

**Frequently Asked Questions on service tax
implications on Import Ocean Freight w.e.f. 1st
June, 2016**



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Ocean Freight for transportation of goods by a vessel from a place outside India to a place in India is made liable to service tax w.e.f. 01.06.2016

Hitherto, freight paid on transportation of goods by a vessel from a place outside India to the customs station of clearance in India has been kept outside the purview of service tax by including the same in negative list of services¹.

The said entry in negative list of services has been omitted with effect from 01.06.2016 vide Union Budget 2016-2017². Hence, ocean freight would be subject to service tax with effect from 01.06.2016. Although Central Government has taken this step to enable Indian shipping lines to avail CENVAT Credit on inputs and input services used in provision of such services, it is against the international practice of not taxing import freight components.

1. What are the implications of service tax on Ocean Freight with respect to transportation of goods by a vessel?

Import movement:

Due to reasons mentioned above, ocean freight for goods transportation by vessel from a place outside India to India would be taxable w.e.f. 01.06.2016.

¹ Section 66D of the Finance Act, 1994

² Section 146 of the Finance Act, 2016

Export movement:

Section 66C of Finance Act, 1994 read with Place of Provisions of Services Rules 2012 (POPS) provides for determination of place of provision of services. Rule 10 of POPS provides for place of provision of services in case of transportation of goods (other than by way of mail/courier). As per said rule, the place of provision of said service will be the destination where the goods are to be transported. Thus, in case of exports of goods by vessel to a place outside India, service tax would not be leviable as the destination is outside India..

However, CENVAT Credit on eligible inputs, capital goods and input services shall be available for providing transportation services by a vessel from customs station of clearances in India to a place outside India³.

2. Whether service tax is applicable on transportation of goods by an aircraft?

Import movement:

Transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India has been included in mega exemption list⁴ with effect from 01.06.2016 and therefore, the same would not be leviable to Service tax.

Export movement:

Vide Rule 10 of POPS as discussed at Para 1 above, Transportation of goods abroad by aircraft would also not be liable to Service tax since the destination of goods is outside India.

³ Notification No. 13/2016-CE (NT) dated 01.03.2016

⁴ Notification No. 9/2016-ST dated 01.03.2016 read with Notification No. 25/2012-ST dated 20.06.2012

3. Who is liable to pay Service Tax?

The business entities obtaining transportation services from domestic shipping lines/other persons (freight forwarders) would be required to pay service tax levied by the service providers under prospective charge. However, services procured from foreign shipping lines/service providers shall be taxable in the hands of the business entity under reverse charge mechanism (RCM)⁵.

Many-a-times, Indian Freight Forwarding Agents/Customs House Agents (CHA) arrange for freight forwarding on behalf of their Indian clients. In such a case, the said agent will be required discharge service tax on freight billed to client. Further, if said agent procures transportation service from foreign shipping line/service provider then service tax needs to be paid by such agent on freight payment made under RCM. However, the same shall be available as CENVAT Credit against output Service tax liability of the agents.

It is clarified that Service tax levied on such services shall not form part of value for customs purposes⁶.

4. Freight forwarders pay Service tax on inward ocean freight. Whether tax is applicable once again on recovery of such inward ocean freight from their Customers?

If all conditions of pure-agent⁷ are fulfilled then it is possible to take a view that service tax need not be paid once again. One of the pertinent conditions to be called as pure agent is recovery of the amount at actuals i.e. without any mark up. It is interesting to note that as per typical industry practice, margin is normally added in freight component. Therefore, service tax needs to be discharged on total freight recovered from client.

⁵ Section 68(2) of the Finance Act, 1994

⁶ TRU Circular – DOF No. 334/8/2016-TRU dated 29.02.2016

⁷ Rule 5(2) of Service Tax (Determination of Value) Rules, 2006

5. What is the value on which tax is payable?

Service Tax at full rate will be applicable on gross amount charged for goods transportation by vessel. Further, an option has been provided to discharge service tax on abated value i.e. on 30% of gross amount charged subject to non-availment of CENVAT Credit on inputs and capital goods⁸. It would be pertinent to note that CENVAT Credit on input services is available even while opting for abatement. Therefore, effective rate of service tax (including SBC and KKC) in case of abatement would be 4.50%.

6. In case of prospective charge, whether services provided by assessee before 01.06.2016 would attract levy of service tax?

Rule 5 of Point of Taxation Rules 2011 (POTR) deals with determination of point of tax in cases of service being taxed for the first time. A table summarising the effective date of tax in various situations has been pasted hereunder for ready reference:

Issue of Invoice	Receipt of payment	Whether ST leviable or not?
Before 01.06.2016	Before 01.06.2016	No
Upto 14.06.2016	Before 01.06.2016	No
Before 01.06.2016	01.06.2016 or thereafter	Yes
After 14.06.2016	Before 01.06.2016	Yes

⁸ Notification No. 26/2012-ST dated 20.06.2012

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Another school of thought could be that since the services are already provided, the point of taxation is already determined during the period prior to introduction of Service tax and therefore, raising of invoice and making of payment may not be relevant at all. In other words, the POT rules cannot go beyond Section 67A of the Finance Act, 1994 and therefore, Service tax shall not be levied on provision of services which are completed prior to 01.06.2016. However, in absence of any clarity from CBEC, this issue could be subject matter of litigation.

7. Whether assessee can take CENVAT Credit of service tax paid on Ocean Freight?

Service tax paid on ocean freight will be available as credit to the Indian manufacturer or service provider availing such services subject to CENVAT Credit Rules, 2004.

8. Whether service tax paid on ocean freight shall be includible on valuation of duty under Customs?

It is clarified that⁹ service tax levied on ocean freight shall not form part of value for customs duty purposes. However, no consequential amendment is made in Customs Act, 1962.

Further, the clarification is restricted to the component of Service tax and the same is silent about the value of transportation service. It is pertinent to note that the component of freight is included under Customs valuation as well as the same is covered by Service tax levy. Therefore, there appears to be double taxation to some extent.

⁹ D.O.F. No. 334/8/2016 – TRU dated 29.02.2016

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