

Draft

QUICK INSIGHT ON GST-

Hospitality Sector

GST for Hospitality Sector

1. Background

The Indian hospitality industry has emerged as one of the key drivers of growth among the services sector in India. Due to the variety of businesses, the hospitality industry is usually one of the largest revenue producers for countries. The growth in the hospitality sector and its contributions to the GDP will continue to be substantially higher than other sectors of the economy on the back of huge tourism potential in the country. Hotel brands over the last decade and a half proliferated on the principle that the hotel sector is more a services based industry than a realty industry. They have over this period organised the sector and are steadily becoming the bedrock of the hospitality industry in the country.

The hospitality industry used to pay multiple taxes (VAT, luxury tax, and service tax) under the erstwhile VAT regime. A hotel where the room tariff exceeded INR 1,000, was liable for service tax at 15 percent. An abatement of 40% was allowed on the tariff value, thus the effective rate of service being 9%. The Value Added Tax (ranging between 12 to 14.5%) and luxury tax, was applicable over and above this. However, for restaurants, there was 60% abatement which meant that the service tax was charged at an effective rate of 6% on the food & beverage bills, apart from VAT (12 to 14.5%). Bills for bundled services like social functions (seminars, marriage etc.), were taxed with an abatement of 30%. In the erstwhile regime, the end consumer used to pay tax on tax, thereby increasing the cost. The hospitality sector did not get any input tax credit on the taxes they paid, as central taxes like service tax, could not be set off against state taxes (VAT) and vice-versa.

2. Introduction to GST

Under the Goods and Services Tax, the hospitality sector stands to reap the benefits of standardized and uniform tax rates, and easy and better utilization of input tax credit. GST abolishes several taxes, leading to a reduction in procedural steps and easy availment and utilization of input tax credit. Under the GST regime there will be only a single charge on the bill and it would give the customers a clear picture of the tax they are paying.

3. Taxes to be subsumed under GST

The GST has subsumed various Centre and state taxes which are tabulated below:

<i>Union levies</i>	<i>State Levies</i>
Central Excise duty	State VAT

Duties of Excise (Medicinal and Toilet Preparations)	Central Sales Tax
Additional Duties of Excise (Goods of Special Importance)	Purchase Tax
Additional Duties of Customs (commonly known as CVD)	Taxes on lotteries, betting and gambling
Special Additional Duty of Customs (SAD)	Entry Tax (all forms)
Service Tax	Luxury Tax
Central Surcharges and Cesses so far as they relate to supply of goods and services	Taxes on advertisement
	Entertainment Tax(not levied by the local bodies)
	State Surcharges and Cesses so far as they relate to supply of goods and services

4. Tax structure

4.1 Erstwhile Regime

Particulars	Service tax		VAT(Differs from state to state)
	Without Abatement	With Abatement	
Accommodation Services	15%	9%	N.A.
Food and Beverages	N.A.	6%	12-14.5%

4.2 GST

The Goods and Services Tax Council finalized four-tier tax rate structure of 5, 12, 18 and 28 percent. The table given below shows GST tax rate on some common items-

Rates of tax	General overview
0%	50% of the items present in the consumer price index basket, including food grains such as rice and wheat.
5%	Items of mass consumption like spices, tea and mustard oil will be taxed.

12%	Computers and Processed Foods
18%	Soaps, Oil, toothpaste, refrigerator, smartphones.
28%	Demerit and sin goods such as aerated drinks, luxury cars, tobacco and pan masala,

Now let us see specific tax rates in hospitality sector.

4.2.1 Accommodation service

4.2.1.1 1st July, 2017- 25th July, 2018

In accordance with *Notification number 11/2017-Central Tax (Rate)*¹ and *Notification number 12/2017-Central Tax (Rate)*², dated 28th June, 2017, the following tax rates were applicable to the accommodation services.

Description of service	Effective Rate of Tax (%)
Accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of a unit of accommodation:	
- Below INR 1,000 per unit per day.	Nil
- INR 1,000 and above but less than INR 2500 per unit per day.	12
- INR 2500 and above but less than INR 7,500 per unit per day.	18
- INR 7500 and above per unit per day.	28

“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.

