

**ISSUES FOR GROUP DISCUSSION  
ORGANISED BY**

**THE CHAMBER OF TAX CONSULTANTS**

Subject: GST issues regarding Hospitality Industries

Chairman: CA. Kalpesh Shah

Group Leader: CA. Umang Talati

Date: 29<sup>th</sup> April 2021

Time: 5:00 pm to 7:00 pm

**GST ISSUES REGARDING HOSPITALITY INDUSTRIES**

1. Luxury Hospitality Pvt Ltd, owns and operates various hotels across the country. In the Rajasthan, it has a unique palatial property. The units for accommodation are attached to the property. The declared tariff is above Rs. 7500/unit. It runs 2 restaurants, the first one is part of the same building as the units for accommodation. The second one is situated right across the street. However, there is a public road dividing the two places.
  - (a) Whether the Restaurant across the street can charge tax at 5%.
  - (b) Will the answer change, if the said restaurant is given to some 3<sup>rd</sup> party to run and the restaurant's billing is done on the GSTIN of the 3<sup>rd</sup> party.
  - (c) What if both of these restaurants are given to a 3<sup>rd</sup> Party to run.
  - (d) The restaurant runs a popular brunch service every sunday, where along with food – alcoholic beverages are provided to the customers. Rs. 2500/person is charged for the brunch. It is an all-inclusive price. How is GST to be calculated on the same? Is artificial bifurcation needed for food and alcoholic beverages? How to pay the VAT liability, if any?

2. With India facing a second wave, various only delivery outlets have opened up around the country. One such company is Box28. Box28 is a central kitchen which used to provide food to various restaurants around the city. As a way to sustain itself, during these difficult times, it started delivering food directly to consumer based on orders it receives from E-commerce outlets. Previously, such kitchen used to only prepare ready-to-cook food for the restaurants to finish and serve. Now, it is also finish the food at its premises. Can this be treated as food served by restaurant? What rate of tax to be charged?

Please note, central kitchen only has a license issued by the health department to prepare food.

3. Fantasy Land Pvt Ltd (FLPL) owns and runs a hotel and an adventure park. Day visitors can buy tickets for entry to the park. The park can be accessed from a separate entry. However, hotel residents can use the exclusive access through the hotel.

- (a) The day ticket also entails the user to food/beverages worth Rs. 400/- Vouchers/Prepaid Card are issued for the same. If the voucher is not redeemed within 6 months, it is forfeited. The same is kept in the balance sheet until it is forfeited and considered as other income.

Whether GST needs to be paid on the following

- (i) At the time of issuance of the voucher
- (ii) At the time, amount is forfeited, is it in nature of supply? If GST is not paid at time of issuance of voucher. If yes, at what rate?
- (b) As an exclusive package, FLPL is offering 1 night stay along with 2-day pass to the adventure park. It also entitles them to 'Skip the Line' Fast pass. The charges for the package is Rs. 8000/-

- (i) Is this in nature of composite supply? If yes, which is the primary supply – supply of accommodation or access to entertainment event?

Please note: 1 day ticket to adventure park is Rs. 1200/-. 2-day ticket is Rs. 2000. General Room Rent along with 1 Breakfast and 1 Meal is Rs. 6500/- Fast Pass is additional cost of Rs. 300/- per day.

- 4. Due to the COVID-19 pandemic, a lot of the tour packages within and outside India got cancelled. In view of the same, the GST implications needs to be discussed from the view-point of the Tour Operator as well as the input services which he has availed for providing such services.

- (a) Output Side

- (ii) Tour operator cancels - Full Refund
- (iii) Customer Cancels: Partial Refund – Rest is retained (as per contract)
- (iv) No Refund – but a document is given which can be used upto a given period of time

[Generally, advances received and GST on the same is discharged on the receipt of the same as per Time of Supply of Services. Invoices are only issued on the day of the tour.]

- (b) Input Side

- (i) Hotels give Credit Note - to be utilized by next FY but not cash refund
- (ii) Tour Operator is opting for discharging GST-18%. On cancellation –all bookings made by Tour Operator such as car booking, hotel etc. are forfeited by the respective service providers. Even Credit Notes are not issued. Insurance Company

reimburses tour operator for loss of money due to cancellations.

- Is ITC available in the present case?

- (c) Are these redeemable documents – in nature of voucher? Discuss the taxability of same.

[REFERENCES: M/s Lemon Tree Hotel vs. Comm (2019-VIL-789-CESTAT-DEL-ST) and Circular No. 137/07/2020-GST]

5. M/s Raja Travels is in the business of planning, scheduling, organizing of tours. They are registered in GST in the state of Maharashtra. It also provides standalone services of booking of accommodation with/without transportation.

