

Service Tax on Food

Introduction

Indians are said to be very fond of food but the amount of taxes on food and periodic spike in food prices are making life miserable. So let us understand exactly how much service tax we are paying on food related services.

'Deemed Sale of Goods'

The concept of 'deemed sale of goods' of food Article was introduced in the Constitution of India in 1982.

In terms of article 366(29A) of the Constitution of India, supply of any goods, being food or any other article of human consumption or any drink (whether or not intoxicating) in any manner as part of a service for cash, deferred payment or other valuable consideration is deemed to be a sale of such goods.

Such a service, therefore, cannot be treated as service to the extent of the value of goods so supplied. The remaining portion however, constitutes a service. It is a well settled position of law, declared by the Supreme Court in BSNL's case [2006(2)STR161(SC)], that such a contract involving service along with supply of such goods, can be dissected into a contract of sale of goods and contract of provision of service. This declared list entry has been incorporated to capture this position of law in simple terms.

The following activities are an illustration of activities covered in this entry

- Supply of food or drinks in a restaurant;
- Supply of foods and drinks by an outdoor caterer.

Exemptions

- Service provided in restaurants without bar and air conditioning or Central heating in any part of the establishment, at any time during the year – Sr No 19 of Notification No. 25/2012 – ST dated 20-06-2012 w.e.f 1-7-2012.
- Service to an educational institution by way of catering under mid day meals scheme sponsored by Govt. – Sr. No. 9 (a) of Notification No. 25/2012 – ST dated 20-06-2012 w.e.f 1-7-2012

Taxable Services

Taxable Service	Partial abatement / Composition Scheme	Conditions	Relevant Notification/Rule
Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises	Tax on 70% of the total amount charged including fair value of goods and services supplied by service receiver (to service provider) under same or different contract (Composition Scheme)	Cenvat credit of input services and capital goods is available. Cenvat credit on food items (covered under Chapters 1 to 22 of CETA) not available. Cenvat credit of other inputs is available.	Sr. No. 4 of Notification No. 26/2012-ST dated 20-6-2012
Outdoor caterer	Tax on 60% of total amount excluding State Vat (Composition Scheme) (Till 1-7-2012, it was 50%)	Cenvat credit of input services and capital goods is available. Cenvat credit on food items (covered under Chapters 1 to 22 of CETA) not available. Cenvat credit of other inputs is available.	Rule 2C of Service Tax (Determination of Value) Rules
Restaurant service (with AC/central heating and bar)	Tax on 40% of total amount excluding State Vat (Composition Scheme) (Till 1-7-2012, it was 30%)	Cenvat credit of input services and capital goods is available. Cenvat credit of excise duty on food items (covered under Chapters 1 to 22 of CETA) not available. Cenvat credit of other inputs is available.	Rule 2C of Service Tax (Determination of Value) Rules
Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	Tax payable on 60% of total amount charged (Abatement Scheme) (Till 1-7-2012, the tax payable was on 50% amount).	Cenvat Credit of input services allowable but no Cenvat credit of inputs and capital goods	Sr. No. 6 of Notification No. 26/2012-ST dated 20-6-2012

Note

- Each restaurant within same complex to be treated as separate taxable unit – CBEC&C circular No 139/8/2011-TRU dated 10-5-2011.
- A restaurant with AC and liquor license serving food in other parts of hotel e.g. swimming pool or an open area attached to restaurant will also be subject to service tax - CBEC&C circular No 139/8/2011-TRU dated 10-5-2011.
- Room service of food and beverage cannot be charged under restaurant service nor under short term accommodation service - CBEC&C circular No 139/8/2011-TRU dated 10-5-2011.

Shikha Singhania

- Service tax is not payable on VAT/ Sales tax charged by restaurant - CBEC&C circular No 139/8/2011-TRU dated 10-5-2011.

Issues

Canteen is restaurant or outdoor catering

- Whether a canteen in a factory or office is 'restaurant' or 'outdoor catering' is a highly debatable issue.
- Earlier, 'outdoor caterer' was defined as follows – "Outdoor caterer" means a caterer engaged in providing services in connection with catering at a place other than his own, but including a place provided by way of tenancy or otherwise by the person receiving such services [Section 65(76a)]. Now, that definition is not applicable w.e.f. 1-7-2012.
- Hence, we have to go by trade understanding. As per trade understanding, canteen is not 'outdoor catering'. In fact, as per draft CBE&C circular dated 27-7-2012, food provided to employees for whom it is charged, is food served in restaurant. Hence, canteen is 'restaurant'.
- If canteen is held as 'outdoor catering', the fair market value of goods and services supplied will have to be added. Further, Cenvat credit of service tax paid on canteen services is not available.

Mere supply of food is not taxable

In Indian Railways Catering and Tourism Corporation Ltd. (IRCTC) v. Govt of NCT of Delhi (2011) 9 taxmann.com 258 = 30 STT 479 (Del HC DB), IRCTC was supplying food articles to Indian Railways. It was held that contract for supply of food by IRCTC to Indian Railways was contract for sale of goods.

Budget 2013 Announcement

It is proposed to levy Service Tax on all air conditioned restaurant. So now irrespective of whether the restaurant has bar service, service tax will be levied if it is air conditioned.