FIPI

Ref. No. PF/9
May 11, 2017

The Jt. Secretary,
Tax Research Unit - II,
Central Board of Excise & Customs,
New Delhi.

Attn : Shri Amitabha Kumar

Dear Sir,

Sub: Service tax on transportation of goods by vessel by foreign shipping lines

You are kindly aware that Indian refineries import large quantities of crude and natural gas. Such import of crude & feedstocks, natural gas is done on FOB / C&F / CIF / DES basis and in respect of C&F, CIF and DES deliveries, transportation is in the scope of the overseas suppliers, who engage the services of foreign shipping lines to transport the goods from load port(s) outside India to disport(s) in India. Thus in case of C&F, CIF and DES deliveries, services of transportation of goods by a vessel, are provided by a foreign shipping line (a person located in a non-taxable territory) to a foreign charterer / overseas supplier of goods (a person located in a non-taxable territory), by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India.

In this regard, we wish to submit the following:

1. Vide notification Nos. 15/2017-ST and 16/2017-ST both dated 13th April, 2017, effective 23.04.2017, the importer of goods as defined in the Customs Act, 1962 has been made liable for paying service tax under reverse charge mechanism on services of transportation of goods by vessel provided by a foreign shipping line to a foreign charterer with respect to goods destined for India.

2. Vide notification No. 14/2017-ST dated 13th April, 2017, effective 22.01.2017, the point of taxation in respect of aforesaid services has been specified as the date of bill of lading of goods in the vessel at the port of export.

3. In terms of sl. no. 10 of notification no. 26/2012-ST dated 20.06.2012, as amended, service tax is payable only on 30% of the freight charged by the vessel, subject to the only condition that CENVAT is not availed on inputs and capital goods used for providing the said taxable service.

Federation of Indian Petroleum Industry

PHD House, 2nd Floor, 4/2, Siri Institutional Area, August Kranti Marg, New Delhi-110016,Tel : +91-11-26537483, 26537062, 26536615, 46151931
Fax : +91-11-26964840,Website : www.fipi.org.in

4. Circular No. 206/4/2017-Service Tax, dated 13.04.2017 has been issued by the Board to clarify the issues related to levy of service tax on the aforesaid services.

5. In para 4 & 4.1 of the above circular, it has been stated that the exemption of 70%, as provided under Notification No. 26/2012-ST, dated 20.06.2012 (Sr. No. 10), as amended, will not be available to services provided by foreign shipping lines, for reasons mentioned below:

   - In case of foreign shipping lines, services provided by them being exports are zero-rated in their home country and have suffered no taxes;
   - Further the foreign shipping lines do not get registered in India and do not follow the provisions of Cenvat Credit Rules, 2004; and
   - The foreign shipping lines are not satisfying the condition mentioned in the Notification No. 26/2012-ST, dated 20.06.2012 (Sr. No. 10), as amended, i.e. non-availment of Cenvat credit on Input and Capital Goods used for providing taxable services.

6. Thus, an abatement which is permissible under notification no. 26/2012-ST is sought to be denied through the above circular dt. 13.04.2017.

7. In the context of the above notifications and board circular, the Indian refining sector wishes to highlight the following:

7.1 <u>Denial of an exemption through a circular is not legally tenable</u>

7.1.1 It is not in dispute that the services rendered by the foreign shipping lines are services of "transport of goods in a vessel'. Therefore in terms of Sl. No. 10 of notification no. 26/2012-ST, dated 20.06.2012, as amended, exemption / abatement to the extent of 70% of the value of taxable service is available, subject to the condition that, CENVAT credit on inputs and capital goods used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004.

7.1.2 The circular itself acknowledges the fact that the foreign shipping lines do not get registered in India and do not follow the provisions of the Cenvat Credit Rules. This being the case, the question of availment of cenvat credit on inputs used for providing the taxable service does not arise; nor do the foreign shipping lines claim Cenvat credit of capital goods. Since the only condition as laid sown under Sl. no. 10 of notification no. 26/2012-ST is complied with, the exemption in terms of the said notification is available.

7.1.3 The said exemption under Sl. no. 10 of notification no. 26/2012-ST would apply to all services of transportation of goods by vessel, irrespective of who the charterer or recipient of service is, so long as such services are taxable in India and Cenvat credit has not been availed on the inputs and capital goods used for providing such service.

7.1.4 The CBEC circular dt. 13.04.2017 recognizes that the above services are zero-rated in the home country and that is precisely why the said service is charged to tax in India. While the said service is charged to tax in India, the exemptions that are available to the very service shall be admissible, if the conditions are satisfied.

7.1.5 When the inputs and capital goods used in providing the impugned service are not liable to Cenvat for whatever reasons, the Department cannot impose a condition through a circular that the said inputs and capital goods used for providing the service should have been liable to Cenvat to start with. This condition is not there in the notification no. 26/2012-ST (sl. no. 10) and hence an additional condition cannot be imposed through a circular, for extending an exemption in terms of the said notification.

7.1.6 An imposition of an additional condition through a circular is beyond the scope of the exemption notification and the Courts / tribunals have consistently held that restricting the scope of an exemption by imposing a new condition through a circular is not permissible. It has also been held by Courts / tribunals that board circulars cannot restrict or expand the amplitude of an exemption notification nor can they add/subtract conditionalities thereto/therefrom.