CBIC FAQ’s on Declared Tariff³

1. Will GST be charged on actual tariff or declared tariff for accommodation services?
 - Declared or published tariff is relevant only for determination of the tax rate slab. GST will be payable on the actual amount charged (transaction value).
2. What will be GST rate if cost goes up (more than declared tariff) owing to additional bed?
 - GST rate would be determined according to declared tariff for the room, and GST at the rate so determined would be levied on the entire amount charged from the customer. For example, if the declared tariff is Rs. 7000 per unit per day but the

¹ Similar notifications exist in IGST law, UTGST law and relevant SGST law.

² Similar notifications exist in IGST law, UTGST law and relevant SGST law.

³ Source:<http://www.cbic.gov.in/resources/htdocs-cbec/gst/om-clarification.pdf;jsessionid=24DD60E07D6469CD0060617B244EFE45>

amount charged from the customer on account of extra bed is Rs. 8000, GST shall be charged at 18% on Rs. 8000.

3. Where will the declared tariff be published?
 - Tariff declared anywhere, say on the websites through which business is being procured or printed on tariff card or displayed at the reception will be the declared tariff. In case different tariff is declared at different places, highest of such declared tariffs shall be the declared tariff for the purpose of levy of GST.
4. Same room may have different tariff at different times depending on season or flow of tourists as per dynamic pricing. Which rate to be used then?
 - In case different tariff is declared for different seasons or periods of the year, the tariff declared for the season in which the service of accommodation is provided shall apply.
5. If tariff changes between booking and actual usage, which rate will be used?
 - Declared tariff at the time of supply would apply.
6. GST at what rate would be levied if an upgrade is provided to the customer at a lower rate?
 - If declared tariff of the accommodation provided by way of upgrade is Rs 10000, but amount charged is Rs 7000, then GST would be levied @ 28% on Rs 7000/-.
7. Whether for the purpose of entries at Sl. Nos. 34(ii) [admission to cinema] and 7(ii)(vi)(viii) [Accommodation in hotels, inns, etc.], of notification 11/2017-CT (Rate) dated 28th June 2017, price/ declared tariff includes the tax component or not?
 - Price/ declared tariff does not include taxes.

4.2.1.2 26th July, 2018 and onwards

In accordance with *Notification number 13/2018-Central Tax(Rate)*⁴, dated 26th July, 2018, for the words “Declared Tariff”, the words “**Value of supply**” shall be substituted.

Hotel industry has been given a major relief by providing that the rate of tax on accommodation service shall be based on **Transaction value** instead of declared tariff.

This has been illustrated with the help of examples as below:

	August 2017	August 2018
Particulars	(INR)	(INR)
Declared Tariff	1,000	1,000
Transaction Value	800.00	800.00

⁴ Similar notifications exist in IGST law, UTGST law and relevant SGST law.

GST rate	12%	NIL
GST Amount	96.00	0.00
Tax Saving		96.00

	August 2017	August 2018
Particulars	(INR)	(INR)
Declared Tariff	3,000.00	3,000.00
Transaction Value	2,200.00	2,200.00
GST rate	18%	12%
GST Amount	396.00	264.00
Tax Saving		132.00

	August 2017	August 2018
Particulars	(INR)	(INR)
Declared Tariff	8,000.00	8,000.00
Transaction Value	6,000.00	6,000.00
GST rate	28%	18%
GST Amount	1,680.00	1,080.00
Tax Saving		600.00

	August 2017	August 2018
Particulars	(INR)	(INR)
Declared Tariff	10,000.00	10,000.00
Transaction Value	7,500.00	7,500.00
GST rate	28%	28%
GST Amount	2,100.00	2,100.00
Tax Saving		No Change

4.2.2 **Food and/or Beverage services**

4.2.2.1 1st July, 2017-14th November, 2017

In accordance with *Notification number 11/2017-Central Tax (Rate)*⁵, dated 28th June, 2017, the following shall be tax rates applicable on food and beverages.

Description of service	Effective Rate of Tax (%)
Food and/or Beverage services provided by a restaurant eating joint including mess, canteen, neither having the facility of air - conditioning or central air -heating in any part of the establishment, at any time during the year nor having licence or permit or by whatever name called to serve alcoholic liquor for human consumption.	12
Food and/or Beverage services provided by a restaurant, eating joint including mess, canteen, having licence or permit or by whatever name called to serve alcoholic liquor for human consumption.	18
Food and/or Beverage services provided by a restaurant, eating joint including mess, canteen, having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.	18
Food and/or Beverage services in outdoor catering.	18
Food and/or Beverage services 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.	18

4.2.2.2 15th November, 2017 till 26th July, 2018

In accordance with *Notification number 46/2017-Central Tax (Rate)*⁶, dated 14th November, 2017, following shall be tax rates applicable on food and beverage services.

