

IMPACT OF GST ON HOTELS & RESTAURANTS

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The Indian Hospitality Industry is one of the key drivers of growth in the service sector. Apart from hotels, lodges and restaurants, it includes tourism services as well. Tourism and Hospitality Sector's direct contribution to GDP in 2016 was estimated to be \$47 billion. In fact, the National Restaurant Association of India (NRAI) in the Indian Food Services Resort (IFSR) 2016 estimated the total contribution of the restaurant industry would alone contribute 2.1% of GDP by 2021. Since hospitality market is quite big, any change in the Tax regime is going to have far reaching implications more particularly after the introduction of GST.

PRE-GST REGIME

2: In the Indirect Tax Regime prior to 1.7.2017, the Hospitality Industry pays multiplicity of taxes in the form of Service Tax, VAT, Luxury Tax etc. If we take room in a hotel with a room tariff in excess of Rs. 1000, it was subjected to service tax of 15% which upon 40% abatement would come down to 9%. In addition, VAT ranging from 5.5%- 14.5% and luxury tax was also payable. In case of restaurant, an abatement of 60% was available whereby effective rate of service tax was brought down to 6%. Upon which, VAT at the appropriate rate and luxury tax was also payable.

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3: Similarly, the bundle of services like social functions, marriage function, seminars etc., abatement of 30% was available. However, for restaurants and hotel owners, the main drawbacks were:

- **No input tax credit was available on the taxes paid by them. The main reason being the central tax like service tax could not be set off against state taxes.**
- Compliance required to be done under the various tax laws
- From the point of view of the end user, the cascading effect of VAT lead to increased prices of products.

COMPONENTS OF RESTATURANT BILL - PRE-GST

4: As a consumer, we do not pay much attention to the bill received by us at the dinner table. However, if we look closely, there were usually three components of bill:

- ✚ SERVICE TAX
- ✚ VAT
- ✚ SERVICE CHARGES

5: The Service Tax is payable for the services rendered by the restaurant. Vat is payable on the food portion of the bill. Service Charge is not a tax but a fee (without any authority of law) levied by the restaurant sector for the services provided by them. It amounts to income of such restaurant and distributed among staff as it claims to be tips.

6: While in the case of VAT and service tax, the amount collected by restaurant from customers were deposited to the credit of the State Government and Central Government respectively. The same is not the case with the service charges, which directly go to the hotel or restaurant owner's kitty.



7: The difference between the service tax and service charge is that service tax is a tax that the service provider has to pay to the government, while the service charge is an additional tip charged by the provider and is not in the nature of tax. Service Tax is mandatory and recovered from the end consumers, while government has issued advisory that consumers can refuse to pay the service charge if they are dissatisfied with the service. As per clarification issued by Ministry of Consumer Affairs, service charges are voluntary in nature and if the consumer is not happy with the services he may decline to pay.

GST IMPACT ON RESTAURANT BILL

8: Under GST, the taxes namely Service Tax, VAT and Entertainment Tax (if levied by State Government) have been merged into a single levy. GST will be levied into two parts i.e. CGST and SGST. For example, if GST to be levied at 18%, then it will be charged 9% CGST and 9% SGST.

GST RATES FOR RESTAURANT WHO ARE UNDER COMPOSITION SCHEME

9: The restaurants, whose aggregate turnover is less than Rs 75 lakhs, can avail the benefits of "Composition Scheme" under Section 10 of CGST Act. Under this Scheme, 5% GST will be levied. i.e. 2.5% CGST and 2.5% SGST and interestingly, this is to be paid out of pocket of restaurants own kitty as

the owner is neither entitled to avail Input Tax Credit of taxes so paid on raw materials nor on Services and at same time, nor the restaurants owner recover the tax i.e. 5% from the customers visiting the Restaurant.

10: In other words, they cannot charge any tax in their bills. They cannot pass their burden on to their consumers because of the inherent design of the composition scheme. They cannot avail input tax credit. However, they have the liberty to join the mainstream GST and pay full tax and avail credit.

NON AC RESTAURANT WITH LIQUOR LICENCE – 12%.

11: In the pre-GST era, non-AC restaurant in your local market serving snacks and providing takeaway service were exempt from paying service tax and were liable to pay only VAT as per the state laws. However, post GST, GST is charged at 12% on the bill, i.e. 6% CGST and 6% SGST. In this case, full input tax credit is available on the inputs, services, capital goods i.e. inputs purchased and input services availed for providing output service i.e. restaurant service.

