

Companies, exporters cry foul as taxman raise fresh GST demands on ocean freight even as issue is pending in SC

The issue of Goods and Services Tax (GST) on ocean freight has come to haunt many companies as the tax department has started raising fresh queries over tax applicability on transportation of imported goods through the sea route even as the matter is pending in various courts.

In the last month or so, the department has started issuing fresh tax demands and notices to companies over GST on ocean freight, prompting some of the companies to file writ petitions against the decision. In one such writ petition filed by an importer, concerns were also raised against "coercive action".

Recovery of GST on ocean freight by the authorities at this stage is not a good idea when the matter is at the final stage before the apex court and one of the high courts in the country has already held these provisions to be ultra vires. Any payment at the audit stage or at the investigation stage can only be made voluntarily by the taxpayer, and any coercive measure to recover without a fair process of adjudication needs to be challenged before the writ court.

The government and many companies, mainly importers, are fighting a battle in the Supreme Court over the imposition of integrated GST (IGST) on ocean freight. The government had approached the Supreme Court against an earlier Gujarat High Court judgement that said that IGST on ocean freight is unconstitutional. Several companies have received notices in the last month or so in this regard.

"During the course of the audit, it is observed that you have been importing goods from your parent company... wherein ocean freight has been paid by foreign suppliers. In such conditions, the taxpayer is required to pay the GST at 5% on the ocean freight, "one such notice to a company read.

The basic issue is that, in most cases, the ocean freight is paid by the seller or companies that are not based in India. So, for instance, if a company based in Europe is exporting goods to India, the company tends to enter into an agreement with shipping companies and pay ocean freight.

In such cases, the tax department is unable to recover GST from the European company. The tax department hopes to recover the IGST from importers or companies that are based in India through a "reverse charge mechanism".

Source: The Economic Times