7.2 Board circular seeks to disturb the level playing ground between the Indian shipping lines and foreign shipping lines

7.2.1 With respect to transportation of goods by a vessel, no service tax was leviable on transportation of goods from a place outside India upto the customs station of clearance in India, whether by an Indian shipping line or a foreign shipping line, since the said service was included under the negative list of services i.e. Sec 66D of the Finance Act, 1994, till 31.05.2016. Thus there was a level playing ground between the Indian shipping lines and the foreign shipping lines during the period 01.07.2012 to 31.05.2016.

7.2.2 Effective 01.06.2016, with the amendment to Sec 66D of the Act, service tax became leviable on transportation of goods by a vessel from a place outside India upto the customs station of clearance in India. Thus on the above transportation services provided by both Indian and foreign shipping lines, since tax on the said transportation service should be the same, whether provided by an Indian shipping line or by a foreign shipping line, tax is being paid on the abated taxable value.

The circular dt 13.04.2017 upsets this level playing field and places a greater tax burden on transportation service provided by foreign shipping lines as comparable to the tax payable on the same transportation service provided by the Indian shipping lines.

7.2.3 It is pertinent to note that effective 01.03.2013, excise duty on ships manufactured in India is nil (Sl. no. 306A of notification no. 12/2012-CE dt. 01.03.2012, as amended) and consequently CVD on ships imported into India is also nil. Hence both Indian flag vessels and foreign flag vessels have no burden of excise duty / CVD on vessels used in providing the above transportation service. Similarly fuel supplied as stores to foreign going vessels of both Indian flag vessels as well as foreign flag vessels does not suffer excise duty. Since the incidence of tax on both capital goods as well as inputs on both Indian flag vessels and foreign flag vessels is identical, the irrefutable conclusion is that the same transportation service rendered by either of them should be eligible for the benefit of abatement. The Department's circular denying the benefit of the abatement for the very same service rendered by foreign flag vessels does not appear to have any basis.

7.3 Point of Taxation based on date of Bill of Lading results in avoidable additional costs

7.3.1 Point of Taxation in respect to above service has been specified as the date of bill of lading of such goods at the port of export. Accordingly, the importer has to discharge liability to service tax on the aforementioned transportation service based on the date of bill of lading.

7.3.2 The above results in various difficulties to the industry as mentioned below:

- In an import on C&F / CIF / DES basis, the transportation of goods is in the scope of foreign supplier located outside India and the supplier of goods is not under any contractual obligation to make available to the Indian importer, the amount of freight incurred in such transportation.

  In such cases, the Indian importer is dependent on the foreign supplier to communicate the necessary details such as date of bill of lading, amount of freight, etc., so that the Indian importer can determine the service tax liability and make payment thereof. In circumstances where there is a delay in receipt of information from the foreign supplier, the Indian importer needs to discharge service tax liability along with overdue interest, which adds to the cost of operations.

- In order to achieve economies in transportation, common cargos meant for more than one manufacturing unit of the Indian entity are transported through the same vessel under multiple bills of lading. Based on the actual requirement of the individual units, at a date near to arrival of the vessel in India, the individual bills of lading are assigned amongst different manufacturing units of importing entity, who file individual bills of entry in their respective addresses as importer of goods.

In such cases, the importer of goods who can discharge the liability to service tax can be identified only when the individual manufacturing unit who would file the bill of entry is finalized closer to the discharge date. In these cases, where there is time gap between the date of bill of lading and the date of filling of bill of entry, the importer becomes liable to pay service tax along with overdue interest, which adds to the cost of operations.

- Moreover Indian refineries purchase / sell goods on "high sea basis", where the transfer of title in goods is done by endorsement of document of title to goods i.e. bill of lading by one person in favour of another person, when the vessel is in the high seas. In such cases, the individual company who would take delivery of the goods files a bill of entry as the importer of goods. In such a scenario, the entity buying goods from outside India, with an intent to sell the cargo on high sea basis to another person in India cannot make payment of service tax, since the said entity will not be the "importer" as defined under clause (26) of Section 2 of the Customs Act, 1962.

  The service tax needs to be paid by the importer of goods who files the bill of entry after buying the goods on high seas basis and since the point of taxation based on date of bill of lading has already occurred prior to the purchase of goods by him, the importer has no option but to pay service tax along with overdue interest, which adds to the cost of operations.

8. In view of the above, the Oil Industry requests that

8.1 the clarification given in the Board circular dt. 13.04.2017 with respect to the denial of exemption / abatement in respect of services of transportation of goods by sea provided by a foreign shipping line to a foreign charterer with respect to goods destined for India be withdrawn and that it be clarified that such exemption i.e. abatement would also be applicable to the services provided by foreign shipping lines; and

8.2 necessary amendments be made to provide for point of taxation as the date of bill of entry filed by the Importer, since all the obligations vis-à-vis the importer related to such import gets attracted from the date of filing of bill of entry.

Thanking you,

Yours faithfully,

Rajiv Bahl
Director (Finance, Taxation & Legal)