

**THE AUTHORITY FOR ADVANCE RULINGS  
(Central Excise, Customs & Service Tax)  
New Delhi**

**Present:**

**Justice V.S.Sirpurkar (Chairman)  
Shri S.S.Rana (Member)  
Shri R.S.Shukla (Member)**

**The 22nd July, 2016**

**Ruling No. AAR/ST-1/ 23 /2016**

**In**

**Application No. AAR/44/ST-1/1/2015**

Name and address of the applicant : M/s Global Transportation Services Private Limited

Commissioners concerned : Commissioner of Service Tax, Mumbai V,  
Udpad Shulk Bhavan, Plot No. C-24, Sector-E,  
Bandra Kurla Complex, Mumbai-400051.

Present for the Applicant : Shri V.Sridharan, Advocate

Present for the Department : Shri Amresh Jain,  
Authorised Representative (AR)

**RULING**

M/S Global Transportation Services Private Limited (hereinafter also referred to as applicant seeks to provide logistics solutions to its customers, comprising of number of services, which are mutually exclusive and can be provided on a standalone basis. The applicant will sell and bill the customer separately for each of the service availed. For rendition of such services, applicant seeks to enter into service agreements with various service providers on a principal to principal basis and not as an agent of its customer. Applicant submits that in his proposed business model, the various stages of consignment shall be distributed inter-se services providers in the following manner.

## Outbound Shipments

Stage	Service Provider engaged by the Applicant
Local Transportation in India by road	Goods Transport Agency
Loading/Unloading in India	Applicant
Customs Clearance in India	Customs House Agent
Air/Ocean Freight	IATA member Airline
Loading/Unloading abroad	Freight Partner
Customs Clearance abroad	Freight Partner
Local Transportation abroad	Freight Partner

## Inbound Shipments

Stage	Service Provider engaged by the Applicant
Local Transportation abroad	Freight Partner
Loading/Unloading abroad	Freight Partner
Customs Clearance abroad	Freight Partner
Air/Ocean Freight	Freight Partner
Loading/Unloading in India	Applicant
Customs Clearance in India	Customs House Agent
Local Transportation in India by road	Goods Transport Agency

2. Applicant shall contract with an IATA member airline for transportation of consignment; the airline shall issue an Airway Bill (Awb) to the applicant. Awb shall govern the terms of contract for transportation of cargo between the airline and the applicant on a principal to principal basis. Further, applicant shall not contract with the airline as an agent of its customer. Instead, the Awb shall lay down the terms and conditions assumed by the airline and the applicant on their own account. Therefore, in case the cargo consignment is damaged during the transportation, the applicant shall have an independent right against the carrier to recover damages in accordance with the Carriage Act and the Montreal Convention. In majority of the cases, applicant as the carrier shall further issue a *House Airways Bill* ('House Awb') upon its customer, i.e. the original consignor, as the shipper. The applicant's customer shall have independent

access to contractual remedies and rights available under the Carriage Act and the Montreal Convention against the applicant.

3. Applicant shall also, *inter-alia* enter into reciprocal freight business arrangements with freight forwarders in other jurisdictions to conduct loading, unloading, customers clearance, local transportation at designation ('Freight Partner'). Following are notable terms of the applicant with Freight Partner;

i. Each party shall render services in relation to freight forwarding business to other party to and from their respective territories as non-exclusive service providers;

ii Each party shall act as a service provider to the other in their respective territories and provide such pick-up and delivery services as agreed from time to time.

lii That contractual relations between the applicant and Freight Partner shall be on principal to principal basis and service rates shall be determined on arm's length basis;

lv The applicant shall invoice Freight Partner for delivery of consignment in India and vice-versa;

v Applicant shall intimate the Freight Partner of the port of delivery and the delivery address and the Freight Partner shall undertake to effectuate actual delivery, including complying with custom and statutory formalities in the particular jurisdiction for clearance of the consignment and vice-versa;

vi The Freight Partner may engage the services of other service providers in rendition of freight forwarding services to the applicant and vice-versa;

4. Applicant further submits that they shall determine its fees for rendition of services based on the customer requisition on a case to case basis and communicate the same to the customer. Based on customer requisition, the applicant shall approach various service providers, such as goods transport agency, custom house agents,

airlines etc. and negotiate their charges for the consignment proposed to be undertaken. Applicant shall then communicate the fee quote to its customer, with charges for each and every activity undertaken by the applicant specifically bifurcated. Further, the applicant's customer shall have no right over the disposition of the right to avail service procured by the applicant from the particular service provider. Applicant shall be separately and legally bound to conduct the carriage of the customer's cargo in terms of its own contract with the customer. Applicant intends to discharge its service tax liability under the Finance Act, 1994 for each and every activity in provision of services to the customer separately as an unbundled service as they are separate services, to be sold individually. Applicant further submits that commercially, the earning of the applicant for all the services rendered shall be the differential between the fee charged from the customer and the charges paid to subcontractors. In case of international freight, the differential amount being the freight margin. Therefore, there may be situations wherein the applicant ends up making a loss to retain a customer when the cost of execution of the shipment through the carrier has escalated more than the fee charged from the customer.

