

## **Introduction:**

Renting office space is a common practice for businesses of all sizes, offering flexibility and convenience without the commitment of property ownership. Whether you're a startup, a small business, or a large corporation, leasing office space provides a physical location where you can conduct your operations, meet with clients, and foster collaboration among your team members.

For businesses (herein referred to as lessee/recipient) that frequently host client meetings or events, having catering services available can make it easier to provide refreshments and meals for guests. It creates a professional and hospitable environment for client interactions, enhancing the overall experience.

The supplier (lessor) charges on a per-head basis which includes both rental and catering services.

Facilitating such events would encourage more businesses to lessor along with an opportunity to open up a new business vertical & it would give a sense of satisfaction to the lessee for having such additional facilities provided by the lessor apart from the renting out of office space, this would ensure one-stop solution/contract for lessee while conduction such event.

This article revolves around the following topic:

- 1) Would the business customer/recipient be eligible to claim ITC on food provided along with a leasing space?
- 2) Would the eligibility to ITC change where an event organiser provides such leasing of space along with food?

## **GST Provision:**

Section 12(3) of the CGST Act 2017, services directly in relation to immovable property will be the location of such property. The expression 'in relation to' encompasses a wide range of services that have a proximate nexus with the immovable property which would include the right to use immovable property/renting among others.

In terms of section 12(7) of the IGST Act 2017, the place of supply for organizing an event **including ancillary services** supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the location of the venue itself.

The services referred to herein said clause would be **“by way of organizing the event”** at the venue and not letting/renting which would be covered in the above provision.

The proviso to section 17(5)(b)(i) ITC in relation to food & beverages, outdoor catering would be eligible where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or **as an element of a taxable composite or mixed supply.**

In terms of Section 2(30) of the CGST Act, 2017 “Composite Supply” means two or more taxable supplies of goods, services, or a combination of both which are naturally bundled & supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

In terms of Section 2(90) of the CGST Act, 2017 “Principal supply” means the supply of goods or services which constitutes the predominate element of composite supply & to which any other supply forming part of that composite supply is ancillary.

The Concessional rate of 5% on the supply of outdoor catering along with renting of premises is provided under

HSN 9963 - Notification No. 11/2017 entry No. 7(V) **composite supply of ‘outdoor catering’ together with renting of premises** (including hotel, convention centre, club, pandal, shamiana or any other place, specially arranged for organising a function) at premises other than ‘specified premises’ provided by any person other than –

- a. supplies liable to charge 18% (where accommodation provided > Rs. 7,500/day)

Such a concessional rate to be charged comes with a condition that, ITC on inward supply cannot be taken.

This entry implies that outdoor catering is the principal supply and renting of premises in the ancillary/supporting supply.

In case of renting of premise or organizing a business promotion / exhibition, the leasing activity by the lessor or organizing would be considered as the principal supply & catering of food during would be considered as ancillary supply albeit being naturally bundled. Wherein all parameters in the said supply such as POS, TOS Rate & HSN, etc would be considered that of leasing/rental services or organizing an event.

A reference is also drawn to a few erstwhile case laws, which provide for the test of the predominate element of composite supply

- ▶ It was held in the case of **M/s Intex Technologies India Pvt [TS-81-HC-2023(KAR)-VAT]** filed before the Hon'ble High court of Karnataka, held the intention of the purchaser while buying mobile set is to buy the phone along with the charger & thereby charger cannot be differently taxed keep in view dominant intention test.
- ▶ It was case of **M/s Samsung (India) Electronics Pvt Ltd [TS-12-HC-2018(ALL)-VAT]** filed before the Hon'ble High court of Allahabad, held that the predominant & paramount intention of the transaction must be recognized to be a sale of phone when the same is sold along with charger as the primary intention of the buyer is to purchase the phone.

Possible HSNs for services:

1. Rental services provided along with outdoor catering (ancillary) – HSN 997212 – 18%.
2. Event management services – HSN 998596 – 18%

### **Author Analysis**

1. Would the business customer/recipient be eligible to claim ITC on food provided along with a leasing space?  
*Where the supplier is able to classify the services based on the above analysis, GST would be eligible to the recipient. The supplier may also be eligible to the credit including on food and beverages as it is utilised towards outward supplies being part of a composite supply.*
2. Would the eligibility to ITC change where an event organiser provides such leasing of space along with food?  
*The customer would be eligible to the customer where services are taken from an event organiser, who arranges for leasing of space and also arranges catering services for the end customer, wherein composite supply of services is provided by the event management services.*

However, renting out space for personal events such as birthday parties & marriage, etc., would still be covered under entry 7(V) of NN. 11/207 and ITC in relation to the supply of foods would be blocked for the supplier (other than 18% applicability). This is assuming that the test of the predominate element of supply would be catering services thereby being classified under HSN 9963. For recipients, ITC would be ineligible since it is for non-business purposes/ covered under food & beverage related services.

## **Conclusion**

The interplay between the renting or organizing of event services along with catering could be seen as a win-win situation for both the supplier & the recipient of services in terms of claiming ITC. This would apply only when the predominant element of the supply is renting/leasing services.

As the Industry standard is to consider the same as catering services, it is suggested to ensure appropriate documentation to clarify the principal supply.

Conservative view could be to make representations through industry/associations, requesting for a clarification by way of Circular on the classification of said services. Option to pay taxes under protest could also be explored.

The views expressed in this article are personal to the authors and are an attempt to interpret the nascent GST law. We recommend professional assistance where required.