



THE CHAMBER OF TAX CONSULTANTS

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INDIRECT TAX STUDY CIRCLE MEETING ON 18th January, 2018

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Advocate

Case Studies

Determine the rate of tax of these supplies:

(1) Arun Printers undertakes the job of printing. Two orders are received by him from the University of Mumbai:

- Printing and supply of question papers for which content will be supplied by the University;
- Printing and supply of receipt books which are to be printed in a specific design and format;
- Printing and supply of general format receipt books.

Determine whether these supplies are of goods or of services? Will it make a difference that receipt books are specifically mentioned in the tariff notification for goods.

(2) ABC Hotels undertakes the following supplies:

- Hire of rooms under a package price under the following plans:
 - i. Continental Plan : Accommodation with breakfast
 - ii. American Plan : Accommodation with breakfast, lunch & dinner

- Sometimes the guest will order food directly to his room and will be charged for it separately.
- Certain Snacks and water kept in the room which is complimentary
- Alcohol and some other snacks are kept in the room which are chargeable
- Laundry and rent a cab services provided by the hotel without charge
- Conference hall provided without charge
- Conference hall provided for separate charge

Also consider a separate case where Chamber of Tax Consultants enter into a contract with this hotel for conference room, accommodation and food for their members during RRC conducted by CTC.

Declared Tariff is more than 7500 rs.

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
7	Heading 9963 (Accommodation, food and beverage services)	(iii) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, including but not limited to food or any other article for human consumption or any drink where such supply or service is for cash, deferred payment or other valuable consideration provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of a unit of accommodation of seven thousand	9	-

		and five hundred rupees and above per unit per day or equivalent. <i>Explanation.</i> -"Declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit).		
		(vii) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, including but not limited to food or any other article for human consumption or any drink (whether or not alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration, in a premises (including hotel convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) together with renting of such premises.	9	-
		(viii) Accommodation in hotels including five star hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of a unit of accommodation of seven thousand and five hundred rupees and above per unit per day or equivalent. <i>Explanation.</i> -"Declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit).	14	-
16	Heading 9972	Real Estate services	9	-

(3) MithoMithaiwala sells mithai over-the-counter. He has been classifying the same under CTH 210690 "Sweetmeats" and paying 5% GST.

GST Officer sends a notice saying that “mithai” is “food” and “article for human consumption”. He says that a composite supply of food is covered by Schedule II Clause 6 which reads as follows:

“6. Composite supply

The following composite supplies shall be treated as a supply of services, namely –

(b) 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.”

The Officer says that as per the illustration to Section 2(30), the supply of packing alongwith supply of goods constitutes a “composite supply” and hence sale of packed mithai is a composite supply which comes within Schedule II Clause 6. Do you agree?

(4) ABC has entered into an agreement with DEF for supply of:

- Porcelain-Clad Vacuum Circuit Breaker
- Current Transformer
- Control Relay Panel

A single lumpsum price is charged for supply of all three. ABC is not responsible for installation of these three devices. However, the tender floated by DEF as well as the purchase order placed by DEF on ABC clarify that all three devices are to be installed at different places in the same equipment which owned by DEF, and all these three devices will be inter-connected by DEF at its end.

Porcelain Clad Vacuum Circuit Breakers are classifiable under CTH 8535, and Control Relay Panels are classifiable under CTH 8537, while Current Transformers under CTH 8504.

At the time when this supply took place, the rates of tax and the relevant entries were:

Customs Tariff Heading	Description of goods	Rate of tax
8535	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, fuses, lightning arresters, voltage limiters, surge suppressors, plugs and other connectors, junction boxes), for a voltage exceeding 1,000 volts	18%
8504	Transformers Industrial Electronics; Electrical Transformers; Static Converters (UPS)	18%
8537	Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or	28%

	<p>the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517</p>	
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In *Crompton Greaves Ltd. v CCE Aurangabad* [1996 (87) ELT 414] a Special Bench of the Central Excise and Gold Appellate Tribunal had taken the view that a Porcelain-clad Vacuum Circuit Breaker and EHV SF 6 Gas Circuit Breakers which are inter-connected through wiring to a Control Panel are classifiable under Heading 8537. The Tribunal held that even if the circuit breakers and the control panels are installed at different places, as long as they are inter-connected by wiring the system falls within the words used in Heading 8537: “panels...equipped with two or more apparatus of heading 8535 or 8536”. In short, even if the circuit breaker and the control panel were not mounted on the same panel, the goods as such were held as classifiable under Heading 8537. This decision was affirmed subsequently by the Supreme Court through the Order dated 18.10.2001 in Civil Appeal No.12553 of 1996.

Determine whether the classification position as explained by CEGAT and affirmed by the Supreme Court in pre-GST era continue to govern the classification position in GST.

Kindly note that a Vacuum Circuit Breaker is almost always used with a Current Transformer and a Control Relay Panel. Only in very rare circumstances will a Vacuum Circuit Breaker be used without a Current Transformer and a Control Relay Panel. Most importantly, a Vacuum Circuit Breaker is never used without a Current

Transformer and a Control Relay Panel in a power distribution system, which is where DEF intends to use these three devices. The tender and purchase order also reflect the fact that these three devices will be used in a power distribution system.

- (5) XYZ has entered into an agreement for acquisition of Technical Know-How from its wholly-owned subsidiary GHI. XYZ is situated in Mumbai and GHI is situated in Nagpur.

Under the terms of the agreement, XYZ will pay an upfront sum of Rs. 5,20,00,000 and an annual royalty calculated as a percentage of Net Sales. It is pertinent to note that under Article 2 of the agreement, the entire right, title and interest in the Technical Know-How will stand transferred absolutely to XYZ within 7 days of the upfront payment.

Determine the rate of tax of this supply.