

SKKA IDT ALERT

2023-2024/26

Notifications dated 26.09.2023 - Integrated Tax (Rate)

CBIC has amended IGST Rate Notifications in order to stipulate that IGST will no longer be levied on importer under RCM on ocean freight services by foreign shipping line to the importer. A comprehensive description of these modifications can be found in this alert. *These changes are slated to come into effect from 1st October, 2023.*

1. Notification No. 11/2023- Integrated Tax (Rate): This notification seeks to amend the principal Notification No. being 08/2017 dated 28th June, 2017 being the IGST Rate Notification.

Previously as per the aforementioned principal notification the transportation of goods by a vessel including services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India was subject to a @ 5% IGST (Integrated Goods and Service Tax) rate.

However, w.e.f. 01.10.2023, the provision relating to services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India has been omitted. This means that such services will no longer be subject to tax under GST.

2. Notification No. 12/2023- Integrated Tax (Rate): This notification seeks to amend the principal Notification No. being 09/2017 dated 28th June, 2017 being the principal Exemption notification.

Previously as per the aforementioned principal notification the exemption did not apply to certain services. Specifically, it did not apply to services received from a provider of service located in a non-taxable territory by a person also located in a non-taxable territory for the following: -

- online information and database access or retrieval services received by persons specified in entry (a) or entry (b);
- services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.

However, it is important to note that this notification has removed the aforesaid restriction specifically for services received by a provider of services located in a non-taxable territory by a person also located in a non-taxable territory in context of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

Consequently, the notification now only restricts exemption on online information and database access or retrieval services received by a person specified above.

3. Notification No. 13/2023- Integrated Tax (Rate): This notification seeks to amend the principal Notification No. being 10/2017 dated 28th June, 2017.

Nature/Supply of Service	Supplier of Service	Recipient of Service
Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962 (52 of 1962), located in the taxable territory.

In this scenario the liability in respect of the said supply rested with the recipient under Reverse Charge Mechanism as stipulated in NN 10/2017- IT (rate) dated 28.06.2017. This notification specified that the Importer, as defined in clause (26) of section 2 of the Customs Act, 1962, was liable to pay integrated tax as recipient of service under reverse charge.

Now, the said RCM entry has been omitted w.e.f. 01.10.2023.

***Comments-** These changes are incorporated to give effect to decision of the Apex Court in the case of Mohit Minerals where the levy of IGST on ocean freight was held to be unconstitutional by the Supreme Court. In our view since the entry has been held to be ultra vires, the same shall stand omitted w.e.f. 01.07.2017 and the notification date of 01.10.2023 is only symbolic in nature.*



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