Description of service	Effective Rate of Tax (%)
Food and/or Beverage services provided by a restaurant eating joint including mess, canteen, whether for consumption on or away from the premises, other than those 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 any unit of accommodation of seven thousand five hundred rupees and above per unit per day	5 Provided that credit of input tax charged on goods and services used in supplying the service has

⁵ Similar notifications exist in IGST law, UTGST law and relevant SGST law.

⁶ Similar notifications exist in IGST law, UTGST law and relevant SGST law.

or equivalent.	not been taken. ⁷
Food and/or Beverage services provided by a restaurant eating joint including mess, canteen, whether for consumption on or away from the premises, 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 any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent.	18
Food and/or Beverage services in outdoor catering.	18
Food and/or Beverage services 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.	18

“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.

Contentious issues

ITC reversal due to change in tax rate from 18% to 5%

Wherever a rate has been prescribed in the notification subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken, it shall mean that,—

- credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and
- credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017.

Hotels need to categorize the said 5% sales as exempt supplies for reversal of common credits. In our opinion many of the suppliers have missed this provision.

4.2.2.3 From 27th July, 2018 onwards

In accordance with *Notification number 13/2018-Central Tax (Rate)*⁸, dated 26th July, 2018, following shall be tax rates applicable on food and beverage services.

⁷ Thereby:

(a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and

(b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply.

Description of service	Effective Rate of Tax (%)
<p>Food and/or Beverage services provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises, other than those 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 any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent.</p> <p>Explanation 1.- This item includes such supply at a canteen, mess, cafeteria or dining space of an institution such as a school, college, hospital, industrial unit, office, by such institution or by any other person based on a contractual arrangement with such institution for such supply, provided that such supply is not event based or occasional.</p> <p>Explanation 2.- “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.</p>	<p>5</p> <p>Provided that credit of input tax charged on goods and services used in supplying the service has not been taken.⁹</p>
<p>Food and/or Beverage services provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises, 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 any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent.</p>	<p>18</p>
<p>Food and/or Beverage services at Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature.</p>	<p>18</p>
<p>Food and/or Beverage services, 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</p>	<p>18</p>

5. Time of Supply of Services

Section 13 of the Central Goods and Services Tax Act, 2017 states that:

⁸ Similar notifications exist in IGST law, UTGST law and relevant SGST law.

⁹ Thereby:

(a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and

(b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply.

- The time of supply of services shall be:
 - If the invoice is issued within thirty days from the date of supply of service:
 - the date of issue of invoice by the supplier or
 - the date of receipt of payment, whichever is earlier.
 - If the invoice is not issued within thirty days from the date of supply of service:
 - the date of provision of service or
 - the date of receipt of payment, whichever is earlier.

Illustration 1: X hotel provides hotel accommodation services to Mr. Y worth INR 1,00,000.

08.04.2018 – An advance of INR 20,000 is received from Mr. Y

10.04.2018 – The services are provided

16.05.2018 – Mr. X receives balance payment of INR 80,000 and records it in his books.

What will be the time of supply assuming X hotel issues the invoice on:

Situation 1 -15.04.2018

Situation 2 -15.05.2018

Answer:

Situation 1: If invoice is issued within the prescribed time period, time of supply will be the date of receipt of payment or date of issue of invoice whichever is earlier. In the given case, the invoice is issued on 15.04.2018 which is within 30 days of the supply of services which is within the prescribed period. So, for INR 20,000, the time of supply will be 08.04.2018 which is the date of receipt of advance payment. For the balance amount, time of supply will be 15.04.2018 which is earlier of 15.04.2018 (date of invoice) and 16.05.2018 (date of receipt of payment).