Based on the above facts, M/s Raja Travels wants certain clarifications on the following :

- (a) Whether the GST Rate @ 5% is Mandatory or Optional?  
(b) Can GST 5% be applied transaction-wise or has to be opted for the entire FY?  
(c) What will be the rate of tax in the given scenarios below:

Sr.No.	Particulars	Rate of Tax
i)	A approaches M/s Raja Travels for booking of a hotel in Delhi only.	
ii)	B approaches M/s Raja Travels for booking for hotel in Coorg along with Airport Transfer from Mangalore.	

Relevant Rate notification is reproduced hereunder:

<i>Sl. No.</i>	<i>Chapter, Section or Heading</i>	<i>Description of Service</i>	<i>Rate (per cent.)</i>	<i>Condition</i>
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(1)	(2)	(3)	(4)	(5)
23	<b>Heading 9985</b> (Support services)	(i) Supply of tour operators services. Explanation.- "tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours.	2.5	1. Provided that credit of input tax charged on goods and services used in supplying the service[, other than the input tax credit of input service in the same line of business (i.e. tour operator service Procured from another tour operator)] <sup>1</sup> has not been taken [Please refer to Explanation no. (iv)]  2. The bill issued for supply of this service indicates that it is inclusive of charges of accommodation <b>and</b> transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour.
		(ii) .....	2.5	.....
		[(iii) Support services other than (i) and (ii) above.	9	-] <sup>1</sup>

6. M/s All Hotels Pvt Ltd is a tour operator registered in the state of Gujarat. Along with the activities of booking tours, it is also engaged in purchasing inventory of hotel rooms from various hotels. The rooms are from various 3star to 5star hotels. This inventory of rooms are further sold to other small tour operators who actually sell it to the final customer.
- In view of the above, M/s All Hotels Pvt Ltd approaches you with the following questions: -

<sup>1</sup> Inserted vide notification No. 1/2018- Central Tax (Rate) dt 25.01.2018

- (a) Can the tour operator claim credit of the hotels situated in Gujarat and in other states? If the answer is “No” or “Partial No”, how to mitigate the situation practically?
- (b) Whether, the purchaser of hotel rooms i.e. small tour operators can claim credit under section 16? Can it be said that the small tour operator has received the services?
- (c) How to differentiate between Recipient of Services v/s Beneficiary of Services while examining various contracts such as the above?
  - (i) In case, there is some damage/problem during the stay, can the Hotel recover charges from the customer/tourist or All Hotels Pvt Ltd with whom, they have their original contract.

7. Club Supreme India is a time Share which provides holiday vacation homes to members (against membership purchased for say 25 years for a one-time fee) to be utilized against a fixed number of days each year. Club Supreme has its own properties across India as well as other countries. It also pays resort fees to certain other participating resorts to utilize its rooms.

Club Supreme also has an arrangement with Club International-USA which provides international destinations and the same can be used by Club Supreme's members (as per a given formula to calculate days). The arrangement is interchangeable and Club International members also get access to Club Supreme's properties

- (a) Whether GST is leviable only on that portion of annual resort fees paid by Club Supreme to participating resorts within India or outside India as well?

- (b) Whether the arrangement between Club International-US and Club Supreme India is in the nature of barter? Whether GST is payable on the same?

8. Cricket Premier League (CPL) 2021 is going to be held in UAE while the semi-finals and finals will be held in India. Indian Cricket Board approaches 5Star World to organize travel and accommodations for its players for the upcoming CPL 2021. M/s 5Star World intends to quote a single price per player for the entire tour. The tour will include accommodation and ticket prices - to and fro.

The matches will be held across Dubai, Abu Dhabi and Sharjah while the semi-finals will be held at the M Chinnaswamy Stadium, Bangalore and Arun Jaitley/Feroz Shah Kotla Stadium, Delhi while the final will be held at Wankhede Stadium, Mumbai. The tour includes various states- Karnataka, Delhi and Maharashtra as well as countries outside India.

- (a) If M/s 5Star World decides to charge Rs.10,00,000/- per player for the entire tour, how is the same going to be valued for levy of GST. Can services for tour outside India be considered as export of services?
  - (i) If instead of Indian Cricket Board, Australian Cricket Board approaches M/s 5Star World, does the answer change?
- (b) M/s 5Star World is also offering optional packages in addition to the basic plan. It provides hot air balloon ride in Dubai. The same can be booked at the time of booking the tour. However, this activity can also be opted for at any time even during the tour.
  - (i) How will this activity be viewed, is it a composite supply/mixed supply or a separate supply? What would be the rate of tax?
    1. If optional activity is booked at the time of booking of tour

2. Prior to starting of tour but after booking of main tour

3. At the time of the activity in Dubai

- (ii) Would it matter if the consideration for the optional activity is received in forex?
- (c) How can one design/plan the transaction to make it tax efficient?
- (d) 5Star World in turn intends to book the same through another tour operator situated in Dubai. Is this import of service?