AC RESTAURANT – GST 18%

12: These restaurants are primarily dining out places with proper sitting and air conditioning facilities. At the same time, such restaurants also possess license to serve liquor. Hence, tax rate of 18% is applicable even if only part of the restaurant is air-conditioned while the remaining part is non-AC. Even if the customer does not dine in the AC portion, still he will be subjected to the same tax rate of 18%. Further, if a restaurant is non-AC and yet it possess a license to serve liquor, the applicable rate of GST is 18% and not 12%.

5 STAR AND ABOVE RATED RESTAURANT -18%

13: These days mostly all 5 star and above rated hotels have restaurants at their premises. Before the implementation of GST, such restaurants were liable to pay service tax at 6% after availing abatement. Thereupon, VAT was

chargeable as per the State law. However, no input tax credit was available. However, post GST regime, the taxability has significantly increased. Now, the customer availing facilities at the restaurant would be liable to GST @ 28% i.e. 14% CGST and 14% SGST. Full input tax credit (on inputs, input services and capital goods) shall be available while providing “output service” i.e. restaurant service.

OUTDOOR CATERING

14: Besides restaurants, another “service” comes to our mind is “Outdoor Catering Services”. Such “Outdoor Catering” may be for pre-marriage, marriages, social, religious, cultural and sports events and also services provided to corporate entities. In the pre-GST scenario, outdoor catering were liable to service tax @9% after providing benefit of abatement. Thereupon, VAT, as per the provisions of the respective State VAT laws, was leviable. However, post GST, the “Outdoor Catering Service” would be subject to tax @18%. Though rate of tax may be 18% but service providers shall now be entitled to avail full “Input Tax Credit” on (i) inputs (ii) input services (iii) capital goods.

GST RATE FOR HOTEL, LODGE, INS, RESORT, CAMPSITE, CLUB, ETC.ETC. WITH ROOM DECLARED TARIFF LESS THAN RS.1000/- NIL

15: Budget hotels providing cheap accommodation and food usually have room tariff less than Rs. 1000/- per night. On such hotels and lodges, no GST is payable.

Room Tariffs between Rs. 1000/- to Rs. 2500/- GST RATE IS 12%.

16: The rooms which have declared tariff between Rs.1000/- to Rs. 2500/- per night were in the pre-GST scenario liable to service tax @ 9% after receiving abatement of 40% on the tariff value. Such amount was subjected to VAT between 12%- 14% and additionally luxury tax was also leviable.

Under the GST regime, for availing the facilities of such hotel the customer has to pay GST at 12% i.e. 6% CGST and 6% SGST. The hotels will be able to claim full input tax credit of (i) inputs (ii) input services (iii) capital goods.

17: Upon comparison of both pre-GST and post GST scenarios, it can be seen that in the pre-GST scenario, the “aggregate tax rate” was higher. Under the GST regime, it is merely 12 % with further benefit of ITC.

1. Room Tariff between Rs. 2500/- to Rs. 5000/- - 18%

18: Taking the case of pre-GST scenario, such hotels were liable to service tax @ 9% (post abatement of 40% on the tariff value), thereupon VAT @ 5%- 14.5% together with the luxury tax was levied. However, in the post GST period, services of such hotels shall be liable to 18% i.e. 9% CGST and 9% SGST. The net effect is that the tax liability has been significantly reduced plus such hotels are now eligible for full input tax credit benefit.

2. Room Tariff exceeding Rs. 5000/- -28%

19: These are usually 4 star or 5 star hotels where average room per room per night exceeds Rs. 5000/-. Such hotels were in the pre-GST regime were liable to service tax @ 9% (post abatement of 40% on the tariff value), thereupon VAT @5.5%- 14.5% together with the luxury tax was charged. However, in the GST era, now such hotels are liable to pay GST @ 28% (14% CGST + 14% SGST). Additionally, they will be able to claim input tax credit in respect of the services rendered.

