

IMPACT OF GST ON HOTEL INDUSTRY

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CGST Act, UTGST Act and IGST Act have received the assent of the President on 12th April 2017 and now there is finality and clarity with regard to the provisions contained therein. The stage is set for the roll out of these Acts from the appointed day – 1st July 2017.

There is confusion and anxiety among the owners of Hotels and Restaurants with regard to the liability of tax under CGST Act and SGST Act. The CGST Act and the SGST Act have more or less identical provisions and there is no change of tax liability under these Acts. SGST Act has not become law as yet. The SGST Act will have to be passed by the State Legislature of all the 31 States of Union of India and will become law when the Governor of the State shall grant the assent to the said Act.

Constitutional validity of Service tax on “Accommodation Services”

The Constitutional validity of service tax on provision of Short-Term accommodation service by a hotel, guest house, etc. ,and service provide by restaurants was once again challenged before the Hon. Delhi High Court in **Federation of Hotel and Restaurant Association of India v. UOI** in WP (C) No.6482 of 2011, dated 12.08.2016 [2016(44)S.T.R.3(Del.)]. The Hon’ble High Court of Delhi in this case upheld the constitutional validity of levy of Service Tax on restaurant services but, struck down the validity of Service Tax on Short-Term Accommodation Services. Entry 62, List –II, i.e., State List, which empowers only the State Legislatures to levy tax on Accommodation services. The said Entry reads as follows-

62 “taxes on luxuries including taxes on entertainments, amusements , betting and gambling.”

Parliament has no power to levy service Tax on Accommodation services under residuary entry in the Seventh Schedule to the Constitution. The same principle has been upheld by the Hon’ble Apex Court in **Godfrey Philipps India Limited v. State of UP –(2005) 2SCC 515**.

Article 246 A introduced through the Constitution (One Hundred and First Amendment Act) empowers Parliaments and the Legislatures every States to tax accommodation services.

PROVISIONS OF ACCOMMODATION SERVICES IN THE STATES

The Centre and the States are levying tax on Services and Goods provided by restaurants respectively. This has resulted on overlapping of VAT and Service Tax on restaurants.

Further, the States have also levied tax on accommodation services under Entry 62, List –II, i.e., State List. Tax on accommodation has been discussed in this article with regards to provisions contained in Madhya Pradesh Vilasita , Manoranjan, Amod Evam Vigyapan Kar Adhinyam , 2011 (LEAT Act) as a test case to illustrate the difference between the present regime and the GST regime on the impact on Hotel Industry on pan-India basis

Similar provisions may also exist in other states regarding the taxability of accommodation services.

Taxability of Hotels under Present laws with respect to the State of Madhya Pradesh

The taxability on luxuries (services) provided in a Hotel can be summarized as under:-

- The owners of Hotels are liable to pay tax @10% on the turnover means the receipts of monetary consideration as per Section 6 of LEAT Act.
- The threshold limit for being liable to pay tax under LEAT Act is Rs.10 lacs of turnover per annum.
- There is no payment of Luxury Tax on hoteliers where rate of charges per day is Rs. 3,000/- or less.
- The new Hotels or existing Hotels undergoing expansion are enjoying the benefit of exemption from payment of Luxury Tax for a period of 5 years or 8 years depending upon the location of the Hotel, as per Notification No.8 dated, 05.02.2011,
- Heritage Hotels have been granted the exemption from payment of Luxury Tax for period of 10 years as per the Notification No.10 dated, 05.02.2011.
- There is also the benefit from payment of Luxury Tax to Hotels registered under **Bed & Breakfast Scheme** of M.P. Tourism.
- No Luxury Tax is leviable on Hotels during off season of 3 months in a year in Hotels located at the places other than Municipal limit of Bhopal, Gwalior, Indore and Jabalpur.
- Similar provisions with regard to levy of tax on accommodation on Hotels exist in Other states as well.

