

GST ON IMPORTED GOODS

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With the introduction of the much awaited Goods and Services Tax (GST), the basic fundamentals of taxation under the indirect taxes has undergone a massive change. Transactions which would have ordinarily been inter-State sale under the VAT/CST regime may get treated as intra-State supply. For illustration, goods billed to a party within the State, but delivered to a party outside the State, would have been an inter-State sale under VAT/CST regime. However, the said transaction is an intra-State supply as per certain fictions created under Section 10(1)(b) of the Integrated Goods and Services Tax Act (IGST Act).

Another fundamental concept under the VAT/CST regime was the taxability of goods sold in the course of import and High Sea Sales. As per Section 5(2) of the Central Sales Tax Act (CST Act), a sale in the course of import was deemed to have taken place when such sale either occasions the import of goods into the territory of India or such sale is effected by transfer of documents of title to the goods before such goods have crossed the customs frontiers of India. A sale in the course of import as referred to under Section 5(2) of the CST Act was not liable to CST. In this article, we will analyse whether such and similar transactions continue to be outside the purview of taxation or are liable to GST.

In order to understand the taxability of such transaction under GST, reference to few provisions of CGST Act and IGST Act is imperative. Section 9 of the Central Goods and Services Tax Act (CGST) / State Goods and Services Tax Act (SGST) Act levies CGST/SGST on all intra-State supplies of goods and/or services. Section 5 of the IGST Act levies IGST on all inter-State supplies of goods and/or services. Section 7 to 9 of the IGST lays down the principles for determining the nature of supply.

Section 7(1) of the IGST Act defines an inter-State supply of goods where the location of the supplier and the place of supply are in two different States/Union territories or in a State and a Union territory.

Section 7(2) provides that the goods imported into territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce. This implies that the levy of GST on such transactions will be governed by the provisions of IGST Act alone and the CGST and SGST Act has no jurisdiction over such transactions.

Section 7 to 9 of the IGST lays down the principles for determining the nature of supply, whereas the charge of IGST is created by section 5 of the IGST Act. Albeit a transaction may get characterised as inter-State by virtue of the principles laid down in section 7 to section 9 of the IGST Act, however, in order to impose IGST, it still has to pass through the test of section 5 of the IGST Act, failing which IGST cannot be imposed. For example, goods imported into India gets characterised as an inter-State supply, however, the levy and collection would still be governed by the proviso to Section 5(1) of the IGST, which would happen only upon customs clearance.

¹Proviso to Section 5 (1) of the IGST Act states that the IGST on goods imported into India shall be levied and collected in accordance with Section 3² of the Customs Tariff Act (CT Act). This would imply that in case of good imported, IGST can be levied and collected only and along with the Customs duty and cannot be collected prior to that. It would not be out of context to mention that Customs duty is collected when goods clear the Customs frontier. In order to understand the implications of Section 7(2)³, reference to few definitions are made hereunder-

Section 2(4) of IGST Act - "customs frontiers of India" means the limits of a customs area as defined in section 2 of the Customs Act, 1962 (the Customs Act).

¹ Provided that the integrated tax on **goods imported** into India shall be **levied and collected** in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act **at the point** when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

² Section 3(7) of the CT Act was introduced with effect from 01.07.2017 to levy IGST on goods imported into India. Section 3(7) subsumes the Additional Duty of Customs levied under Section 3(1) (popularly known as CVD) and the Special Additional Duty of Customs levied under Section 3(5) of the CT Act (popularly known as SAD).

³ Section 7(2) of IGST Act - Supply of **goods imported** into the territory of India, till they cross **the customs frontiers of India**, shall be treated to be a supply of goods in the course of inter-State trade or commerce

Section 2(11) of the Customs Act - "customs area" means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities;

Section 2(25) of the Customs Act - "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption

The phrase 'goods imported' as used in section 7(2) of the IGST Act, has not been defined anywhere. What has been defined under the Customs Act, 1962 (the Customs Act) is the phrase "imported goods". It is very interesting to observe that the goods imported may not remain imported goods for Customs purposes, once they clear customs frontier in terms of section 2(25) of the Customs Act but would continue to be goods imported under the IGST Act. The word "import"⁴ has been defined under IGST Act which is aligned with the definition provided under the Customs Act. The word "imported" also has not been defined anywhere but actually is the past tense of the word "import". Considering the stated provisions, it may be said that once there is an import of goods, imported goods comes into existence and remain so under IGST Act, notwithstanding they do not remain so under Customs Act post customs clearance.

By implication imported goods would cover all goods which are brought into India from a place outside India. It will include goods which are not cleared from the customs port, goods which are cleared from the customs station and stored in a warehouse by filing In-bond bill of entry (Bill of entry for warehousing) and goods procured by ⁵Special Economic Zone (SEZ) units for its authorized operations.