5. During the personal hearing on 01.07.2016, applicant made an oral plea that there was an unintended error in question B raised by them and "transportation of goods by air" be read as "transportation of goods by air and/or sea", which was accepted by this Authority. Therefore, applicant has raised following questions before this Authority for ruling;

- A. *Whether the freight margin recovered by the applicant from its customer in an outbound shipment not taxable under the Act in light of Rule 10 of Place of Provision (POP) Rules, 2012 on account of the fact that place of provision of service would be outside India?*
- B. *The freight margin recovered by the applicant from its customer or a Freight Partner in an inbound shipment exempt from levy of service tax under the Act in light of the exemption provided to transportation of goods by aircraft and vessel under Section 66 D of the Act as same is service by way of*

*transportation of goods by air or sea from a place outside India into Indian Customs area.*

*C. Without prejudice, whether the applicant is liable to discharge service tax liability on or only on the amount of differential freight margin retained by the applicant in case of both an outbound shipment and inbound shipment?*

*D. Without prejudice, whether the applicant shall be entitled to avail of CENVAT credit on account of input services utilized by it if its final output service, is held to be taxable under the Act?*

6. Revenue inter-alia submits that the service provided by the applicant is a single indivisible bundled service; that the method and manner of invoicing does not alter or impact the taxable value; that consideration for the services provided in such cases is the gross amount received. It is further submitted that the main service of transportation of goods is provided by the Airlines/Shipping Agency and not by the applicant; that applicant at most can said to be the person, who arranges or facilitates a provision of service which is the main service of transportation of goods. Further, applicant said to recover only the freight margin from the customers as provider of intermediary service as defined under Rule 2(f) of POP Rules and the POP is determined in accordance with Rule 9 of POP Rules; that the Service Tax is liable to be paid on the commission or margin earned by the applicant in view of Rule 9 of POP Rules. Further, the actual amount of freight for transportation of goods by air cargo or a vessel from a place outside India up-to the customs station of clearance in India falls under the Negative List of Service specified under Section 66 D and hence, not subjected to levy of Service Tax. Revenue further states that the international freight in respect of export of goods is exempted from levy of Service Tax; that if any margin is earned by the applicant by providing services as intermediary, Service Tax is leviable on the amount earned as commission or margin. In short, Revenue has raised 2 issues in respect of subject application, both in respect of inbound shipment and outbound shipment. First is that freight margin recovered by the applicant from the customers is in respect of intermediary service in terms of Rule 9 (c) of POP Rules and therefore, place of provision of service shall be location of service receiver. Second issue is that the service provided by the applicant is single indivisible bundled service in terms of Section

66F of the Finance Act, 1994. Both issues, i.e. in respect of inbound shipment and outbound shipment are taken up together, being same.

7. First issue is whether freight margin recovered by the applicant from the customer would be covered by intermediary service in terms of Rule 9 (c) of POP Rules. Rule 9 (c) of said Rules inter-alia states that the place of provision of “intermediary services” shall be the location of the service provider. “Intermediary” is defined in terms of Rule 2(f) ibid and means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (called main service) or supply of goods, between two or more person, but does not include a person who provides the main service or supplies the goods on his account. It is noticed that the definition of “intermediary” does not include a person who provides main service on his own account. It is observed the relationship between the applicant and the airline/shipping line is separate and distinct from the relationship between the applicant and its customer. The applicant contracts with its customer to provide for transportation of cargo. The applicant also negotiates with an airline/shipping line seeking space and time for transportation of cargo. However, it does not imply that the applicant contracts with the airline on behalf of its customer as an intermediary. In the present case, the airline issues the Awb upon the applicant who adorns the role of a ‘consignor’. In case of damage or destruction of cargo, the applicant shall have an independent right of recover of damages against the airline. Similarly, the customer shall also have a right to recover damages from the applicant in such a scenario. Therefore, agreement between applicant and airline/shipping line would be on principal to principal basis.

8. Further, Schmitthoff’s Export Trade: The law and practice of International Trade discussed in respect of forwarder as ‘agent’ and ‘principal’. Relevant paragraph is reproduced below;

*If the forwarder acts as the customer’s agent, his duty is to procure with due diligence others who perform the carriage, storage, packing or handling of the goods. The customer, through the intermediaryship of the forwarder, enters into direct contractual relations with the others. In this case the forwarder is under the usual duties of an agent, unless they are modified by his contract with the customer. In particular, he*

*is accountable to him, but, as will be seen, this duty is usually qualified by the trading conditions of the forwarder. If the forwarder acts as a principal, he enters into a contract of services with the customer. He is the only person with whom the customer is in contractual relations, even though the actual services which the forwarder has undertaken are carried out by others. The profit which the forwarder makes, when contracting with the actual operators, is his own affair and he is not accountable for it to the customer.*

9. In the case before us, applicant would enter into an agreement with the carrier for transportation of cargo i.e. airline/shipping line. This service agreement would be on principal to principal basis and not as agent of said airline/shipping line. Therefore, applicant would be covered by the exclusion clause i.e. provides the main service- inbound and outbound shipment on his own account in terms of Rule 2(f) of POP Rules and thus not covered under Rule 9 ( c) ibid as “intermediary” service. Therefore, place of provision of said service will not be location of service provider.

