



GN LAW ASSOCIATES

ARTICLES 2020



www.gnlawassociates.com

WHY EXEMPTION IS REQUIRED FOR EXPORT FREIGHT?

Author : **G. Natarajan**

Reference is invited to the author's articles Treading the GST Path 27 and 56 - Export Freight Inequity.

To quote,

Under Section 12 (8) of the IGST Act, when both the supplier and recipient are in India,

(8) The place of supply of services by way of transportation of goods, including by mail or courier to,-

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

So, when an Indian Shipping line is engaged by an Indian Exporter, GST is payable on such freight as the place of supply is the location of the registered person.

Whereas, under Section 13 (9) of the IGST Act, where either the supplier or recipient of the service is outside India,

(9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.

So, when a Foreign based Shipping line is engaged by an Indian Exporter, GST is not payable as the place of supply is outside India.

Is it not an inequity?

The following proviso has since been added to section 12 (8) of the IGST Act with effect from 01.02.2019.

Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.

The purpose of adding the above proviso has been explained by the Government as,

In order to provide a level playing field to the domestic transportation companies and promote export of goods, it is proposed that the transportation of goods from a place in India to a place outside India by a transporter located in India would not be chargeable to GST, as place of supply will be outside India.

This is a taxpayer-friendly amendment. So far so good.
But as per Section 7(5) (a) of the IGST Act,

7(5) Supply of goods or services or both, -

7(5) Supply of goods or services or both, -

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

As per Section 5 of the IGST Act, IGST is leviable on all inter-state supplies. So the export transportation services provided by Indian Service providers (by aircraft or vessel), would attract IGST!

Vide Notification 2/2018 Integrated Tax (Rate) Dt. 25.01.2018, the following exemption has been introduced.

(1)	(2)	(3)	(4)	(5)
"20A	Heading 9965	Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India	Nil	Nothing contained in this serial number shall apply after the 30th day of September 2018.
20B	Heading 9965	9965 Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.	Nil	Nothing contained in this serial number shall apply after 30th day of September 2018.";



The validity of this exemption has been extended upto 30.09.2019, vide Notification 15/2018 Integrated Tax (Rate) Dt. 26.07.2018. Subsequently it was further extended upto 30.09.2020 vide 20/2019 Integrated Tax (Rate) Dt. 30.09.2019.

So after 01.10.2020, if the exemption is not extended, the inequity will resurface again?

(Published in www.taxindiaonline.com on 30.09.2020)