Taxability of Restaurants under Present laws with respect to the State of Madhya Pradesh

The taxability of VAT under MPVAT Act on the sale of food provided in a Restaurant can be summarized as under:-

- VAT is leviable @5% on cooked foods and snacks provided by a restaurant.
- VAT is leviable @20% on Cold drinks and @14% on other non food items.
- Entry Tax is also payable @1% on raw material and incidental goods used in the manufacture of cooked food.
- Luxury Tax is also payable by outdoor caterers @10% under LEAT Act with the deduction of sale price on which tax is liable to be paid under MP VAT Act with the exception of Hospitals and Educational Institutions.
- Tax on sale of alcoholic liquor to customers is levied @ 5% under MP VAT Act.
- Similar provisions with regard to levy of tax on sale of cooked food by restaurants in other states as well.

Tax liability of Hotels and Restaurants under Service Tax

The Service Tax liability on Hotels and Restaurants can be summarized as under:-

- There is no Service Tax on services provided in a Hotel.
- Service Tax is leviable @15% on services provided by Air Conditioned Restaurants with the abatement of 30%.

Composition Scheme under MP VAT Act

- The dealer opting for composition u/s 11 of MP VAT Act is liable to pay composition money @3% on the turnover of cooked food manufactured without the facility of input tax rebate.
- No input tax rebate is available to composition holders u/s 11.
- The manufacturers u/s 11 have the benefit of buying goods taxable @5% from unregistered dealers without the liability of payment of purchase tax.
- Composition under VAT regime is available to the dealers whose turnover per annum is upto Rs.1 crore
- Similar provisions exist in different States in respect of composition provisions to restaurants.
- There is also provision in some States to grant licence to restaurants at nominal rates on advance payment of licence fee.

Tax liability on Hotels under GST regime

- Luxury Tax on services provided in a Hotel is leviable @10% on receipt basis. As all services under GST regime are to be taxed @18% while the present rate of Service Tax is 15%.
- The services provided under GST regime **by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite by whatever name called and including a house boat or any other vessel** will be taxable @18% on the transaction value of supply of services in all probability.
- There is no Luxury Tax under LEAT, where the rate per day for accommodation is upto Rs. 3,000/-. Such exemption on daily rate basis may not be available under GST regime.
- The threshold limit under GST regime on supply of services is aggregate turnover of Rs.20 lacs per annum. On discount, some of the owners who are paying tax under LEAT may not be liable to pay tax under GST regime.
- Some of the owners of the Hotel who are enjoying exemption from payment of Luxury Tax will not get the benefit of exemption under GST regime.
- The supplier of Hotel services will be entitled to input tax rebate on the inputs, capital goods and input services used by them in the course or furtherance of business.
- Alcoholic liquor for human consumption alongwith Perto Products has been retained in entry 54 of List –II, i.e., State List of the Seventh Schedule of the Constitution. As such, tax on Alcoholic liquor for human consumption, as provided to customers in restaurants will continue to attract Vat under VAT Laws of the states. Being a super luxury, it may attract a higher rate in the interest of state revenue.
- No Input Tax credit will be available to sale of alcoholic liquor for human consumption as it is outside the GST regime.

Tax liability on Restaurants under GST regime

- Schedule II u/s 7 of CGST Act incorporates activities to be treated as supply of goods or supply of services.
- As per clause 6(b) of Schedule II, Restaurant services are specified as composite supply and have been defined as follows:-

“Supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration”.
- As per clause 6(b) of Schedule II, tax under GST regime will be leviable as supply of services, not as supply of goods @18% on transaction value i.e. the consideration paid or payable.
- No tax will be payable on the goods supplied by the Restaurants to the customers as Restaurant services have been specified as composite service.
- The supplier of Restaurant services will be entitled to input tax rebate on the inputs, capital goods and input services used by them in the course or furtherance of business.
- As such Restaurant service supplier shall pay tax @18% on supply of services in place of 5% which is being paid under VAT regime.

Service Tax Liability on Mandap keeper , Hotels and convention Services , providing full catering services

- Mandap keeper, Hotels and convention Services, providing full catering services shall pay service tax on 60% of the gross amount charged, under abatement scheme.
- Outdoor caterers shall, under abatement scheme, charge service tax on 50% of the amount where he provides full and substantial meal.
- Similarly, under the abatement Scheme, the Pandal and Shamyana Service providers shall be liable to pay tax on 70% of gross amount charged if full catering service is provided.
- The rate of service tax on above services is 15%.
- Simultaneously, the states are also subjecting to tax the services provided by Marriage hall, Mandap Keepers etc with a general rate of 10%. The same receipts re being subjected tax both by the Central Govt. and the State Govt., resulting in double taxation without any grant of credit for Input Tax on goods and services.

