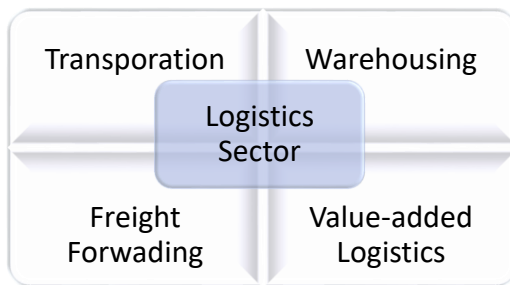


GST on Logistics: Smooth Transportation?



The Indian logistics industry has gained immense significance over the years and is a major contributor of Indian GDP. The logistics market in India is forecasted to grow at a CAGR of 10.5% between 2019 and 2025. It has a critical role to play for developing countries like India wherein consumption is growing and demand is always high. Granting of infrastructure status to logistics, implementation of GST and introduction of

e-way bill are all aimed to streamline this important sector.

Despite the growing importance, the sector has been grappling with the ambiguous provisions of GST which has been woefully ignorant about the various practical challenges, compliance burdens and incompetent legal framework.

TRANSPORTATION BY ROAD:

- Services by way of transportation of goods by road except the services of a GTA and a courier company are exempt from GST.
- GTA or a Goods Transport Agency which has been excerpted from the exemption has always been a topic of controversy under the indirect taxation regime due to it being a highly unorganized sector in India.

The use of the phrase '*in relation to*' in the definition of GTA has extended the scope of the definition of GTA. This actually means that the services by way of GTA includes not only the actual transportation of goods but any intermediate/ancillary service provided in relation to such transportation too like loading / unloading, packing, trans-shipment and temporary warehousing; thereby treating a bundle of services as a composite supply of GTA.

Issuance of consignment note is an essential requirement for supplier of services to become a GTA and if consignment note is not issued by such transporter, then such transporter will not be considered as GTA. However, if a bundle of services is provided similar to that of GTA, without issuing a consignment note, it may be taxable at 18% as "Other Support Services" and not eligible for the road transportation exemption.

Services of a GTA are covered under Reverse Charge Mechanism, where service recipient (consigner or consignee) would be required to pay GST. A GTA is exempted from registration under GST if it is exclusively transporting goods where the total tax is required to be paid by the recipient under

reverse charge basis (irrespective of the turnover exceeding 20 lakhs).¹ However, an option has been given to the GTA to pay tax under forward charge mechanism.

	Person liable to GST	GST Rate	Condition
Option I	Recipient of Supply	5%	- ITC on inputs and input services is not available to the supplier
Option II	Supplier (GTA)	12%	- ITC on inputs and input services is available to the supplier - Applicable on all outward supplies during the financial year

Further, RCM would be applicable only if recipient is one of the "specified recipients"(does not include unregistered individuals) as per the notification. It is interesting to note that even if a specified recipient is not registered under GST (turnover less than the specified limit) but has availed the services of a GTA; then such a person is compulsorily required to register under GST, irrespective of the threshold turnover and discharge the GST liability thereon.

Few exemptions in relation to Goods Transport Agency service and such exemption would be available to both Supplier as well as Recipient which includes service by way of transport in a goods carriage of few items like milk, salt, food grains, defence or military equipment, organic manure, newspapers, agricultural produce. Exemption has also been granted based on monetary limits:

- goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed Rs.1500,
- goods, where consideration charged for transportation of all such goods for a single consignee does not exceed Rs.750.

➤ Other means of Road Transport:

Activity	GST
Courier Services	GST at 18% with full input tax credit available to the supplier
Giving on hire a means of transportation to a GTA	Exempt

CHALLENGES FOR TRANSPORTATION BY ROAD:

- In the changing business scenario, the traditional GTA service has undergone a change with newer logistics chain coming into play. Various type of services provided like door-to-door delivery, hiring

¹ Notification No. 5/2017- Central Tax dated 19/06/2017

of other transport vehicles, ecommerce aggregators, custom contractual terms with the customers and with a PAN India presence have led to questions not adequately addressed by the law.

- Whether to opt for RCM and 5% GST and avail no ITC or pay 12% GST under forward charge and avail ITC is a big dilemma for the GTA industry. Considering that the criteria for exemption is different for goods and for services, in certain cases while the goods are exempted, transportation thereof is taxable. A GTA opting for forward charge charging 12% would be an additional cost to such registered persons and lead to loss of customer for such GTA.
- Provisions relating to deemed supplies for transporters located across multiple States have increased the cost of operations due to non-availability of ITC under the 5% tax rate structure.

TRANSPORTATION BY SEA:

Shipping industry in India can be classified into two segments – Goods segment, which broadly covers shipbuilding and shipbreaking activities and the Services segment, which covers transportation of goods – both domestic (like coastal and inland waterways) and international, port services and ship repair.