⁴ Section 2(10) "import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India

⁵ Section 53 of the SEZ Act, 2005 provides that SEZ area, for the purposes of Customs Act, shall be deemed to be a territory outside the customs territory of India.

A SEZ is deemed to be a port, airport, inland container depot, land depot and land customs station under Section 7 of the Customs Act.

On a conjoint reading of the above provisions, it may be said that the taxability of goods, imported into India pending customs clearance, is governed by the proviso to Section 5(1) and not by the main Section 5(1) of the IGST Act. Accordingly, when goods imported, pending customs clearance, are supplied, the supplier is not liable to pay IGST. The taxability is determined by proviso to Section 5(1) and accordingly, the IGST as leviable under Section 3(7) of the CTA. Further, the IGST under Section 3(7) of the CTA is leviable at the point when the Customs Duty under Section 12 of the Customs Act is leviable. Therefore, till the point of time Customs Duty is not leviable, IGST under Section 3(7) of CTA read with proviso to Section 5(1) of the IGST Act is not leviable.

In view of the above, we proceed to examine the taxability under GST for the following situations:-

Nature of Transaction	Whether IGST under Section 5(1) payable	Whether IGST under proviso to Section 5(1) payable	Remarks
High Sea Sale of imported goods / Sale in the course of Import	No	Yes	Goods pending customs clearance. Transaction governed by the proviso to Section 5(1). The person clearing the goods for home consumption liable to pay IGST under Section 3(7) of CTA read with Customs ⁶ Circular no 33/2017. Supplier of goods making High Sea Sale not liable to pay IGST on such sale.
Supply made from a Bonded Warehouse to another Bonded Warehouse	No	No	Goods pending customs clearance. Transaction governed by proviso to Section 5(1).
Supply made from a Bonded	No	Yes	Goods are cleared for home consumption. Transaction governed by proviso to

⁶ dated 01.08.2017

Warehouse to EOU			<p>Section 5(1). W.e.f. 13.08.2016 (notification no. 44/2016-Cus), EOU's delicensed.</p> <p>The person clearing the goods for home consumption liable to pay IGST under Section 3(7) of CTA read with Customs Circular no 33/2017. Basic Customs duty is exempted vide Notification 52/2003.</p> <p>Supplier of goods in the Bonded Warehouse not liable to pay IGST on such sale.</p>
Supply made from a Bonded Warehouse to a unit in Domestic Tariff Area	No	Yes	<p>Goods are cleared for home consumption. Transaction governed by proviso to Section 5(1). The person clearing the goods for home consumption liable to pay IGST under Section 3(7) of CTA read with Customs Circular no 33/2017. Supplier of goods in the Bonded Warehouse not liable to pay IGST on such sale.</p>
Supply made from a SEZ to another SEZ	No	No	<p>Goods pending customs clearance. Transaction governed by proviso to Section 5(1).</p>
Supply made from a SEZ to a unit in Domestic Tariff Area (Goods)	No	Yes	<p>Goods are cleared for home consumption. Transaction governed by proviso to Section 5(1). The person clearing the goods for home consumption liable to pay IGST under Section 3(7) of CTA. Supplier of goods in the SEZ not liable to pay IGST on such sale.</p>
Supply made from a SEZ to a EOU	No	Yes	<p>Goods are cleared for home consumption. Transaction governed by proviso to Section 5(1). W.e.f. 13.08.2016 (notification no. 44/2016-Cus) EOU's are not considered as private licensed</p>

			warehouse. Therefore, premises of EOU will be treated as a place outside the customs frontiers of India. The person clearing the goods for home consumption liable to pay IGST under Section 3(7) of CTA. Basic Customs duty is exempted vide Notification 52/2003. Supplier of goods in the SEZ not liable to pay IGST on such sale.
Supply made from a SEZ to Bonded Warehouse	No	No	Goods pending customs clearance. Transaction governed by proviso to Section 5(1).

From the above illustrations, it can be concluded that IGST under Section 5(1) is leviable only upon goods getting cleared from customs frontier. Till the time the goods have not been cleared from customs frontier, IGST under Section 5(1) will not be leviable or collectible. This view is further strengthened by the clarification issued by the Ministry of Finance vide Circular no. 33/2017 dated 01.08.2017. The Circular states that IGST on High Sea Sale transactions of imported goods, shall be levied and collected only when the import declarations are filed before the Customs Authorities. This implies that the dealer effecting the High Sea Sales of imported goods is not liable to IGST. The person clearing the goods from customs frontier is liable to IGST under Section 3(7) of the CT Act and for the purpose the value addition done in all previous sales would be forming part of the assessable value.

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