

Importers to save on 5% IGST on ocean freight

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Now, Indian importers will not have to pay the 5 per cent integrated goods and services (IGST) levy on shipping charges known as ocean freight after the Supreme Court judgment struck down the levy on Thursday.

The Supreme Court in its judgment said the impugned levy imposed on the “service” aspect of the transaction is in violation of the principle of “composite supply” enshrined under Section 2(30) read with Section 8 of the CGST Act. “Since the

Indian importers are liable to pay IGST on the “composite supply”, comprising supply of goods and supply of services of transportation, insurance, etc, in a CIF (cost, insurance, freight) contract, a separate levy on the Indian importer for the



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“supply of services” by the shipping line would be in violation of Section 8 of the CGST Act,” it added.

In a CIF transaction, the foreign exporter enters into a contract with a foreign shipping line. The service

of shipping is rendered by the foreign shipping line to the foreign exporter and the consideration is accordingly payable by the latter to the former. The cost of such shipping forms a component of the price that

is eventually charged to the importer, based on the negotiated terms. If an FOB (free on board) contract were to be negotiated, the importer will independently avail of the service of shipping and pay for the consideration, including the IGST on ocean freight.

In Mohit Minerals Pvt Ltd versus the Union of India, the Gujarat HC had held that no tax is leviable under the IGST Act on the ocean freight for services provided by a person located in a 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. The levy and collection of tax of such ocean freight under the impugned notifications is not permissible in law, the HC had said.

Ajay Sahai, director general, Federation of Indian Export Organisations, said this was a double

levy because an importer is already paying IGST as an import duty. “Of course, the additional IGST was also revenue neutral because importers are allowed to offset the IGST. It was basically an issue of liquidity. It was pinching more because freight has gone up 300 per cent after the pandemic. It is quite a substantial amount,” he added.

Sahai said it was very difficult to quantify the amount paid by importers as IGST on ocean freight as it would depend on the value of consignments. “It will vary from product to product and destination to destination,” he added.

Abhishek A Rastogi, partner at Khaitan & Co, who argued on behalf of the importer, told CNBC-TV18, “As far as this specific case is concerned, the importers will benefit a lot. All the importers of the country will be eligible to refund.”