Situation 2: If invoice is not issued within the prescribed time period, time of supply will be the earlier of the date of completion of service and the date of receipt of payment. Here, invoice is issued on 15.05.2018 which is after the prescribed time period. So, for INR 20,000, the time of supply will be 08.04.2018 which is the date of receipt of advance payment. For the balance amount, time of supply will be 10.04.2018 which is earlier of 10.04.2018 (date of completion of service) and 16.05.2018 (date of receipt of payment).

6. Composite Supply and Mixed Supply

Section 2(30) of the Central Goods and Services Tax Act, 2017 states that;

“composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Section 2(74) of the Central Goods and Services Tax Act, 2017 states that;

“mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Section 8 of the Central Goods and Services Tax Act, 2017 states that;

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

If supply involves more than one goods and / or services which are naturally bundled together and supplied in conjunction with each other in the ordinary course of business and one such supply would be a principal supply, these are referred to as composite supply of goods and / or services For e.g. stay with breakfast is naturally bundled in the hotel industry, while the supply of lunch and dinner, even if they form part of the same invoice, may not be considered as naturally bundled supplies along with room rent.

Example: A hotel provides a 5 days-4 nights package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.

Example: A 5 star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities:

- Accommodation for the delegates
- Breakfast for the delegates,
- Tea and coffee during conference
- Access to fitness room for the delegates
- Availability of conference room
- Business centre

This would be treated as a composite supply of Convention center services.

Contentious Issue

In case of a specified service of "**Buffet - Alcohol inclusive**" which is generally seen at every five – star hotel, such buffet service cannot be treated as a composite supply as alcohol has been kept outside the purview of GST, thereby the same would not form part of a composite supply. Thus, restaurants which give buffet offers inclusive of alcohol might have to issue a separate invoice for liquor and separate invoice for buffet service.

7. Place of Supply

Section 12(3) of the Integrated Goods and Services Tax Act, 2017 states that:

The place of supply of services, —

(a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or

(b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, and including a house boat or any other vessel; or

(c) by way of accommodation in any immovable property for organizing any marriage or reception or official, social, cultural, religious or business function including services provided in relation to such function at such property; or

(d) any services ancillary to the services referred to in clauses (a), (b) and (c),

shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:

Thereby services directly in relation to immovable property will be the location of such property. The location of the supplier or recipient is irrelevant in such cases. Further, there are other services that have proximity to immovable property that are 'by way of' accommodation. Such services too have, as their place of supply, the location of such property. Such property may be a hotel, inn, guest house, homestay, club or campsite including houseboat. The use of such property may be accommodation or for organizing a function such as marriage. The end-use will not alter the applicability of this provision but the proximity of the property vis-à-vis the services. Services that are ancillary to such services would also be covered by this provision.

7.1 No input tax credit available if hotel and recipient are located in different states.

The fact that place of business of accommodation in hotels is the place of location of immovable property (hotels) is responsible for the woes of the industry as the recipient located in another State is not able to utilise ITC of CGST & SGST paid by him, which becomes a cost for him.

For example, a company has Branch-R which is a registered taxable person in Rajasthan conducts conference in a hotel in Mumbai (Maharashtra) where CGST + SGST is charged by the hotel. This company also has Branch-M which is registered taxable person in Maharashtra. CGST-SGST has been charged by the hotel, input tax credit would not be available to Branch-R as tax paid in Maharashtra is not a creditable tax in Rajasthan.

7.2 Hotel accommodation & restaurant services provided to SEZ units to be treated as supply to SEZ units?

Authority of Advance Ruling – Karnataka in its order in case of *M/s Gogte Infrastructure Development Corporation Ltd.* dated 21st March, 2018 vide Advance Ruling No. KAR ADRG 2/2018 held that, accommodation and restaurant services provided by applicant engaged in hotel business within premises of hotel, to employees and guests of SEZ units cannot be treated as supply of goods and/or services to SEZ units. Thereby such supplies would be treated as '**Intra-State**' supplies and are taxable accordingly.

Post this decision by AAR GST policy wing came out with Circular No.48/22/2018: As per section 7(5) (b) of the IGST Act, 2017, the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of '**Inter-State**' trade or commerce. Services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an '**Inter-State**' supply.

We are of the view that this circular by GST policy wing is more legally correct.

