

GST Model Law: Impact on Freight Forwarding & Logistics Industry

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The Government's efforts to release the Model GST Law in June 2016 is an admirable effort towards introduction of the much awaited Goods and Services Tax ('GST'). Certain business processes like registration, payment, refund and filing of return were already released earlier.

The Model GST Law contains comprehensive provisions relating to Central Goods and Service Tax (CGST), State Goods and Service Tax (SGST), Integrated Goods and Service Tax (IGST) and various aspects relating to supply of goods & services, time & place of such supply, input tax credit, valuation and the transition provisions. All these developments augur well for GST implementation in April 2017.

The Model GST law has several new concepts along with provisions from legacy tax framework to address the needs of the foreseen GST structure. The freight forwarding and logistics industry can be seen at the centre of the proposed changes in the expected law.

Freight forwarding and logistics shall be a 'supply of services' including the movement of goods by air, sea, inland waterways, rail or road. The GST treatment on freight transportation shall depend whether the freight transportation is domestic or international.

Domestic freight transportation refers to transportation of goods from a place in India to another place in India. Both, the point of origin and the point of destination should be located in India. On the other hand, International freight transportation is a transportation of goods wherein either the origin or the destination or both are outside India.

Practically, all international freight transportation of goods is carried out in association with the associated overseas agents ('OA') of domestic freight forwarder ('FF') as a part of a global network. The OA and FF use each other's services in order to be able to provide last mile delivery in the respective country of operation. In consideration for such services, invoice is raised on entity receiving the services by corresponding entity for charges in relation to services rendered and an agreed percentage of ¹profit share.

¹*Profit share refers to share in the profit earned by the principle freight forwarder from buying and selling of cargo space. Such profit of freight is shared between the FF and OA in agreed percentage.*

The industry now needs to analyse the provisions of the draft law in detail and its impact on their business. This is essential to identify key implementation requirements as part of the preparations for transition from existing Indirect tax regime to the GST regime.

The critical area of impact is the '**Place of Supply**' provisions to determine the taxability of cross border and inter-state transactions.

Under the current regime, for transportation of goods by vessel/ship, outbound shipments are considered as exports, whereas inbound shipments are subject to service tax. In case of transportation of goods by air, inbound and outbound shipments are not subject to service tax. Consequently, taxability of ancillary charges such as cargo handling, terminal handling, warehousing, distribution of profit share, etc., also gets determined basis the taxability of principal service.

However, the Model GST law does not specify any specific exclusion for air or ocean freight. Thereby it can be construed that in case of transactions where the place of supply is within the taxable territory, even the air and ocean

freight would be leviable to GST.

Where's the Place of Supply of 'Transportation of goods' services under the Model GST law?

The 'Place of Supply' Rules define that the place of supply of transportation of goods services shall be:

- the location of the recipient, if the recipient is a GST registered person;
- If the recipient is an unregistered person, the place of supply shall be the place where the goods are handed over for transportation.

Considering the aforesaid, it is essential to understand the various legs on transaction involved in providing freight transportation service. Basis the origin and destination of the transaction, analysis of each transaction from point of view of GST is encapsulated below:

Inward Shipments – Shipments Coming Into India

INWARD SHIPMENT

Type of Shipment	Legs of Transactions	Scope	Taxability Under Service Tax	Taxability Under GST
Delivered Duty Paid ('DDP') (Entire liability discharged by Consignor/ Seller)	a. Between Consignor and Overseas Agent ('OA')	Contract for delivery of goods from outside India to factory/ warehouse of consignee in India	No service tax since the Consignor and OA are located outside India	Not taxable since both parties are located outside India
	b. Between OA and Indian Freight Forwarder ('Indian FF')	Contract to perform the Indian leg of shipment, on behalf of OA and not the Consignor or Consignee	Service tax chargeable under Rule-10 of Place of Provision Rules, 2012 ('POPS')	² Taxable (refer note below)
Ex-Works ('EXW') (Entire liability discharged by Consignee/ Buyer)	a. Between Consignee and Indian FF	Contract for delivery of goods from outside India to factory/ warehouse of consignee in India	Service tax chargeable under Rule 10 of POPS, including the amount of inward ocean freight	Taxable under Rule 9 of proposed Place of Supply Rules
	b. Between Indian FF and OA	Contract to perform the origin leg of transaction in the foreign country on behalf of FF and not the Consignor or Consignee	Service tax payable under RCM by FF, as per Rule 10 of POPS	Taxable under Rule 9 of proposed Place of Supply Rules. Tax liability to be discharged under Reverse Charge Mechanism ('RCM')

Cost-Insurance-Freight ('CIF') (Liability of Consignor to deliver the goods till Indian port i.e. port of importation)	a. Between the Consignor and Foreign Freight Forwarder ('Foreign FF')	Contract to deliver goods till the port of importation (India), including respective clearance and freight charges	No service tax payable, since Consignor and Foreign FF located outside India	Not taxable since both parties are located outside India
	b. Between Consignee and Indian FF	Contract for transportation of goods from domestic port to the factory/ warehouse of consignee	Service tax chargeable on entire consideration under Rule 10 of POPS	Taxable under Rule 9 of proposed Place of Supply Rules
Free-on-Board ('FOB') (Liability of Consignor to deliver the goods till Foreign port i.e. port of exportation)	a. Between Consignor and Foreign FF	Contract to deliver goods till the port of exportation	No service tax payable, since Consignor and Foreign FF located outside India	Not taxable since both parties are located outside India
	b. Between Consignee and Indian FF	Contract for transportation of goods from foreign port to factory/warehouse of consignee, including clearance and freight charges	Service tax chargeable on entire consideration, including ocean freight, under Rule-10 of POPS	Taxable under Rule 9 of proposed Place of Supply Rules

