

Tax alert: IGST payable on ocean freight by importer irrespective of valuation methodology – Andhra Pradesh AAR

Issued on: 03 December 2019



Summary

The Andhra Pradesh Authority for Advance Ruling (AAR) has, in a recent case, held that transportation of goods in a vessel from a non-taxable territory to a taxable territory amounts to import of service. Hence, the importer is liable to pay Integrated Goods and Services Tax (IGST) on the ocean freight as an inter-state supply. Further, the AAR clarified that IGST is payable under the reverse charge mechanism (RCM) irrespective of the valuation adopted for the import of goods, i.e., free on board (FOB) or cost inclusive of freight (CIF). The AAR opined that there is no exemption available under the GST law for payment of IGST on ocean freight where IGST is paid on the goods imported.

Facts of the case

- The Applicant¹ is engaged in import-handling, promotion and marketing of fertilisers.
- In terms of a notification², the importer is required to pay IGST on RCM on the amount of deemed ocean freight equal to 10% of the value of goods imported.
- The Applicant is of the view that levy of IGST on ocean freight results in double taxation since it has already been included while computing customs duties on imported goods.

Questions before the AAR and its ruling

Is the transaction import of service and inter-state supply?

AAR ruling: The transportation of goods in a vessel from a non-taxable territory to a taxable territory amounts to import of service, and such ocean freight is leviable to IGST as an inter-state supply of service³.

Can the Applicant be deemed to be the recipient of service?

AAR ruling: The Applicant is the recipient of both goods and services as the said consideration paid for the transaction is inclusive of freight as well⁴.

Is the Applicant liable to pay IGST under RCM?

AAR ruling: The Applicant, being an importer, is liable to pay IGST under RCM by following the valuation prescribed irrespective of the valuation adopted for the import of goods, i.e., FOB or CIF². Furthermore, there is no exemption available under the GST law for payment of IGST on ocean freight where IGST is paid on the goods imported.

¹ M/s Indian Potash Ltd.

² Notification No. 10/2017 – Integrated Tax (Rate) dated 28 June 2017 read with Notification No. 8/2017 – Integrated Tax (Rate) dated 28 June 2017

³ Section 7(4) and 7(5)(c) of the IGST Act, 2017

⁴ Section 5(1) and 5(3) of the IGST Act, 2017

Our comments

Levy of IGST on ocean freight has been a matter of extensive litigation. Writ petitions challenging the levy have already been filed/admitted before various High Courts (HCs), including the Mumbai HC, Delhi HC and Gujarat HC.

Recently, the Karnataka AAR⁵ also ruled that IGST on ocean freight in case of a contract on CIF basis should be paid by the importer under RCM, subject to the final decision of Gujarat HC.

Further, the Madhya Pradesh AAR⁶ had rejected the challenge to the validity of levy of IGST on ocean freight under RCM and held that IGST is leviable on ocean freight paid on imported goods under RCM even when the ocean freight formed part of CIF value of imports.

⁵ In the case of M/s M K Agro Tech Ltd

⁶ In the case of M/s E-DP Marketing Pvt. Ltd.

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI National Office Outer Circle L 41 Connaught Circus, New Delhi 110001 T +91 11 4278 7070	NEW DELHI 6th floor, Worldmark 2, Aerocity, New Delhi - 110037 T +91 11 4952 7400	AHMEDABAD 7th Floor, Heritage Chambers, Nr. Azad Society, Nehru Nagar, Ahmedabad - 380015	BENGALURU 5th Floor, 65/2, Block A, Bagmane Tridib, Bagmane Tech Park, C V Raman Nagar, Bengaluru - 560093 T+91 80 4243 0700	CHANDIGARH B-406A, 4th Floor, L&T Elante office Industrial area, Phase-I, Chandigarh 160002 T +91 172 4338 000
CHENNAI 7th Floor, Prestige Polygon 471, Anna Salai, Teynampet Chennai - 600 018 T +91 44 4294 0000	DEHRADUN Suite 2211, Michigan Avenue, Doon Express Business Park, Saharanpur Road, Dehradun - 248002 T +91 135 264 6500	GURGAON 21st Floor DLF Square Jacaranda Marg, DLF Phase II, Gurgaon 122002 T +91 124 462 8000	HYDERABAD 7th Floor, Block III White House Kundan Bagh, Begumpet Hyderabad 500016 T +91 40 6630 8200	KOCHI 7th Floor, Modayil Centre Point, Warriam road junction, M.G. Road, Kochi 682016 T +91 484 406 4541
KOLKATA 10C Hungerford Street 5th Floor, Kolkata 700017 T +91 33 4050 8000	MUMBAI 16th Floor, Tower II Indiabulls Finance Centre SB Marg, Prabhadevi (W) Mumbai 400013 T +91 22 6626 2600	MUMBAI Kaledonia, 1st Floor, C Wing (Opposite J&J office) Sahar Road, Andheri East, Mumbai 400069	NOIDA Plot No. 19A, 7th Floor Sector - 16A, Noida 201301 T +91 120 4855 900	PUNE 3rd Floor, Unit No 309 to 312, West Wing, Nyati Unitree Nagar Road, Yerwada Pune- 411006 T +91 20 6744 8800

For more information or for any queries, write to us at contact@in.gt.com



Follow us @GrantThorntonIN



Grant Thornton

An instinct for growth™

© 2019 Grant Thornton India LLP. All rights reserved.

“Grant Thornton in India” means Grant Thornton India LLP, a member firm within Grant Thornton International Ltd, and those legal entities which are its related parties as defined by the Companies Act, 2013.

Grant Thornton India LLP is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001.

References to Grant Thornton are to Grant Thornton International Ltd (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.