10. Revenue submits that the main service of transportation of goods is provided by the Airlines /Shipping Agency and not by the applicant. Therefore, Rule 10 of POP Rules will not be applicable in respect of the applicant. Applicant submits that said Rule 10 is wide to cover not only the actual transportation, but also a person who arranges for the transport; that this is expressly clear from the exclusion to mail or courier from Rule 10 of POP Rules; that proviso to Rule 10 suggests the place of provision of service in respect of goods transport agency (GTA); that but for said exclusion, courier or GTA would be covered by said Rule 10. We agree with the contention of the applicant that in the absence of specific exclusion, services provided by the applicant cannot be excluded from the scope of Rule 10 of POP Rules.

11. Second issue raised by the Revenue is that the service provided by the applicant is single indivisible bundled service in terms of Section 66 F of the Finance Act, 1994. Explanation to Section 66 F inter-alia states that the expression “bundled service” means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. It is submitted by the applicant that the activities of the applicant are mutually exclusive and can be provided on standalone basis. It is observed that applicant has

since commenced business operations and performing following activities and paying Service Tax on all activities except “international air / ocean freight”. They are local transportation at origin; loading, unloading and handling service at origin; customs clearance at origin; international air / ocean freight; loading, unloading and handling services at destination and customs clearance at destination. On the other hand, Revenue has not given any reason as to how these services are single indivisible bundled service, especially when the applicant is discharging liability towards Service Tax on each and every above referred service except international air / ocean freight. In the absence of any tangible ground, it is incorrect on the part of Revenue to state that the service provided by the applicant is single indivisible bundled service in terms of Section 66F *ibid*.

12. It is reiterated that place of provision of service of transportation of goods shall be the place of destination of the goods, as per Rule 10 of POP Rules. In the case of outbound shipment –both by aircraft and vessel, destination of goods shall be outside India. Therefore, place of provision of service of outbound shipment shall be outside India, hence there will be no Service Tax on freight margin recovered by the applicant from the customer.

13. As far as inbound shipment is concerned, it is noticed that Section 66 D (p) (ii) of Finance Act, 1994, as it existed prior to 01/06/2016 read as under:

*66 D Negative list of services*

*The negative list shall comprise of the following services, namely:-*

*(p) services by way of transportation of goods –*

*(ii) by an aircraft or a vessel from a place outside India to the customs station of clearance in India;*

14. In view of said Section 66 D (p) (ii), transportation goods by aircraft or vessel from a place outside India to India prior to 01.06.2016 shall be covered by the negative list of services and shall not be liable to Service Tax, as per Section 66 B *ibid*.

15. With effect from 01.06.2016, aforesaid section 66 D (p) (ii) of the Finance Act, 1994 has been omitted vide the Finance Act, 2016 of 2016. Therefore, services by way of transportation of goods by an aircraft or a vessel from a place outside India up-to the customs station of clearance has been deleted from the negative list. However, such

services by an aircraft will continue to be exempted as such benefit has been extended to said service vide Notification No. 9/2016-ST dated 01.03.2016 (S. No. 53) w.e.f. 01.06.2016. In view of above, freight margin recovered by the applicant from its customer or a Freight Partner in a inbound shipment is exempt from levy of Service Tax provided to transportation of goods by aircraft and vessel under Section 66 D of the Finance Act, 1994 up-to 31.05.2016. However, exemption will continue in respect of transportation of goods by aircraft in view of Notification No. 9/2016-ST.

16. In view of above, we rule as under;

*A. The freight margin recovered by the applicant from its customer in an outbound shipment is not taxable under the Finance Act, 1994 in light of Rule 10 of Place of Provision Rules, 2012 on account of the fact that place of provision of service would be outside India.*

*B. The freight margin recovered by the applicant from its customer or a Freight Partner in an inbound shipment is exempt from levy of service tax under the Finance Act, 1994 in light of the exemption provided to transportation of goods by aircraft and vessel under Section 66 D of the Act as same is service by way of transportation of goods by air or sea from a place outside India into Indian Customs area up-to 31.05.2016. However, exemption provided to transportation of goods by aircraft has been extended vide Notification No. 9/2016-ST (S. No. 53) w. e. f. 01.06.2016.*

*C & D. In view of A and B above, questions C and D have become infructuous.*

**(S.S.Rana)**  
**Member (R)**

**(V.S.Sirpurkar)**  
**Chairman**

**(R.S.Shukla)**  
**Member (L)**