Outward Shipments – Shipments Going From India

OUTWARD SHIPMENT

Type Of Shipment	Legs Of Transactions	Scope	Taxability Under Service Tax	Taxability Under GST
Delivered Duty Paid ('DDP') (Entire liability discharged by Consignor/ Seller)	c. Between Consignor and Indian FF	Contract for delivery of goods from India to factory/warehouse of consignee outside India	No service tax payable as per Rule-10 of POPS, since destination of goods is outside India	Taxable under Rule 9 of proposed Place of Supply Rules
	d. Between Indian FF and OA	Contract to perform the foreign leg of shipment, on behalf of FF and not the Consignor or Consignee	No service tax chargeable under Rule-10 of POPS	Taxable under Rule 9 of proposed Place of Supply Rules. Tax liability to be discharged under RCM

Ex-Works ('EXW') (Entire liability discharged by Consignee/ Buyer)	c. Between Consignee and OA	Contract for delivery of goods from India to factory/warehouse of consignee outside India	No service tax payable, since Consignee and OA located outside India	Not taxable since both parties are located outside India
	d. Between OA and Indian FF	Contract to perform the origin leg of transaction in India on behalf of OA and not the Consignor or Consignee	Services performed in India for Foreign FF, would not attract service tax. As per Rule 10 of POPS this transaction would qualify as export of service	² Taxable (refer note below)
Cost-insurance-Freight ('CIF') (Liability of Consignor to deliver the goods till foreign port i.e. port of importation)	c. Between the Consignor and Indian FF	Contract to deliver goods till the foreign port of importation, including respective clearance and freight charges	No service tax chargeable under Rule-10 of POPS	Taxable under Rule 9 of proposed Place of Supply Rules
	d. Between Consignee and Foreign FF	Contract for transportation of goods from foreign port to the factory/warehouse of consignee	No service tax payable, since Consignor and Foreign FF located outside India	Not taxable since both parties are located outside India
Free-on-Board ('FOB') (Liability of Consignor to deliver the goods till Indian port i.e. port of exportation)	c. Between Consignor and Indian FF	Contract to deliver goods till the port of exportation (India)	No service tax chargeable under Rule-10 of POPS.	Taxable under Rule 9 of proposed Place of Supply Rules
	d. Between Consignee and Foreign FF	Contract for transportation of goods from Indian port to factory/warehouse of consignee, including clearance and freight charges	No service tax payable since Consignor and FF located outside India	Not taxable since both parties are located outside India

In respect of transaction performed by Indian FF on behalf of OA, the services are provided to a non-resident entity which would be considered as a non-registered entity. Accordingly, the place of supply of service for unregistered entity will be location where the goods are handed over for transportation i.e. India, provided the air/ocean freight is paid by the OA. Hence, such transaction would be subject to GST.

In respect of outbound shipments, representation should be made by the industry to zero rate international freight under GST, in order to keep the taxation of freight in line with global practices.

It can be briefed that, the proposed law as it stands at present would encapsulate each transaction entered by a domestic freight forwarder as taxable under GST.

Impact on Input Tax Credit

The Model GST law has introduced a matching principle for availment of Input Tax Credit. The details of recipient availing credit would be matched with the detail of the supplier for authentication of credit availed. In case of any mismatch, the amount of discrepancy would be added to the tax liability of the recipient in the subsequent month.

Also in case the supplier where either tax is not deposited by the supplier or the details are not furnished, the input tax credit would not be available to the recipient in respect to such supplies.

This provision places the liability on the recipient for non-compliance made by their vendors. In case of freight forwarding and logistics industry the input tax credit is contributed from large number of vendors and thereby keeping a track of all such vendors would be a cumbersome process. Businesses will need to ensure their vendors are compliant and apply appropriate safeguards such as release of payment only after vendor has uploaded details on the GST Network.

Further, Input Tax Credit is also restricted by condition related to timeliness. Credit in respect of invoices can be taken up to one year from date of issue of tax invoice or filing of return for the month of September following the end of financial year to which the tax invoice pertains or date of filing of annual return, whichever is earlier.

In another view, GST will also present significant opportunities for freight forwarding and logistics industry as various entities will review their supply chain in accordance with tax considerations under new regime to bring about supply chain efficiencies.

Comments

The Model GST Law provides complications as well as certain opportunities to the freight forwarding and logistics industry. However, there are still certain unanswered questions on key areas like treatment of supplies to SEZ/STP, transition procedures, capital goods credit mechanism, concept of bundled services. Also at this stage no negative list, list of service chargeable under reverse charge mechanism and detailed zero rated supply provisions have been prescribed. Some of these require consensus between State and Centre, which hopefully will emerge in ensuing months.

| *Courtesy :*

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