8. Eligibility and conditions for taking input tax credit

Section 16 of the Central Goods and Services Tax Act, 2017 states that:

Every registered person shall, subject to such conditions and restrictions, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

8.1 Basic conditions for availment of ITC

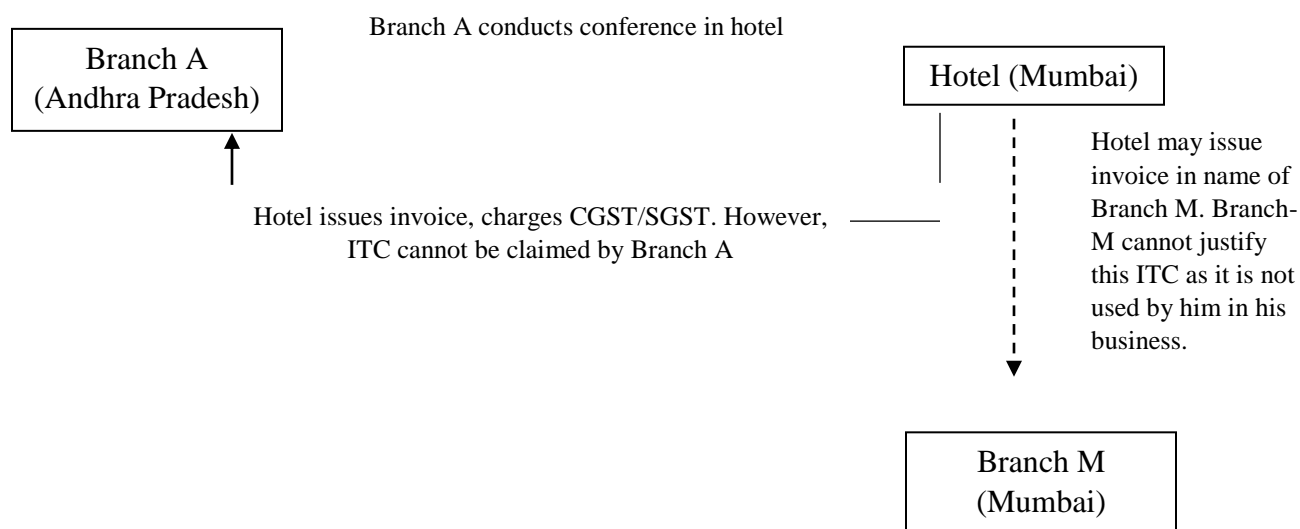
No registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act.
- (b) he has received the goods or services or both. However where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:
- (c) the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible; and
- (d) he has furnished the return under section 39:

8.1.1 'used by him' & 'in his business'

The words 'used by him' and 'in his business' as appearing in section 16(1) refer to the registered taxable person in question and not the legal entity. So, input tax paid in a State must not be in relation to the business of a taxable person in another State, albeit belonging to the same person.

For example: A conference is conducted in a hotel in Lonavla (Maharashtra) by branch A of a company, which is a registered taxable person in Andhra Pradesh. CGST-SGST is charged by the hotel. This Company also has Branch-M which is a registered taxable person in Mumbai.



Now the provisions of section 16(1) operate as follows:

- CGST-SGST charged by the hotel in Lonavla (Maharashtra) is 'used in the business of Branch-A' in Andhra Pradesh and not in the business of Branch-M in Mumbai.
- Hotel would not be aware about the above fact and would not resist to issue the bill in the name of Branch-M because both are branches of the same Company. Since, CGST-SGST has been charged by the hotel, input tax credit would not be available to Branch-A as tax paid in Maharashtra is not a creditable tax in Andhra Pradesh.
- Branch-M in Mumbai cannot justify this input tax credit as it is not 'used by him' in 'his business' but it is 'used by another' in 'that others business'

8.2 Payment in 180 days

Where a recipient fails to pay to the supplier, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by

the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon.

However, the recipient would be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

9. Apportionment of ITC

Section 17 of the Central Goods and Services Tax Act, 2017 states that:

- Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.
- Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.
- The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

9.1 Reversal of ITC in case of exempted supply: FD Reversal

- As per section 17(2) of CGST Act, 2017, ITC shall be reversed in case a company is effecting taxable supplies as well as exempt supplies
- Notification no. 3/2018-Central Tax, dated 23rd January, 2018, Interest on fixed deposits will not be considered as exempt supplies for the purpose of reversal of ITC as per Rule 42 and 43 of CGST Rules, 2017.
- Hence, till 23rd January, 2018, Interest on Fixed deposits may be considered as exempt supplies and corresponding reversal in ITC needs to be carried out.

