

Shri M Ajit Kumar, Chairman
The Central Board of Indirect Tax and Customs,
North Block,
New Delhi-110001

16 November 2020

Dear Mr Chairman,

CIRCULAR NO. 103/22/2019-GST RELATING TO CLARIFICATIONS ON INTEGRATED GOODS AND SERVICES TAX ACT 2017 (IGST ACT 2017)

The International Chamber of Shipping (ICS) is the global trade association for shipowners and operators. ICS represents over 80% of the world's merchant fleet and comprises a membership of national shipowners' associations from 37 countries. This includes members of the Asian Shipowners' Association (ASA), ICS' regional partner.

The Federation of National Associations of Ship Brokers and Agents (FONASBA) is the international representative body for ship agents and brokers, representing 75 members in 65 countries.

We note that on 28 June 2019, the Central Board of Indirect Taxes and Customs (CBIC) issued a circular (no. 103/22/2019-GST), providing clarification on the application of the Indian Integrated Goods and Services Tax Act (IGST) of 2017 to shipping and port related charges. Specifically, this circular confirmed that the 'place of supply' relevant to various services provided by Indian ports to foreign shipping companies, should be considered 'outside of India', meaning that all such charges are exempt from payment of IGST.

Pertinent to sections 13(2) and 13(4) of the IGST 2017 Act, the 2019 circular therefore clarified that all foreign shipping companies are exempt from payment of IGST for certain services provided in Indian Ports. These services include pilotage charges; mooring/unmooring; harbour dues/ dockage; custom dues/ filing cost; garbage removal; superintendent costs; port communication; port transportation; tonnage dues; navigation/ light/ fairway dues; berth/ terminal/wharfage/ quay dues; and other port expenses.

It is relevant to note that the intention of the legislature in clarifying the place of supply of these services was to accord export benefit for such services, whenever provided to foreign shipping companies located outside of India. As some foreign shipping companies continue to be charged IGST by ports in India, some of these companies have approached a number of ports for the implementation of the circular guidelines and have requested that IGST no longer be charged for these services.

Implementing the government circular: Addressing challenges faced by ports

Following these clarifications by the Indian government, it was expected that foreign shipping companies would cease to be charged IGST on the above services, in accordance with the law. However, we understand that ports appear to be facing a

number of regulatory and administrative challenges and, as a result, foreign shipping companies continue to be charged IGST contrary to the regulation.

The ports have explained that based on existing technological infrastructure and billing processes, local agents are added as customers in the port databases and accordingly, the billing is done in the name of the local agents (acting on behalf of foreign shipping companies). As a result, the ports have indicated that within this existing framework, it is not possible to capture foreign shipping companies related details in their databases and raise invoices accordingly in the name of those foreign shipping companies.

Whilst the aforementioned processes may be administratively simple for the ports, they nonetheless ignore the fundamental convention of “as agents only”, by which the agent “acts at all times for and behalf of the master and owners of the vessel”. Accordingly, the contract for the supply of services is between the owner of the vessel and the service supplier only. The agent is not party to that contract.

We are therefore seeking your intervention, to ensure that the circular is effectively implemented, by clarifying that the services for which invoices are issued by the ports to local (Indian) agents, shall be deemed to be provided to the foreign shipping companies located outside India. Foreign shipping companies are the *de facto* recipients of services, while the local agents are appointed to act on their behalf, in accordance with national regulatory/administrative requirements. Therefore, in keeping with the spirit of the government circular, ports should consider foreign shipping companies to be the recipients of their services and the location of the foreign shipping companies (outside of India) to be the place of supply for IGST purposes.

Although the government has clarified the place of supply (i.e. location of the recipient) of the services provided by the ports, the reservations and challenges faced by the ports in implementing this requirement has diluted the intent of the circular. Ports are therefore continuing to charge IGST.

Widespread industry support

It is also understood that Indian Port Authorities appear to be reluctant to implement the necessary technological solutions, unless and until there is evidence of widespread demand from several foreign shipping companies. Therefore, to demonstrate the widespread industry support for the prompt implementation of the technological infrastructure needed to facilitate the IGST exemption, please find **attached** to this letter a list of companies which have confirmed their support.

Proposed action to be taken

Acknowledging that the intent of the circular was to confirm and clarify the exempt status of foreign shipping companies from payment of IGST for certain services provided in Indian ports; noting also the widespread industry support for prompt implementation of the technological infrastructures needed to facilitate the IGST exemption, ICS requests that the CBIC kindly issue a statement clarifying that:

‘In accordance with national regulatory/administrative requirements, local (Indian) agents are appointed to act on behalf of foreign shipping companies, with invoices for certain services issued by ports in the name of local agents in India. Foreign shipping companies, however, are the de facto recipients of those services provided by Indian ports. It is therefore appropriate for ports to consider foreign shipping companies as

recipients of said services, and to consider the location of foreign shipping companies (outside of India) as the place of supply for IGST purposes’.

The clarifications proposed above should ensure effective implementation of the circular. Moreover, the established international practice is to apply zero rating to port related services. It is therefore globally recognised that cargo and port related services are recipient based and services provided to the foreign shipping companies are tax-free (i.e. zero rated).

India is a key player in the logistics sector, we therefore call on the government to bring parity between the IGST and established international practices. Like many other sectors, shipping companies continue to be severely impacted by the COVID-19 pandemic, and the global shipping industry is therefore counting on your support to navigate through these very difficult times.

Proposed dialogue between the CBIC and the global shipping industry

We wish to propose a constructive dialogue (at your earliest convenience) between the CBIC and the global shipping industry, to discuss and address these issues. If agreed, this proposed dialogue could take place virtually, in light of the current COVID-19 travel restrictions.

We hope that the CBIC will give due consideration to our comments and suggestions, and we look forward to your response at your earliest convenience.

Yours sincerely,



Mr Guy Platten
Secretary General
ICS



Mr Jonathan C. Williams FICS
General Manager
FONASBA

Copy to:

Shri Vivek Johri,
Board Member of CBIC (GST, IT & Tax Policy)

Shri Udai Singh Kumawat
JS (Revenue), Ministry of Finance

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GLOBAL SHIPPING INDUSTRY SUPPORT FOR PROMPT IMPLEMENTATION OF IT INFRASTRUCTURE NEEDED TO FACILITATE IGST EXEMPTION ON CERTAIN PORT SERVICES

The following shipping companies support the prompt implementation of the IT infrastructure needed to facilitate the exemption from Goods and Services Tax for foreign shipping companies using the aforementioned services received in Indian ports:

