

What's New

News Flash



November 2017

CBEC clarifies that IGST would be levied twice on sale of goods lying in a customs bonded warehouse

The CBEC has issued circular no. 46/2017-Cus dated 24 November, 2017, clarifying that in case of sale of goods lying in a customs bonded warehouse before its clearance for home consumption, IGST is payable on the transaction of supply between original importer and the buyer, and also, at the time of clearance of such goods by buyer, as a part of the customs duty. The basis of the clarification is summarised below:

In-bond sale is 'supply' under IGST Act

As per section 7(2) of the IGST Act, any supply of imported goods taking place before the goods cross customs frontiers of India should be treated as an 'inter-State supply' and such transaction of sale/ transfer will be subject to IGST. The value of supply liable for IGST should be determined as per the respective provisions under CGST Act and IGST Act.

This is without prejudice to the levy of customs duty and collection of duty at ex-bond stage.

Tax on value addition

The value of imported goods for levy of customs duty is determined at the time of filing the into-bond bill of entry. The transaction of sale/ transfer etc. of warehoused goods between the importer and any other person may be at a higher price than the assessable value of such goods. There is no provision in the customs law to amend the value of imported goods at the ex-bond stage (except the cases where the goods are subject to tariff value based valuation).

PwC comments

This clarification deals with an issue which lacked clarity, wherein taxpayers were adopting different positions. The CBEC earlier clarified that a high sea sale is not liable to IGST since tax is paid by the importer (on the final sale value). However, in respect of in-bond sales, it has now been clarified that it is taxable under the IGST Act, though importer pays IGST (on the original import value).

The Circular recognises the possibility of double taxation when goods stored in bond are transferred to another person. The rationale seems to tax the value addition accruing on an in-bond sale, which is subject to customs duty (including IGST) on the original import value.

The industry needs to assess the impact of this clarification (mainly on cash flow and compliance) on the warehousing models, including impact on supplies from FTWZ and SEZ. This circular is likely to result in litigation and may be challenged primarily on the grounds of jurisdiction (since it is issued as customs circular), constitutional validity, ultra vires proviso to section 5(1) of the IGST Act and double taxation (of IGST). The industry also needs to represent to the Government to provide a mechanism to address this anomaly of double levy on the same transaction, by way of exemption or levy only on value addition or other possible options.

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