10. Blocked credits

Section 17(5) of the Central Goods and Service Tax Act,2017 states that:

Input tax credit shall not be available in respect of the following supply of goods or services or both—

- (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of a particular category is used by a registered person for making an outward taxable supply of the same category or as an element of a taxable composite or mixed supply;

- (ii) membership of a club, health and fitness centre;
- (iii) rent-a-cab, life insurance and health insurance except where—

.....
.....

- (g) goods or services or both used for personal consumption;

Thereby no credit would be available to customers of hotel industry of following services:

- Food & beverages
- Outdoor catering
- Membership of club, health and fitness centre in hotel.
- Spa treatments in hotel as they are in the nature of personal consumption.

11. Credit on new construction of Hotels?

According to Section 17(5)(c) of CGST Act 2017, works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service, input tax credit shall not be available.

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) Mumbai in its order no. A/85880 / 2018, dated 3rd April, 2018 in case of Lemon Tree Hotels Ltd versus Commissioner of Central Excise, Customs & Service Tax Aurangabad held that Cenvat Credit is allowable on building constructed for the hotel which is used for renting of services of the hotel. The overall hotel business is rendered within the common hotel building and the construction service received in respect of construction of any part of the hotel is a common input service which has nexus with overall hotel business. Therefore, even though some part of the hotel business is not taxable, but it cannot be said that the construction service was used exclusively for non-taxable service.

12. Value of Taxable Supply

Section 15 of the Central Goods and Services Tax Act, 2017 states that;

The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply, where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

12.1 Inclusions & exclusions

Section 15(2) and Section 15(3) of the Central Goods and Services Tax Act, 2017 states that value of supply shall include—

- (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, if charged separately by the supplier;
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;
- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply.
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

The value of the supply shall not include any discount which is given—

- (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
- (b) after the supply has been effected, if—
 - (i) such discount is established in terms of an agreement entered into at or before the time of such supply and
 - (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

13. Composition Levy

Section 10 of Central Goods and Services Tax Act 2017 states that,

Category of registered persons	Rate of tax
Suppliers making supplies 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.	5% (2.5% CGST+ 2.5% SGST) of the turnover in the State/UT

13.1 Eligibility to pay tax under composition scheme:

The conditions for eligibility to opt for payment of tax under the composition scheme is as follows:

- (i) Registered persons having an 'aggregate turnover' across all States under the same PAN, including exempt supplies, supplies specified under Schedule I, etc. does not exceed the prescribed limit in the preceding financial year will be eligible to opt for payment of tax under the composition scheme.

In this regard, the following may be noted:

1. The prescribed threshold limit is Rs. 1 crore (and Rs. 75 lacs in case of Special Category States being Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Himachal Pradesh);
2. The aggregate turnover of the registered person should not exceed the said prescribed limit during the financial year in which the scheme has been availed;

- (ii) The scheme cannot be opted for during the middle of a financial year, except in the case where the person obtains registration, and opts for composition scheme at the time of applying for registration under the GST Law.
- (iii) The registered person would **not** be eligible to effect any supply of **non-taxable goods**, i.e., alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.
- (iv) All the registrations obtained under a single PAN are also mandated to opt for payment under the composition scheme.

13.2 Role of 'Supplier Status' in Classification

A restaurant buys aerated beverage on payment of GST at 28% +12% including cess and on resale of this beverage as part of food served as a combo with 'composition status' under Section 10 of CGST Act, the rate of tax on this beverage would be 5%. Therefore, it is important to note that classification can undergo a change depending upon the 'status' of the Supplier.

13.3 CBIC FAQ's on Composition Levy¹⁰

Q. How will the aggregate turnover be computed for the purpose of composition?
Ans. Aggregate turnover will be computed on the basis of turnover on an all India basis and will include value of all taxable supplies, exempt supplies and exports made by all persons with same PAN, but would exclude inward supplies under

¹⁰ Source: <http://www.cbic.gov.in/resources/htdocs-cbec/gst/faq-composition-levy-revised.pdf;jsessionid=E895D94DAB9F5DAD0FEDDB9B42E87235>

reverse charge as well as central, State/Union Territory and Integrated taxes and cess.