Taxability on Mandap Keeper Services etc under GST

- Mandap keeper, Hotels and convention Services, etc. , as mention above are proposed to be taxable @ 18% under GST.
- There is abatement on these services under Service Tax law which may not be available under GST as these services will not be taxable separately under any state law.
- There will not be overlapping of taxation as present state taxation laws have been subsumed in GST.
- There will be availability of Input Tax Credit of taxes paid on supply of Inputs and Input

Services.

Composition under GST regime for supply of Restaurant services

- As per Section 10(1)(b) of CGST / SGST Act, the Restaurant service provider whose aggregate turnover in a previous financial year does not exceed Rs.50 lacs shall pay tax @2.5% as CGST and 2.5% as SGST totalling 5%, which is as under:-
 - “(b) two and a half per cent of the turnover in State in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II”.
- The composition Restaurant suppliers will not be entitled to input tax credit.
- The composition u/s 10 of CGST Act/ SGST Act is subject to provisions of Section (3) and (4) of Section 9. It means that composition persons will pay tax at full rate on reverse charge basis, if they get supplies from notified suppliers of goods / services and from unregistered persons. Restaurant Service providers have to buy the goods and services from the unregistered persons in the course of nature of services provided by them. This will result in unnecessary burden on restaurant service providers on unregistered inward supplies. This will make the provisions contain in Section 10 of GST laws impractical and redundant while the intention of the Council is to give the relief to small restaurants and dhawas whom cannot keep the complicated accounts and documentation and to reduce the burden of taxation on restaurant service supplies.

Classification Issues

With the adoption of Five rate – taxation slab i.e. 0% ,5% ,12% 18% and 28% , there are bound to be classification issues and litigation. Such issues shall be resolved with the application of principles decided under the present regime. It takes at least 20-25 year for the taxation law to mature and to settle the classification disputes.

For example, if a customer takes cold drinks in a hotel/ restaurant, it will result in complications to whether the **cold drinks** to be subject to tax under 28% tax slab with a cess of 15% or @18% as Restaurant services.

Similarly where a customer orders for alcoholic drinks alongwith meals, further complications will arise as alcoholic drinks, although outside the GST regime, will be taxed alongwith restaurant services. Further, no input tax credit will be available on VAT paid on purchase of alcoholic drinks.

Conclusion

It is evident that the hoteliers will pay Service Tax under GST regime @18%, while they are paying tax @10% on average under State Acts. They will not get any benefit of exemption as notified under State Act. Every State has exempted accommodation services for specified periods to promote tourism in their State. They will also not get any benefit where the daily tariff charges has been fixed beyond which the luxuries provided in a hotel are taxable. Such limit is Rs.3,000/- in the State of M.P.

Similarly, restaurant service suppliers will pay tax @18% on services provided while they are paying tax @5% under VAT regime with the benefit of input tax rebate. Only those registered persons who opt for composition u/s 10 will pay tax @5% on aggregate turnover under GST regime, that too without the benefit of Input Tax Credit. As the restaurant owners have to make a lot of supplies from unregistered persons, therefore in accordance with Section 9(4)of GST laws, they shall be liable to pay tax on such supplies from unregistered persons at full rate under reverse charge mechanism (RCM). This

will cause real hardship to composition holders restaurant. Also the limit of Aggregate Turnover of Rupees 50 Lakh for composition is too low to get the real benefit. Under VAT laws, restaurants are enjoying higher limits with lower tax rates. Also in the VAT regime, composition holders not liable to pay purchase tax on purchases made from unregistered persons.

Restaurant service providers and hoteliers are in for real hardship under GST regime with higher burden of taxation on outward supplies. There will also be issues with regard to compliance under GST regime where the Supplier has to maintain accounts and documentation meticulously to claim Input Tax credit and also comply with the different provisions of the GST laws.

XX

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