

Impex # 1

CBEC issues clarification on 'Service Tax' on freight forwards on transportation of goods from India'

CBEC issues Circular clarifying that 'Since the place of provision of the service from a place in India to a place outside India will be a place outside the taxable territory, hence it is not liable to service tax'

The above clarification of the CBEC that Service Tax is not payable on the subject matter is welcome in as much as any relief in transaction cost makes the Indian goods in international market more competitive.

A copy of CBEC circular No. 197/2016 - Service Tax dt. 12-08-2016 containing the above said clarification is reproduced below.

Copy of CBEC circular No. 197/2016 - Service Tax dt. 12-08-2016

Subject: Service tax on freight forwarders on transportation of goods from India

The Board has received representations regarding service tax on freight forwarders on transportation of goods from India.

2.0 It may be noted that in terms of rule 10 of the Place of Provision of Services Rules 2012, (herein after referred to as 'POPS Rules 2012', for brevity) the place of provision of the service of transportation of goods by air/sea, other than by mail or courier, is the destination of the goods. It follows that the place of provision of the service of transportation of goods by air/sea from a place in India to a place outside India, will be a place outside the taxable territory and hence not liable to service tax. The provisions of rule 9 of the POPS Rules 2012, should also be kept in mind wherein the place of provision of intermediary services is the location of the service provider. An intermediary has been defined, inter alia, in rule 2(f) of the POPS Rules 2012, as one who arranges or facilitates the provision of a service or a supply of goods between two or more persons, but does not include a person who provides the main service or supplies the goods on his own account. The contents of the succeeding paragraphs flow from the application of these two rules.

2.1 The freight forwarders may deal with the exporters as an agent of an airline/carrier/ocean liner, as one who merely acts as a sort of booking agent with no responsibility for the actual transportation. It must be noted that in such cases the freight forwarder bears no liability with respect to transportation and any legal proceedings will have to be instituted by the exporters, against the airline/carrier/ocean liner. The freight forwarder merely charges the rate prescribed by the airline/carrier/ocean liner and cannot vary it unless authorized by them. In such cases the freight forwarder may be considered to be an intermediary under rule 2(f) read with rule 9 of POPS since he is merely facilitating the provision of the service of transportation but not providing it on his own account. When the freight forwarder acts as an agent of an airline/carrier/ocean liner, the service of transportation is provided by the airline/carrier/ocean liner and the freight forwarder is merely an agent and the service of the freight forwarder will be subjected to tax while the service of actual transportation will not be liable for service tax under Rule 10 of POPS.

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2.2 The freight forwarders may also act as a principal who is providing the service of transportation of goods, where the destination is outside India. In such cases the freight forwarders are negotiating the terms of freight with the airline/carrier/ocean liner as well as the actual rate with the exporter. The invoice is raised by the freight forwarder on the exporter. The invoice is raised by the freight forwarder on the exporter. In such cases where the freight forwarder is undertaking all the legal responsibility for the transportation of the goods and undertakes all the attendant risks, he is providing the service of transportation of goods, from a place in India to a place outside India. He is bearing all the risks and liability for transportation. In such cases they are not covered under the category of intermediary, which by definition excludes a person who provides a service on his account.

3.0 It follows therefore that a freight forwarder, when acting as a principal, will not be liable to pay service tax when the destination of the goods is from a place in India to a place outside India.

4.0 Keeping this in mind, field formations may deal with cases purely on the basis of the facts of the case, the terms of contract between the entities concerned, the provisions of the Finance Act, 1994, the POPS Rules 2012 and other rules.

Impex # 2 Bonded warehousing provisions in EOUs substituted with 'Rule Based Movements'

DGFT issues notification removing the mandatory warehousing requirements for EOUs etc. and replace it with 'Rule Based Movements'

Any step in the direction of 'ease of doing businesses' is welcome as that step reduces transaction cost and means less documentation. In exports, the steps make Indian goods all the more competitive in international markets which is the need of the day. DGFT has issued a Notification No. 23 dt 13-08-2016 on the subject cited above. A copy of the above said notification is given below.