Q. Can a person who has opted to pay tax under the composition scheme avail Input Tax Credit on his inward supplies?

Ans. No. A taxable person opting to pay tax under the composition scheme is out of the credit chain. He cannot take credit on his input supplies. When he switch over from composition scheme to normal scheme, eligible credit on the date of transition would be allowed.

Q. Can a person paying tax under the composition scheme issue a tax invoice under GST?

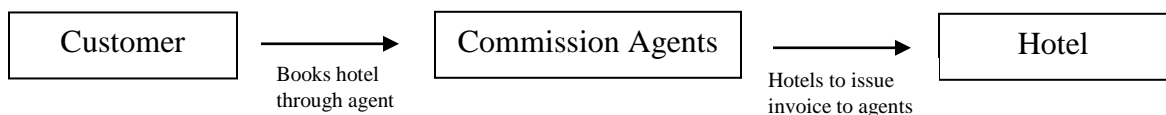
Ans. No. He can issue a bill of supply in lieu of tax invoice.

Q. In case a person has registration in multiple states? Can he opt for payment of tax under composition levy only in one state and not in other state?

Ans. The option to pay tax under composition scheme will have to be exercised for all States.

Q. Can a person paying tax under composition scheme make supplies of goods to SEZ? Ans. No. Supplies to SEZ from domestic tariff area will be treated as inter-State supply. A person paying tax under composition scheme cannot make inter-State outward supply of goods. Thus, for making supplies to an SEZ unit, a person needs to take registration as a regular taxpayer. The supplies to SEZ will be zero rated and the supplier will be entitled to make supplies without payment of tax or if he pays tax, he will be entitled to refund of tax so paid.

14. Third Party Bookings:



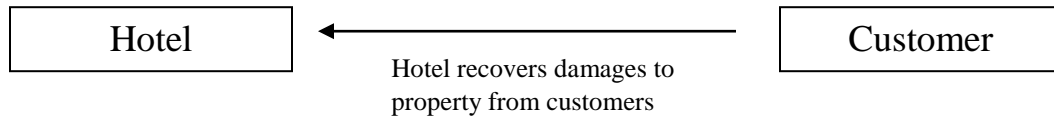
Booking of hotels happen through Commission agents like Booking.com, TripAdvisor.in, MakeMyTrip etc. There are several modes by which these transaction could happen like pre-sale of inventory or commission model etc.

In all such cases tax invoices needs to be issued to contractual recipient and not to actual recipient of services. Also place of supply needs to be determined accordingly.

Hotels are seen issuing invoices in the name of actual recipients in every case. This needs to be re-assessed on contract to contract basis.

15 Damages recovered by Hotels:

Hotels have a policy of recovery for damages to property like kettle, carpets, upholstery etc. from customers. All such charges may be chargeable to GST which is still a debated issue.

