

## FAST FORWARD APPROACH OF GOVERNMENT REGARDING IMPLICATIONS OF GST: AN EXAMPLE OF HOTEL INDUSTRY

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**Abstract :** the service tax regime the effective rate of service tax after abatement on hotels enjoy with provision of accommodation services and restaurants was 9% and 6% respectively. Though an attempt has been made by the government to make the burden of this indirect tax on the principle of progressive taxation, being the services of nature availed by all class of persons, which is laudable, there are certain issues which require clarity to prevent the disputes between revenue and assessee in near future.

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**Key words :** GST, accommodation services, simplified version

**Introduction** GST is being propagated as a simplified version of the indirect taxation with reduced litigation, increased compliance requirements and with a friendly tax environment. But there are certain provisions which may lead to probable disputes and difficulties in compliances, which require timely clarifications to set the law to certainty. This article analyses the implications of GST on levy of tax on the hotel industry and the fast forward approach of Government to set the same as rest.

### **Present Status of Hotel Industry**

Under the service tax regime the effective rate of service tax after abatement on hotels enjoy with provision of accommodation services and restaurants was 9% and 6% respectively. Though an attempt has been made by the government to make the burden of this indirect tax on the principle of progressive taxation, being the services of nature availed by all class of persons, which is laudable, there are certain issues which require clarity to prevent the disputes between revenue and assessee in near future. The various rates applicable with respect to restaurants and hotel services under GST regime are as follows:

**Restaurant Services<sup>1</sup>:**

Particulars	Case I	Case II	Case III	Case IV
<b>Condition under which the service is provided</b>	Without Air Conditioning facility or Central Heating and No license to serve liquor	Having license to serve liquor	Having facility of Air Conditioning or Central Heating at any time during the year	5 Star or above rated hotel having AC restaurant
<b>Rate of GST</b>	12% with Full Input Tax Credit	18% with Full Input Tax Credit	18% with Full Input Tax Credit	28% with Full Input Tax Credit

<sup>1</sup> Serial No. 16, 21,22 & 31 of SCHEDULE OF GST RATES FOR SERVICES AS APPROVED BY GST COUNCIL available at <https://finapp.co.in/wp-content/uploads/2017/05/GST-Rate-for-Services.pdf> accessed on 12th July, 2017

**Accommodation Services<sup>2</sup>:**

<b>Particulars</b>	<b>Case A</b>	<b>Case B</b>	<b>Case C</b>	<b>Case D</b>
<b>Condition under which the service is provided</b>	Declared tariff of a unit is less than Rs. 1,000 per day or equivalent	Declared room tariff of Rs. 1000 and above but less than Rs. 2500 per room per day	Declared room tariff of Rs. 2500 and above but less than Rs. 5000 per room per day	Declared room tariff of Rs. 5000 and above <b>per night</b> per room including 5 Star and above rated hotels
<b>Rate of GST</b>	Exempt	12% with Full Input Tax Credit	18% with Full Input Tax Credit	28% with Full Input Tax Credit

**Implications and Analysis of the above rates**

<sup>2</sup> Id. at Serial No 17, 24 & 32 read with Serial No. 74 of Service Tax Exemptions to be continued in GST as decided by GST Council available at <http://gstindiaupdates.com/wp-content/uploads/2017/05/Exemption-List-under-GST.pdf> accessed on 12th July, 2017

It is a general practice amongst the hotel industry to provide for both restaurant and accommodation services in form of combined package such as 3 Days/2 Nights package including breakfast or lunch or dinner or with either of all. In such situations, the concept of composite supply and mixed supply will apply.

Under the provisions of GST Law, a supply is composite supply wherein two or more taxable supplies of goods and services being supplied are naturally bundled and supplied in conjunction with each other. In such case, the rate of GST applicable to principal supply will be applicable applying the principle of dominant nature. However, in case of mixed supply, wherein two or more individual supplies of goods or services or their combinations made in conjunction with each other are capable of being supplied independently and not as a composite supply, the highest rate of GST applicable will be considered<sup>3</sup>.

Both the concepts are subjective and there is likelihood of dispute between the assessee and the department on the matter of interpretation as the revenue authorities will apply the concepts which would fetch them higher revenue whereas, the assessee will interpret it otherwise.

In the above situations as shown in Table I and Table II, in situation 1C (The declared accommodation tariff is between Rs. 2500-5000 whereas the restaurant is without AC or heating system and liquor license), the rate of GST applicable for accommodation is 18% and rate of GST applicable for restaurant services is 12%, the revenue authorities will be inclined to charge @18% by invoking the concept of composite supply. However, in situations 1A, 2A, 2B, 3A, 3B, 4A, 4B and 4C, where the rate of GST on restaurant services is higher than the rate of GST on accommodation services, the revenue authorities will consider the package to be mixed supply and will be inclined to charge

the highest rate which may lead to disputes between the revenue department and the assessee. This situation will be more interesting in case of in-room dining and minibar services. It is likely that the revenue authorities may classify the said services under accommodation services rather than restaurant services, as the rate of service tax on accommodation services is higher.

However, a clarification of has been given by the Government that accommodation in any hotel, including 5-star hotels, having a declared tariff of a unit of accommodation of less than INR 7500 per unit per day, will attract GST @ 18%. Star rating of hotels is, therefore, irrelevant for determining the applicable rate of GST.

### Conclusion

The above article showed how the difference in rates between the two services could lead to dispute between the assessee and the revenue department. It is therefore, laudable that timely clarifications in this regard have been issued by the revenue department to avoid the unnecessary litigation and to streamline the GST regime, in tune towards ideal system of taxation in India.

<sup>3</sup> Section 8 of CGST Act, 2017