Copy of DGFT Notification No. 23 dt 13-08-2016

Subject: Removal of mandatory warehousing requirements for EOUs, SITPIs, EHTPs etc. amendment in paras 6.01, 6.13, 6.19 and 6.28 of FTP 2015-2020

S No. 1, Para No. 6.01

Existing para - 1. (g) An EOU engaged in agriculture, animal husbandry, aquaculture, floriculture, horticulture, pisciculture, viticulture, poultry or sericulture may be permitted to remove specified goods in connection with its activities for use outside bonded area.

Revised Para- (g) An EOU engaged in agriculture, animal husbandry, aquaculture, floriculture, horticulture, pisciculture, viticulture, poultry or sericulture may be permitted to remove specified goods in connection with its activities for use outside the premises of the unit.

S No. 2, Para No. 6.13

Existing para - (a) Transfer of manufactured goods from one EOU/EHTP/STP/BTP unit to another EOU/EHTP/STP/BTP unit is allowed with prior intimation to concerned Development Commissioners of the transferer and transferee units as well as concerned Customs authorities, following procedure of in-bond movement of goods. Transfer of manufactured goods shall also be allowed from EOU /EHTP/STP/BTP unit to a SEZ developer or unit as per procedure prescribed in SEZ Rules, 2006.

Revised Para- (a) Transfer of manufactured goods from one EOU/EHTP/STP/BTP unit to another EOU/EHTP/ STP/BTP unit is allowed with prior intimation to concerned Development Commissioners of the transferer and transferee units as well as concerned Customs authorities, as per following procedure for movement of goods:

- i. Any procurement by one unit from another should be supported by a Procurement Certificate or pre-authenticated procurement certificates, as applicable;
- ii. The supply of the goods from one unit to another shall be based upon the usual commercial documents, such as, invoice and delivery challan;
- iii. Upon receipt of goods, copies of documents shall be provided to the jurisdictional office of the sending and receiving unit by way of intimation.

Transfer of manufactured goods shall also be allowed from EOU/EHTP/STP/BTP unit to a SEZ developer or unit as per procedure prescribed in SEZ Rules, 2006.

Simultaneously, DGFT has also amended the Handbook of Procedure(Vol. 1) of 2015-20 dt 13-08-2016 to change procedures as per changes made in FTP of 2015-20 on the subject which may be also referred to (not reproduced below).

Impex # 3

Questions & Answers

Question : Can we sell goods in India to a foreign buyer against international Credit Cards of the buyer? How such transactions are accounted for in India?

Answer : Yes, you can do it. When payment for goods sold to overseas buyers during their visits is received, EDF should be released by the banks only on receipt of funds in their Nostro account or if bank concerned is not the Credit Card servicing bank, on production of a certificate by the exporter from the Credit Card servicing bank in India to the effect that it has received the equivalent amount in foreign exchange.

Question : What are the currencies in which Indian exporters can export to Nepal?

Answer : All transaction between a person resident in India and a person resident in Nepal and Bhutan are to be settled in Indian rupees. However, in case of export of goods to Nepal, where the importer has been permitted by the Nepal Rashtra bank to make payment in free foreign exchange, such payments shall be routed through the ACU mechanism.

Question : We have exported to SEZ units during 2014-15 and got paid in rupees. However, DGFT is not allowing such exports for discharge of export obligation under EPCG. What can we do?

Answer : DGFT has issue a TRADE NOTICE NO. 10/2016 dated 20th July, 2016 dealing with such cases. The trade notice allows closure/redemption/EODC in cases where EPCG authorization holder has made supplies to SEZ units and has not realized the proceeds from the Foreign Currency Account (FCA), in case of supplies which have not been made prior to 1.04.2015. However, where exports have been made on or after 01.04.2015 or payments have been realized after 31.03.2015, the same shall be governed by para 5.11 of Handbook of procedures 2015-20 and export in such cases shall be taken into account for discharge of EO, provided payment is realized from FCA of the SEZ unit.

Question : We made a shipment in July 2016 but wrongly mentioned the description though description in invoice, test report done by Customs. Can the shipping bill be amended now?

Answer : As per section 149 of the Customs Act, 1962, 'no amendment of a bill of entry or a shipping bill or bill of export shall be authorized to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be.' The Act allows amendment to a shipping bill even after clearance of goods. Since you have documents to support your contention, you may approach Customs for the desired correction.