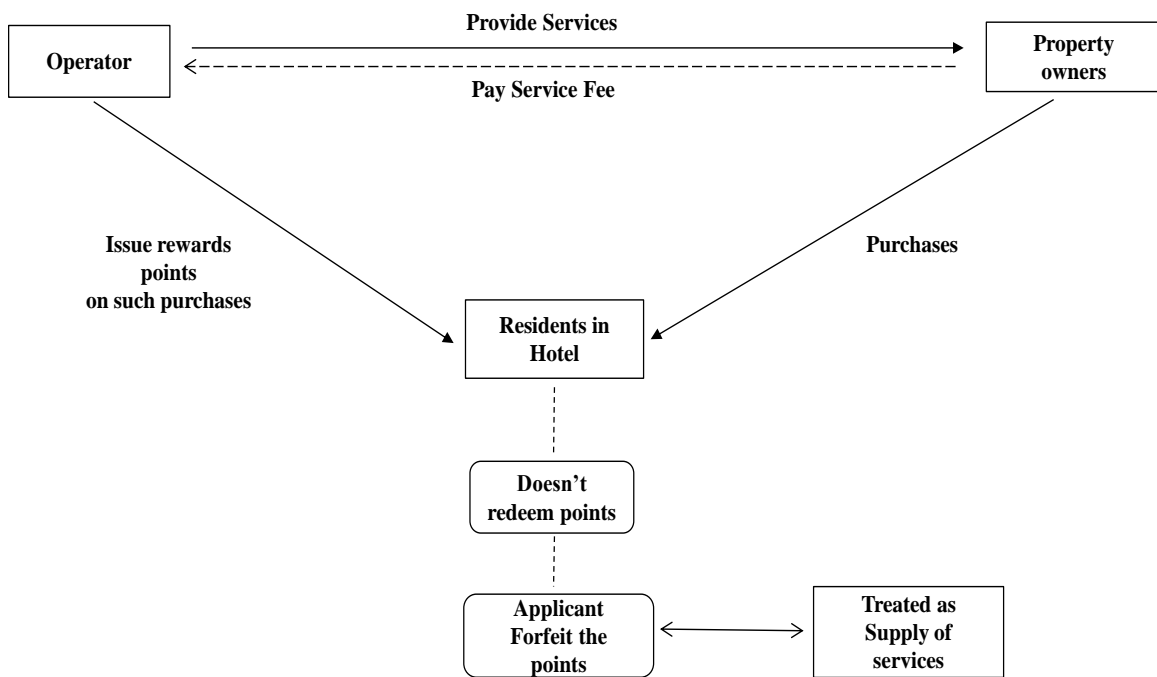


Authority for Advance Rulings, Maharashtra in ruling number GST-ARA-15/2017-18/B-30, dated May 8, 2018 in case of Maharashtra State Power Generation Company Ltd. has ruled that GST would be applicable in case of Liquidated damages.

16 Loyalty Programs under GST

Recently the Authority for Advance Rulings, Haryana has issued ruling number HAR/HAAR/R/2017/18/4, dated 11th April, 2018 in case of Loyalty Solutions & Research (P.) Ltd.

AAR ruling on the said subject is briefed below:



Facts of the case

- The applicant operates a reward point based loyalty programme (“**Operator**”) that is integrated towards its partners and their customers and gets a Management fee on which GST is paid by him.
- The applicant issues reward points to the end customers which can be redeemed by them within 36 months while making future purchases of products of "partners".

- Applicant receives 0.25 INR per reward point from the store at which customer has used the service. This reward is then remitted to the concerned store where a discount is given to end customer.
- On non-redemption of the rewards points by the customers, reward points are forfeited and retained by the Operator.

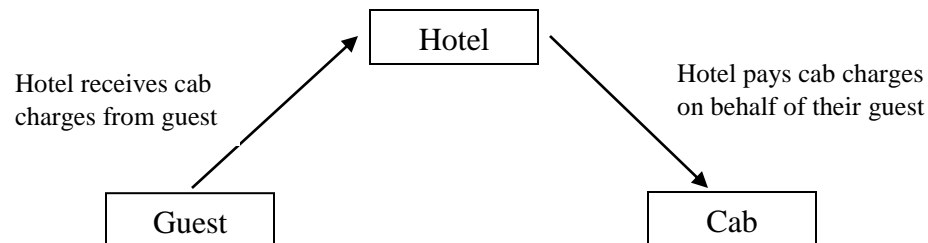
Issue

Whether the value of points forfeited by the operator on which money had been paid by the issuer of points on account of failure of the end customers to redeem the payback points within their validity period would amount to consideration for 'actionable claim' or it would qualify as a “supply” and be chargeable to GST?

Ruling

The value of points forfeited of the applicant on which money had been paid by the issuer of points on account of failure of the end customers to redeem the payback points within their validity period would amount to consideration received in lieu of services being provided by applicant to its clients and thus would be outside the scope of 'actionable claim' and therefore would qualify as “supply of services”.
Thereby GST would be chargeable on such money forfeited by the operator.

17 Cab Charges:



If a company books cab on behalf of their customer and receives the cab charges along with their commission from them, then GST shall be charged on the cab facility to guests which many hotels are not paying.

In many cases it has been seen that Hotels does not have any mark-up on these payments and generally the transactions are settled outside the books.

GST law *per se* is chargeable on all such transactions.

18. Concluding Remarks

GST has both positive and not so positive impacts for the hospitality industry. With the evolution of GST, hotels are able to reap the benefits of lower tax rate. However, the restriction on availability of

ITC is still a major concern. GST has abolished several taxes, leading to a reduction in procedural compliance framework and thereby streamlining the taxation process.