20: The Ministry of Finance, Government of India, has a Circular No.139/8/2011-TRU dated 10.05.11 as follows:-

i)Relevance of Declared Tariff

It has been clarified that Declared tariff' includes charges for all amenities provided in the unit of accommodation like furniture, air-conditioner, refrigerators etc., but does not include any discount offered on the published charges for such unit. The relevance of 'declared tariff' is in determining the liability to pay service tax as far as short term accommodation is concerned. However, the actual tax will be liable to be paid on the amount charged i.e. declared tariff minus any discount offered. Thus if the declared tariff is Rs. 1100/-, but actual room rent charged is Rs. 800/- tax will be required to be paid @ 5% on Rs. 800/-

ii). Levy of differential tariff for the same accommodation

It is possible to levy separate tariff for the same accommodation in respect of a class of customers which can be recognized as a distinct class on an intelligible criterion. However, it is not applicable for a single or few corporate entities.

iii). Inclusion of cost of meals of beverages in the declared tariff.

Where the declared tariff includes the cost of food or beverages, GST will be charged on the total value of declared tariff. But where the bill is separately raised for food or beverages, and the amount is charged in the bill, such amount is not considered as part of declared tariff.

iv. Whether of season prices will be considered as declared tariff

When the declared tariff is revised as per the tourist season, the liability to pay GST shall be only on the declared tariff for the accommodation where the published/printed tariff is above Rupees 1000/-. However, the revision in tariff should be made uniformly applicable to all customers and declared when such change takes place.

v. Inclusion of luxury tax impost by states in the declared tariff or actual room rent

For the purpose of GST, luxury tax has to be calculated from the taxable value.

21: Although there is no circulars/clarification about the meaning of word “Declared Tariff” in the GST Regime, but, in my view, the aforesaid circular issued by the Ministry of Finance, Government of India, in relation to levy of Service Tax, shall be squarely applicable in the GST regime as well. The Hon’ble Supreme Court in the following cases has held that Circulars issued by the Department are binding and Department cannot take a contrary view: -

(i) Collector of CE, Guntur v. Andhra Sugar Ltd. reported in MANU/SC/0079/1988 : 1988 (38) ELT 564;

(ii) State of Tamilnadu v. Mahi Traders reported in MANU/SC/0561/1989 : 1989 (40) ELT 266;

(iii) UCO Bank, Calcutta v. Commissioner of Income Tax, W.B. reported in MANU/SC/0389/1999 : (1999) 4 SCC 599;

(iv) Collector Central Excise, Vadodara v. Dhiren Chemical Industries reported in MANU/SC/0787/2001 : 2002 (139) ELT3 "

INPUT TAX CREDIT – SECTION 16 OF CGST ACT.

22: Section 16 of CGST Act provides that every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business . In other words, this Section 16 virtually permits taking credit all taxes paid on procuring (i) inputs (ii) input services (iii) capital goods and used in the course of or furtherance of business. Now, we need to consider the meaning of “ in the course of “ or “furtherance of business”.

23: The meaning of '**furtherance**', as per Black's Law Dictionary, 6th Edition, 11th reprint, 1997, is "act of furthering, help forward, promotion, advancement or progress". **Furtherance of business will, thus mean, act of furthering business, helping forward business, promotion of business, advancement of business or progress of business.** Therefore, if a service provider is renting the property in the course of or for furtherance of business or commerce, it will amount to an activity in favour of service recipient for helping forward business, promotion of business, advancement of business and progress of business. It automatically generates value addition and comes within the meaning of 'service tax' as defined under Sec.65[105][zzzz].

24: Section 17 (5) of CGST Act, inter-alia, speak of blocked credit, which is, as is relevant for our purpose, is reproduced below:-

(5) Notwithstanding anything contained in sub-section (1) of Section 16 and sub-section (1) of Section 18, input tax credit shall not be available in respect of the following, namely:-

(a).....

(b) **the following supply of goods or services or both:**

(i) **food and beverages, outdoor catering, beauty treatment, health service, cosmetic and plastic surgery except where an inward supply of goods or service or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of taxable composite or mixed supply**

By virtue of Section 17(5), no input tax credit shall be permissible on “food and beverages” and/or “outdoor catering” unless the same is used for making outward supply. Therefore, the input tax paid on “food and beverages and outdoor catering” shall be allowable only

if the same are used for making taxable “outward supply”

©: works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

25: Plainly speaking Section 17(5)© of CGST Act, bars inputs tax credit on works contract services used for construction of an immovable property unless the same is used as a “plant and machinery” and also where “works contract service” is an input for further supply of “works contract service. Now, the question arises as to what does “plant and machinery” mean ? Does it mean what is fabricated out of steel items, some bought-out items of steel and brought to site and erected, installed and commissioned at the Works/Factory Site or could it be something else? In order to find answer, we have to look to the following judgments of Hon’ble Apex Court and that of different High Courts.

