



GST Relief to Hotels and Restaurants: Analysis of 55th GST Council's decision

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Decision:

To omit the definition of declared tariff and suitably amend the definition of specified premises (from the services rate and exemption notifications) to link it with actual value of supply of any unit of accommodation provided by the hotel and to make the rate of **GST applicable on restaurant services** in such hotels, for a given financial year, dependent upon the 'value of supply' of units of accommodation made in the **preceding financial year**, i.e. 18% with ITC if the 'value of supply' exceeded Rs. 7,500 for any unit of accommodation in the preceding financial year, and 5% without ITC otherwise.

Further, to give an option to pay tax on restaurant service in hotels at the rate of 18% with ITC, if the hotel so chooses, by giving a declaration to that effect on or before the beginning of the financial year or on obtaining registration.

The above changes to be made effective from 01.04.2025 to avoid any transition difficulties.

Our Comments:

The current rate of GST in restaurants are as under -

- I. The rate of GST to be charged by a restaurant is 5% incase it is a standalone restaurant and no ITC is available to it.
- II. The Rate of GST to be charged by a restaurant which is located in a hotel is as follows—
 - a. 5% incase the hotel does not sell even one room at more than Rs.7500/- in the same FY
 - b. 18% incase the hotel sells even one room at more than Rs.7500/- in the FY

Consider the example - Incase the hotel sells a room on 31st March 2025 at say Rs.8000/- then its entire restaurant sale from 1st April 2024 would be 18% (with ITC) and not 5% (without ITC). This would be hit by doctrine of impossibility as how would the hotel know on 1st April 2024 that it would be selling a room over Rs.7500/- on 31st March 2025. Further, once it gets to know on 31st March 2025, then the recipient of the service is untraceable and the hotel has to pay the differential 13% GST (less ITC) out of its own pocket.

This is proposed to be corrected from 1st April 2025. i.e. **GST applicable on restaurant services** in such hotels, for a given financial year, would be dependent upon the 'value of supply' of units of accommodation made in the **preceding financial year**, i.e. 18% with ITC if the 'value of supply' exceeded Rs. 7,500 for any unit of accommodation in the **preceding financial year**, and 5% without ITC otherwise.

So Consider the same example as supra after 1st April 2025 - Incase the hotel sells a room on 31st March 2025 at say Rs.8000/- then its entire restaurant sale from 1st April 2025 would be 18% (with ITC) and not 5% (without ITC). This would bring certainty in taxation to the hotel.

Further, the hotels would be give an option to pay tax on restaurant service in hotels at the rate of 18% with ITC, if the hotel so chooses, by giving a declaration to that effect on or before the beginning of the financial year or on obtaining registration.

It is understood that the modus-operandi to change from one option to another year-on-year would also be out.

BRIEF ABOUT THE AUTHOR:

Vivek Jalan is a Chartered Accountant, M.B.A (International Trade) & a qualified L. LM (Constitutional Law) & LL.B. He is the Founder & Partner of Tax Connect Advisory Services LLP. He is the Chairman of The Indirect Tax Core Group of The Confederation of Indian Industries – EAC(ER). He is the Chairperson of The National Fiscal Affairs & Taxation Committee of The Bengal Chamber of Commerce and Industry. He is a Member of The Managing Committee of The Bengal Chamber of Commerce and Industry.

He is a regular Columnist and guest expert in Economic Times, Times of India, Dalal Street Journal, Money Control, Live mint, CNBC, Hindustan Times, Zee Business, Financial Express, other dailies and business magazines like Business Today, etc. He is also a guest expert on Taxation matters in All India Radio and other media platforms. He is the Editor of Weekly Bulletin TAX CONNECT, a publication on Indirect Taxes and Direct Taxes which reaches more than 70000 professionals.

He is also a visiting faculty for Taxes in The Confederation of Indian Industries (CII), The Institute of Chartered Accountants of India, Institute of Cost Accountants of India, Indian Institute of Foreign Trade, The Bengal Chamber of Commerce and Industry, The Indian Chamber of Commerce and other Business Forums. He has also delivered Lectures at various Government Taxation Forums including the CGST & SGST Departments across the country.

He has worked as a Finance Manager in ITC Ltd. and Chief Compliance Officer with IntraSoft Technologies Ltd. He has more than 15 years of experience in the field of Indirect & Direct Taxation. He was also an All-India Rank holder in CA Final Examination conducted by the Institute of Chartered Accountants of India.

His Books on taxation include the following –

- **Income Tax Section Wise Commentary and Analysis of Recent Developments**
- **Union Budget 2024 Edition**
- **GST APPELLATE TRIBUNAL (GSTAT)**
- **TAX PLEADING & PRACTICE JOURNAL – OCTOBER 2023**
- **GST PLEADING & PRACTICE – SEPTEMBER 2023**
- **UNION BUDGET – 2023-24**
- **HANDBOOK ON GST – August 2022**
- **COMMENTARY ON UNION BUDGET 2022 – Feb 2022**
- **GST PLEADING & PRACTICE – AUGUST 2021**
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- HOW TO HANDLE GST-TDS, GST-TCS, GST AUDIT & GST ANNUAL RETURN – NOVEMBER 2018
- COMMENTARY ON UNION BUDGET 2019 – July 2019
- WITHDRAWAL OF LEGAL TENDER 2016
- COMMENTARY ON UNION BUDGET 2017
- A COMPENDIUM ON GST W.E.F. 1ST JULY 2017
- GST MODEL LAW (NOVEMBER 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- GST MODEL LAW (JUNE 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY

He is a regular speaker at various professional forums on the various key areas in Indirect & Direct Taxes and has delivered more than 300 lectures on various topics under GST, Customs, Foreign Trade Policy of India, Income Tax, etc.