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ITIC Circular – Indian service tax extended

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ITIC would like to draw your attention to the recent extension of service tax to apply to freight received by foreign owners and charterers for goods imported into India. The imposition of this tax will have a significant impact on Indian ship agents.

ITIC is very grateful to Mr. V. Subramanian (Kumar), Advocate, for providing the following guide to these recent developments:

In light of the recent Notification Nos. 1/2017-ST, 2/2017-ST and 3/2017-ST issued by the Ministry of Finance, Government of India, various issues have arisen with respect to payment of service tax on the transportation of goods from a foreign port to India, and Agents' liability for the same.

"Assesse" under the Service Tax Act, Chapter V of the Finance Act, 1994, is defined as a person liable to pay the service tax and includes his agent.

When the service tax was first introduced on freight for goods being imported in June 2016, the service tax was not payable if the owner and the charterer of the ship were foreign nationals, i.e. not residents of India.

On January 12, 2017, the Government of India issued 3 Notifications, by which the exemption previously provided to foreign vessel owners and charterers of vessel, was withdrawn. By Notification No. 1/2017, services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, is now subject to payment of service tax. Therefore, irrespective of whether the transportation of goods is by the owner of the vessel or by a charterer of the vessel, the service of transportation of goods is now subject to payment of service tax.

Notification No. 3/2017 clarified that in respect of such services of transportation of goods by a vessel from a foreign port to an Indian port, the person liable for paying service tax other than the service provider shall be the person in India who complies with Sections 29, 30 and 38 read with Section 148 of the Customs Act, in respect of such goods. This person who is now held liable for payment of service tax, other than the service provider i.e. the vessel owner/ charterer, under Sections 29, 30 or 38 is the "person-in-charge of the vessel". Under Section 148, anything to be done by the person in charge of the vessel may be done by his agent. Thus, it is the agent of the Master of the vessel who will be held liable for the payment of service tax.

For any services rendered outside India to an entity / individual outside India, hitherto, no service tax was payable as the same was exempt. Vide the new notifications, the Government of India has done away with those exemptions and made service tax applicable in such transactions as well particularly relating to provision of transportation service by way of vessel for carrying goods into India; and the person chargeable to payment of this service tax to the

Government, is the agent of the Master / vessel. Therefore, as and from 22-1-2017, service tax is payable by vessels arriving in any port in India to discharge import cargo, even where agreements for provision of transportation of goods into India is entered into outside India, between foreigners, even prior to the Government doing away with the exemption - even then Service Tax is payable, and that is payable by vessel agents.

Freight need not go through the hands of the agents. Prior to the vessel arriving in India, the Agent will have to collect all information of freight etc. When vessel arrives India, the agent would file the Customs documentation on behalf of the vessel, details of freight paid/ payable and working of applicable service tax will also be filed and pay the applicable service tax.

Agents in India would be advised to seek information and funds to pay tax beforehand itself, and to seek indemnity in this behalf from their principal / freight earner. If payment is not made 'port clearance' for vessel under the Customs Act may not be applied for by Agent; or granted by Authority if the Agent is unable to undertake to the Authority to pay and discharge all tax obligations. In spite of all efforts, Agent does not receive funds to discharge the obligation for payment of service tax, he can also approach Court and have vessel arrested for recovery of the debt that he has paid and/or has to pay to the Government on vessel's behalf.

The tax is on providing of service of transportation of goods to India. It is of any goods. And, it could be by anybody, wherever Contract is entered into. Freight is the cost of transportation service being provided. Therefore, service tax is payable on freight for the transportation of cargo to India.

As per the notifications referred to above, the goods are required to arrive in a Customs Station for clearance into India. If goods are simply on board the vessel and being on-carried to a foreign port (same bottom cargo), and/or goods are simply transshipped through an Indian Port (goods not meant for clearance into India), then, as per the wordings of the notifications, service tax will not apply on freight paid on those goods.

Sections 76 to 78A deal with imposition of penalties in the event of default in paying service tax. If incorrect information should be provided to the Agent, who in turn, files such wrong information, then the agent is held liable for such mis-declaration and penalties as set out in Sections 76 - 78A shall follow; and the Agent in turn would become entitled to be indemnified by the owner / charterer as the case maybe.

As will be appreciated, these are early times in relation to the issue, and there are still issues which are not entirely clear and how authorities would interpret and apply the tax in different scenarios. That remains to be seen in due course.

This circular is for general information only and is not a replacement for advice on individual situations.