26: The Hon’ble Supreme Court in the case of Scientific Engineering House Private Limited v. Commissioner of Income Tax, Andhra Pradesh, (1986) 157 ITR 0086 (SC), held as under:

"10. In deciding whether a 'building' or a structure is a plant, the functional test has to be applied as indicated in the said decisions. If the 'building' is an apparatus or tool used by the Assessee for carrying on the business or manufacturing activity, then it would be part of the 'plant'.

11. Therefore, the word 'installed' is used in connection with the words ' plant and machinery', can also refer to 'installation' of a factory building. Therefore, the mere use of the word 'installed' with reference to 'plant and Machinery' is not sufficient to

exclude the factory building, from the scope of the 'plant and machinery' used in the Notification dated 15.10.1981.

27: The Supreme Court in the case of CIT vs. Taj Mahal Hotel, Secunderabad (12.08.1971 - SC) : MANU/SC/0239/1971

Land, buildings, machinery, apparatus and fixtures employed in carrying on trade or other industrial business....

28: The Supreme Court in the case of CIT vs. Dr. B.Venkata Rao MANU/SC/1284/1999 : [2000] 243 ITR 81, has held that if it was found that the 'building' or structure constituted an apparatus or a tool of the taxpayer by means of which business activities were carried on, amounted to a 'plant' but where the structure played no part in the carrying on these activities but merely constituted a place where they were carried on, 'building' could not be regarded as a 'plant'.

29: The Supreme Court in the case of Anand Theatres MANU/SC/0409/2000 : [2000] 244 ITR 192 (SC), has observed that where a building that was used as a hotel or a cinema theatre could be given depreciation on the basis that it was a 'plant' and it was in relation to that question that the court considered a host of authorities of this country and England and came to the conclusion that a building which was used as a hotel or a cinema theatre could not be given depreciation on the basis that it was a plant. We must add that the court said: "To differentiate a building for grant of additional depreciation by holding it to be a 'plant' in one case where a building is specially designed and constructed with some special features to attract the customers and the building not so constructed but used for the same purpose, namely, as a hotel or theatre would be unreasonable." This observation is, in our view, limited to buildings that are used for the purposes of hotels or cinema theatres and will not always apply otherwise.

30: The above judgment of the Supreme Court in the case of Anand Theatre would greatly help the Hospitality Industry (Hotel, Resorts, Inn, Campsite, Club and Restaurants) that the Input Tax Credit (input, service, capital goods) could be allowed for construction of building, complex, civil structure etc.etc. since these would be held to be “plant and machinery” for the Hospitality Sector.

RECORDS TO BE MAINTAINED UNDER GST

31: Under GST, the activities of manufacture, provision of taxable service and sale of goods have a common law and hence, businesses can now maintain consolidated information which was maintained separately earlier. Under GST, every registered taxable person is required to maintain the following accounts:

1. **Purchase Register** should be maintained for all purchases made within a tax period for manufacturing of goods or provision of services.
2. **Sales Register** should be maintained for all the sales made within the the tax period.
3. **Stock Register** containing correct stock of inventory available at any given point of time should be maintained.
4. **Register for input tax credit availed** should be maintained to mention the details of input tax credit availed for a given period.
5. **Output Tax Liability Register** which should mention the details of GST liability outstanding to be adjusted against input credit or paid out directly.
6. **Output tax paid Register** which should mention the details of GST paid for a particular tax period.
7. **Register of goods produced** which contains the details of goods manufactured in a factory or production house. It should be maintained by every assessee carrying out manufacturing activity.

32: In addition to maintaining the accounts specified above, a registered person whose turnover during the financial year exceeds Rs. 1 crore is required to get the accounts audited by a chartered accountant or cost accountant and submit a copy of the audited annual accounts and a reconciliation statement in Form GSTR-9B while filing the annual return in Form GSTR-9.

33: Every registered person is required to retain account for five years from the due date of filing annual returns for the year to which the account and records pertain.

34: In view of the enormous potential in the Hospitality Sector and also in view of the ever increasing size of the foreign tourists of various categories viz. (i) industry (ii) business (ii) medical (iv) pilgrimage (v) government business (vi) political business. Therefore, it is absolutely imperative that the Government must, by their policies, give philip to this Sector and tap the enormous opportunities coming soon.