The below mentioned table elucidates the rate structure and exemptions applicable for supply of goods and/or services by a shipping company in GST regime:

Activity	Post GST
Transportation of goods by a vessel (other than outbound freight).	GST at 5% with the condition that credit on goods (other than ships, vessels including bulk carriers and tankers) used in supplying the service has not been taken. ²
Supply of transportation services by Indian shipping companies to Indian exporters (outbound freight)	Exemption from payment of GST has been granted till 30 September 2020. This will not be treated as an exempted supply for the purpose of reversal of input tax credits for the supplier.
Port services	GST – 18%
Services by way of transportation of goods by inland waterways is exempted from GST.	Exempt
Supply of Various kinds of ships, boats and vessels covered under HSN 8901, 8902, 8904, 8905, 8906 and 8907	5%
Supply of parts of ships, boats and vessels covered above	5% ³

² There is no option available to the supplier to pay GST at higher rate (say, 12% or 18%) and avail Input Tax Credit as in the case of GTA. However, there is also a view that the supplier can charge GST @18% and claim credit on inputs, capital goods and input services.

³ It may be noted that parts used in shipbuilding may also be classified under separate entries describing such goods liable to 12% or 18% of GST. In this case, the ruling of Maharashtra AAR in the case of Mazagon Dock Shipbuilders Ltd., In re

Various scenarios Transportation by vessels and GST implications thereon:

➤ Outbound freight – Export of goods:

Supplier (shipping company)	Person liable to pay freight	GST applicability	Person liable to pay GST	Place of Supply (PoS)	Comments
Indian Shipping Company	Indian Exporter	Exempt	Indian Shipping Co.	Section 12(8) of IGST Act - Location of registered service recipient - Post amendment w.e.f. 01.02.2019, outside India	Exemption up to 30 th September 2020
Indian Shipping company	Foreign importer	Zero-rated supply – export of services	<i>(Export in the hands of -)</i> Indian Shipping Co.	Section 13(9) of IGST Act - Outside India	Refund of unutilized ITC on inputs and input services or tax paid, as the case may be, can be claimed by Indian shipping company
Foreign Shipping Company	Indian exporter	Not Taxable	-	Section 13(9) of IGST Act – outside India	-
Foreign Shipping Company	Foreign importer	Not Taxable	-	Section 13(9) of IGST Act – outside India	-

➤ Inbound freight –Import of goods:

Service provider (shipping company)	Person liable to pay freight	GST applicability	Person liable to pay GST	Place of Supply (PoS)	Comments
Indian Shipping Company	Indian Importer	Taxable	Indian Shipping Co.	Section 12(8) of IGST Act - Location of registered service recipient	-

[2019] 103 taxmann.com 380 although not binding is worth considering as a guide for classification and rate of tax applicable.

Indian Shipping Company	Foreign exporter	Taxable	Indian Shipping Co.	Section 13(9) of IGST Act – India	Since, PoS is in India, it will not be treated as an export of service.
Foreign	Indian importer	Taxable under Reverse Charge Mechanism	Indian Importer	Section 13(9) of IGST Act – Place of destination of goods, i.e., India	Import of services in the hands of Indian importer
Foreign	Foreign exporter	Taxable under Reverse Charge Mechanism (Refer Note below)	Indian Importer of goods i.e. the one who files the Bill of Entry	Section 13(9) of IGST Act – Place of destination of goods i.e., India	Where freight value is not separately available, then 10% of CIF value of the imported goods shall be taken as value of supply.

Note: As may be noticed, in case of import of goods on CIF basis, applicability of GST under Reverse Charge Mechanism not only leads to double taxation in the hands of the importer but also seeks to tax a transaction which is outside the very ambit of GST. A recent Gujarat High Court judgement in the case of Mohit Minerals (P) Ltd vs Union of India⁴ has held such levy to be ultra-vires the IGST Act, as it lacks legislative competency. Government’s progressive stand on this matter is yet awaited.

CHALLENGES FOR TRANSPORTATION BY SEA:

- The problem of double taxation on Import freight still prevails as the industry is in a state of confusion over recent rulings and other provisions of the GST Act.
- The exemption to outbound freight until 30th September 2020 as a temporary recourse has failed to level the playing field for the domestic shipping companies.
- From the shipbuilding point of view, ambiguity in the rate of tax applicable on the parts used in ships / vessels has resulted in more shipbuilders opting for import rather than local procurement.³

OTHER SECTORS OF LOGISTICS:

Activity	GST
Transportation of goods by rail	GST at 5% with the condition that credit on goods used in supplying the service has not been taken.

⁴ [2020] 113 taxmann.com 436

	Certain exemptions as in the case of GTA are available.
Transport of goods in containers by rail by any person other than Indian Railways	GST at 12%
Transport by way of import of goods by an aircraft	Exempt
Transport by way of export of goods by an aircraft	Exempt up to 30 th September 2020
Warehousing services	<ul style="list-style-type: none"> - GST at 18% - Exempt for warehousing of good like rice, minor forest produce, cereals, pulses, fruits, nuts and vegetables, spices, coffee and tea
Multimodal transportation of goods	GST at 12%
Any other goods transport services not specifically covered anywhere else	GST at 18%

WAY FORWARD:

While the introduction of GST had the potential to accelerate growth in the logistics industry and therefore, indirectly boost the manufacturing sector, the law has remained woefully ignorant about the various complexities of the industry; thereby pushing the industry into ambiguity. The implementation of GST for the logistics industry has been a ride on the undeveloped roads till now and the road ahead looks as rocky. The shipping industry is not only navigating in uncharted waters but also seems to have lost the requisite directions. The industry looks up to the Government to signal some clarity and direction; especially, after the pandemic as a boost to logistics industry could indirectly boost the revival of the economy.

14 August 2020

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