



Rate of GST for a contracted caterer supplying food at a canteen w.e.f 1st Oct
'19

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Taxpayers are now used to the frequent changes in the GST law, which may be either by way of a change in the provisions of the Act or the rules or by way of a change in the rate of tax, etc. Further, it has been seen that these changes take place due to various reasons, a few of which are listed below:

- a. To clarify the intention of the law makers (eg: retrospective amendment made to the transition provisions, attempting to restrict the transition of cess credits into GST),
- b. To cater to the representations made by the trade, industry, etc. (eg: removal of restriction on the inverted duty structure refund for the textile industry),
- c. To overcome the loss of revenue or any other adverse impact that would arise due to any judgments (amendment to make Form GSTR-3B a return under GST),
- d. To take care of loss of revenue due to non-payment of taxes by the supplier where it would be difficult to track and collect the same by Revenue (eg: RCM provisions under real estate),
- e. To take care of possible non-compliance with the provisions relating to anti-profiteering (example rate changes made for the real estate sector and the restaurant businesses), and many more.

However, in the experience during the period from Jul '17 to Dec '19, it has been seen that many a times there have been side effects of these amendments which were sometimes not envisaged, and the taxpayers were left to live with these side effects. In this article, one such amendment is being discussed which has led to a side effect that is not evident from the intention of the amendment. This amendment relates to entry 7 of notification No. 8/2017-IGST (R) pertaining to *Accommodation, food and beverage services*), more specifically being discussed in the context of entry 7(i) relating to the supply of food at a premise.

Initially i.e. from 1st Jul '17, there was not much clarity on the rate of GST applicable to the services provided by a caterer to an industrial unit, office, hospital, etc. (hereinafter referred to as **Institution**) (hereinafter this service would be referred to as **Contracted Caterer service**), where such institution would run the canteen at its premises. For example, the company has a canteen at its factory wherein it has appointed a caterer to



prepare food and serve to the employees. However, the company would be paying the caterer for the services provided.

The absence of clarity was for the reason that there was a confusion whether such services would be covered under 'outdoor catering services' (entry 7(v) of notification No. 8/2017 *ibid*) or under supply of food at a premise (entry 7(i) *ibid*). Initially the term 'outdoor catering services' was not defined under GST. Subsequently, an explanation was added to entry 7(v) of notification No. 8/2017 *ibid* (rate entry for outdoor catering services) w.e.f. 27th Jul '18 vide notification 14/2018 IGST (R), to include only **event based and occasional** catering into its ambit whereby the rate of tax was 18% up to 30th Nov '19. Thereby, the Contracted Caterer services were not covered under the ambit of outdoor catering as such services are not event based or occasional.

Further, w.e.f. 27th Jul '18 vide notification 14/2018 IGST (R), explanation 1 was added to entry 7(i) of notification No. 8/2017 *ibid* (this entry is for the services of food supply provided **by** hotel, mess, canteen, etc.) which reads as follows:

*Explanation 1.- This item includes such supply **AT** a canteen, mess, cafeteria or dining space of an institution such as a 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.*

The above explanation covers services provided at a canteen by any person to the Institution. Thereby, the Contracted Caterer services were covered under this entry whereby the rate of tax was 5%.

However, w.e.f. **1st Oct '19** vide notification No. 19/2019-IGST (R) entry 7 of notification No. 8/2018 *ibid* was amended whereby most of the entries were re-worded and some of the important changes therein are the following:

(ii) Supply of 'restaurant service' other than at 'specified premises'

(iv) Supply of 'outdoor catering', at premises other than 'specified premises' provided by any person other than-.....

(vi) Accommodation, food and beverage services other than (i) to (v) above.

From the above it can be seen that the rate entries have now included certain phrases like 'specified premises', 'restaurant service' and 'outdoor catering service'. Further to note that the explanation 1 in the erstwhile S. No. 7(i) of notification No. 8/2018 *ibid*



(discussed in the above para here) is not in existence now. The above terms were defined in para 5 of notification No. 8/2018 *ibid* which are as below:

*(xxxii) 'Restaurant service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, 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.*

From the above definition it can be seen that restaurant service covers only services provided **by** a canteen and not the services provided **at** a canteen. Thereby the Contracted Caterers' services would not be covered under restaurant service.

*(xxxiii) 'Outdoor catering' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, at Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are **event based and occasional** in nature.*

The Contracted Caterers' services would not be covered under outdoor catering service as it is not an event based or an occasional service.

(xxxvi) 'Specified premises' means premises providing 'hotel accommodation' services having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.

The canteen for which the Contracted Caterer is appointed is also not a specified premises in our example.

From the above it can be seen that the Contracted Caterers' service does not fall under the ambit of the below entries of Notification 8/2017 *ibid* w.e.f. 1st Oct '19 .

- a. 7(i) as it relates to hotel accommodation
- b. 7(ii) which relates to restaurant services and the Contracted Caterer service does not fall under the said category as mentioned above.
- c. 7(iii) which relates to supply by Indian Railways or IRCTC and the Contracted Caterer service does not fall under the said category.
- d. 7(iv) and (v) which relates to outdoor catering services and the Contracted Caterer service does not fall under the said category as mentioned above.



Thereby, the services of the Contracted Caterer would be falling under entry No. 7(vi) of the above referred notification, being the residual entry whereby the rate of tax would be 18%.

The inference from the above is that the services provided by the Contracted Caterer would be liable @ 18% w.e.f. 1st Oct '19 with input tax (ITC) benefit and not at the rate applicable earlier i.e. 5% without ITC. Hence such caterers should start charging 18% GST and start availing the ITC before the time period for availing the same lapses i.e. 20th Oct '20.

Another implication of this conclusion is that the company having a canteen at its factory will not be able take credit of this 18% tax charged by the Contracted Caterer for 2 reasons:

- a. The input service is relating to food, and could be said to be restricted under section 17(5)(b)(i) of the CGST Act, or
- b. The company (if recovering any cost from employee in this regard) would be liable to pay GST @ 5% in terms of entry 7(ii) of notification No. 8/2017 w.e.f. 1st Oct '19 wherein ITC is restricted. Though an attempt can be made to see if this restriction can be challenged in the light of the proviso to section 17(5)(b)(i) *ibid*.

Thereby the company would end up with a tax cost of 18% or 23% cost for running the canteen at its premises.

From the above, one can understand that any amendment that is carried out needs a careful read to see if there are any unintended side effects and update the same to the taxpayers so that steps can be taken to comply with the same or make representations to get any amendment/clarification, as required.

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