

# **Rajput Jain & Associates** **Chartered Accountant**



**No GST exemption  
on Outbound Ocean  
Freight from 01-10-  
2022.**

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## No GST exemption on Outbound Ocean Freight from 01-10-2022.

### Introduction

In the recent past the controversy related to GST on inbound Ocean Freight (vessel - CIF contracts) was resolved vide the Hon'ble Supreme Court ruling in the matter of **Union of India & Anr. v. M/s Mohit Minerals Pvt. Ltd.**<sup>1</sup> where in was upheld that no GST is payable by the Indian importer on ocean freight contracts (CIF) under the reverse charge mechanism. However, in no time, another controversy related to out bound ocean freight has been capturing the attention of the logistics industry and the professionals.

Till 30-09-2022, there were following exemptions which were available vide NT. 09/2017 IT(R), as below:

S. No	Description of Services	Status till 30-09-2022	Status today
20A	Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India.	Exempt	Taxable
20B	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.	Exempt	Taxable

The above two exemptions were notified with the sunset clause and have come to end on 30-09-2022. Due to this reason, there has been certain challenges in determining the GST applicability on these services in various scenarios, as some are now taxable, and some qualify the definition of export of services and continue to remain out of GST.

Through this article the authors attempt to analyze various scenarios of ocean freight transactions.

Legal analysis

Type of Contract	LOS <sup>2</sup>	LOR <sup>3</sup>	Movement of Goods and POS.	Taxability under GST.
FOB	India	Outside India	<p>From India to outside India.</p> <p>Thus, place of supply is outside India. [Section 13(9) - IGST Act]</p>	<p>In this scenario the goods are exported from India to outside India under a FOB contract, wherein the logistics service provider is located in India. The implications for:</p> <p><b><u>The logistics service provider</u></b> - Its services would become an "Export of service" in terms of section 2(6) of the IGST Act, as the supplier is located in India and place of supply is outside India.</p> <p>Accordingly, no tax burden would arise on the same. Further, other export benefits like refund of ITC etc. would now become available.</p> <p><b><u>For the Exporter of goods</u></b> - No impact to the Indian exporter under a FOB contract.</p>
	Outside India	Outside India	<p>From India to outside India.</p> <p>Thus, place of supply is outside India. [Section 13(9) - IGST Act]</p>	<p>In this case, the logistics service provider, the recipient, and place of supply all are outside India.</p> <p>Hence, No GST impact on this transaction.</p>

CIF	India	India	<p>From India to outside India.</p> <p>The place of supply would be the destination of such goods i.e., outside India. [Proviso to Section 12(8) - IGST Act].</p>	<p>In this case, the logistics service supplier and recipient of such services are located in India. However, the place of supply is outside India. The implications for:</p> <p><b><u>The logistics service provider</u></b> - The services would not qualify to be an export of service in terms of Section 2(6) <i>ibid.</i> as the location of the recipient is in India and Integrated tax would be charged. (5% for vessel, 18% for air).</p> <p><b><u>For the Exporter of goods</u></b> - additional compliance burden, GSTR-2B reconciliations, refund of ITC, working capital blockage etc.</p>
	Outside India	India	<p>From India to outside India.</p> <p>Thus, place of supply is outside India. [Section 13(9) - IGST Act]</p>	<p>In this scenario the goods are exported from India to outside India under a CIF contract, wherein the logistics service provider is located outside India. The implications for:</p> <p><b><u>The logistics service provider</u></b> - No GST impact as both location of supplier and place of supply is outside India.</p> <p><b><u>For the Exporter of goods</u></b> - the above services would not be taxed under the reverse charge as they do not qualify to be an "Import of service" in terms of section 2(11) of the IGST Act, due to the reason that their place of supply is outside India i.e., destination of goods.</p>

## **Conclusion**

In a nutshell, the authors are of the view that, there is additional compliance burden in one scenario mentioned above, where the logistics service provider and the recipient are in India and the destination of goods is outside India (i.e., Scenario 3 *supra*). However, the same is a typical CIF contract through which the Indian exporters export their goods and therefore it would have farfetched implications, in terms of increased compliances on both the parties.

Commercially, this move may further render the Indian logistics industry non-competitive in front of any foreign supplier as they remain unimpacted from the stanching away of this exemption and Indian exporters would now prefer doing business from them, instead of the Indian service provider. The CBIC need to relook the matter and consider extending the above exemption for a longer period.

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