

EAP Circular for Tax payable on Ocean freight and Airfreight on Exports wef.01/10/2022

Greetings to all from EAP family,

E.A.P Family wishes everyone a very Happy Diwali and Prosperous New Year in advance. Hope this coming year brings you more joy, happiness and prosperity.

This circular is regarding GST Implication w.e.f 1st October 2022 on Freight on overseas Export shipment after **"the non-extension of notification related to GST exemption on Air-freight and sea freight on Goods sent from India to a place outside India."**

We are sharing this information of change in law lately because there was persuasion going on with Finance Minister to extend the exemption Notification and keep the Export freight away from GST. However the Government have finally disclosed that since the Mechanism under GST for claiming the refund was not very smooth earlier which could hamper the cash flow of the exporter, hence the Freight on export were kept exempted till 30/09/2022 and now as the government claims that the mechanism has been smoothen and refunds are being issued faster to the exporters, no need of any extension.

BACK GROUND:

The following services were exempted as per notification number 09/2017 - IGST (Rate) dated June 28, 2017 (as amended from time to time till 30th September 2022 by virtue of notification No. 07/2021- IGST (Rate) :

1. Services by way of transportation of goods by an aircraft from India to a place outside India.
2. Services by way of transportation of goods by a vessel from India to a place outside India.

Because of these Notification Freight paid by the Exporter to or through freight Forwarders and to shipping companies/Airlines were exempted and no GST was payable on these transactions.

W.e.f 1st October, 2022:

In absence of any further extension by Government, W.e.f 01st October 2022 following transactions would be taxable under GST at applicable rate as below-

1) SAC code, Rate of tax wef.1st October,2022:

Sr no	Description	SAC	GST Rate
1	Air Export freight -Services by way of transportation of goods by an aircraft from India to a place outside India.	996531	18%
2	Ocean Export Freight - Services by way of transportation of goods by a vessel from India to a place outside India	996521	5%

2) Place of Supply:

Further we also want to bring to your notice regarding Place of supply of service by way of transportation of Goods outside India and where location of supplier and recipient is in India, with effect from 01st Feb 2019 new proviso was inserted in section 12(8) of IGST Act that states, **"Provided that where transportation of Goods is to be place outside India, the place of supply shall be the place of destination of such goods"**. Therefore, as per the provision of section 12(8) read with section 7(5) of IGST Act, supply shall be Interstate supply when the supplier is located in India and the Place of supply is outside India and will be subjected to IGST with Place of supply as 97 – Other Territory.

The place of supply will always be IGST irrespective of place of supplier (Forwarding agent/shipping company) or Place of Recipient of service (Exporters) being in same state.

3) **Billing pattern by Forwarding agents:**

Forwarding agents will raise (please insist on) 2 separate invoices with effect from 1st October 2022 onwards, one for Shipping/Airlines charges and other for agency service charges.

1. For Freight on Export, the forwarder will always levy IGST at the applicable rate
2. For all other his service charges, he will levy IGST or CGST/SGST as applicable depending upon the place of supply of supplier Recipient of service.

4) **Litigation:**

Unless clarified by the Government, there will be an area remained of litigation. The rate of 5% on Ocean Freight by forwarding agents to Exporters.

This litigation is created because of the entry "**Ocean Export Freight-** Services by way of transportation of goods by a vessel from India to a place outside India" where the word "by a vessel" is crucial to determine rate of 5%.

Since the Shipping company is providing transport services by vessel to the forwarding agent and rightly charging 5%, whereas the Forwarding agent is merely booking space in the ship and not providing any transportation by vessel service, can levy GST @5% is a matter of litigation in future.

5) **Input Tax Credit:**

With effect from 01st October 2022, GST will be levied under forward Charge Mechanism and ITC can be claimed on such Inward supply by the recipient.

Kindly Go through the above circular and feel free to contact us in case of any clarification required.