

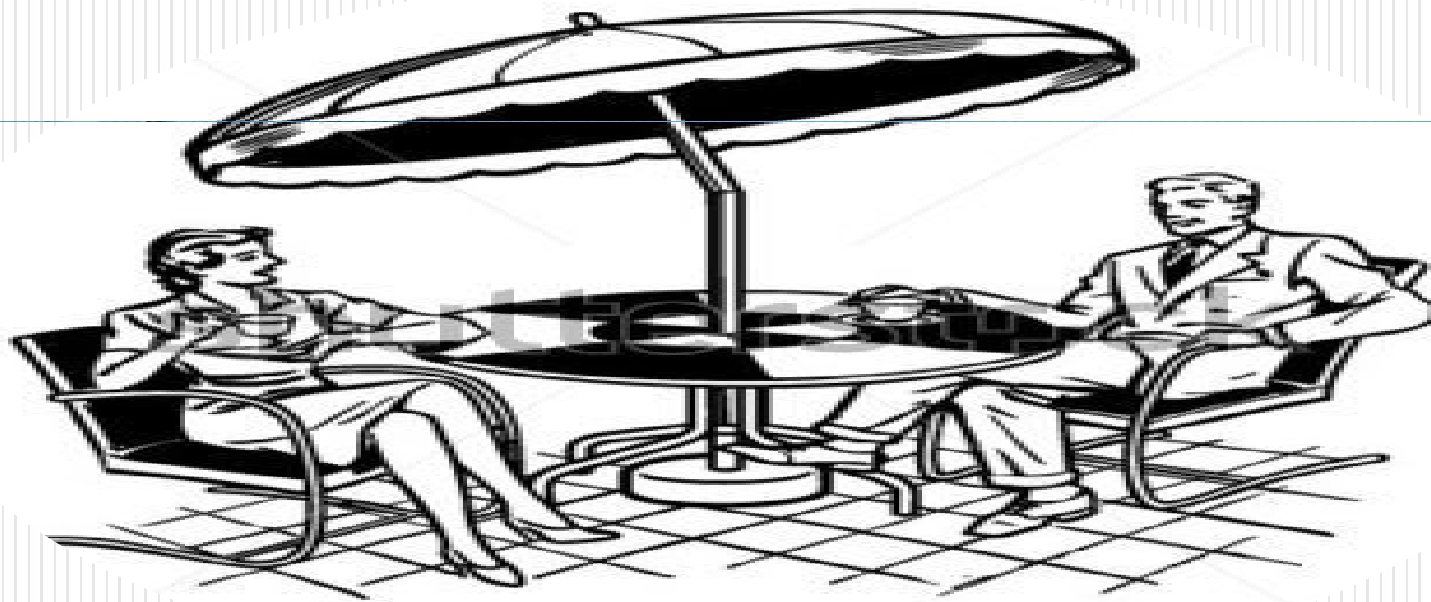
INDUSTRY WISE ANALYSIS OF SERVICE TAX – RESTUARANTS, HOTELS, TRAVEL & TOURISM

ORGANISED
by
WIRC OF ICAI

CA. NARENDRA SONI

8th February 2014

RESTAURANTS & HOTELS



8th February 2014

SERVICES BY RESTAURANT



- Broad timeline of applicability of Service Tax

Particulars	1/5/11 to 31/3/12	1/4/12 to 30/6/12	1/7/12 to 31/3/13	From 1/4/13 till date
Scope	Restaurants having AC and liquor license	Restaurants having AC and liquor license	Restaurants having AC and liquor license	Restaurants having AC
Abatement	70%	70%	60%	60%
Effective rate	3.09%	3.708%	4.944%	4.944%
CENVAT Credit	No CENVAT credit		Credit allowed except for inputs under chp. 1 to 22	

SERVICES BY HOTELS



- Broad timeline of applicability of Service Tax

Particulars	Upto 1/3/12	1/4/12 to 30/6/12	1/7/12 to till date
Abatement	50%	50%	40%
Effective rate	5.15%	6.18%	7.416%
CENVAT Credit	No CENVAT credit	No CENVAT credit	Credit of Input Service is eligible

** Hotel/Inn etc. having **declared tariff** of a unit of accommodation **below Rs. 1,000/- per day** is exempt



ISSUES

CERTAIN ISSUES:

➤ Ice Cream Parlour's:

Thanda Ice cream parlour do not having sitting facility

Cold Ice cream parlour having sitting facility

Cool Ice cream parlour only having table without sitting facility

➤ Take away centre's/counters:

Burger Maharaj having separate take-away counter in their our eating joint premises

➤ Eating joints in mall having common sitting arrangements:

Mera mall is having centralised AC system. Food courts within the mall do not have their own separate sitting facilities.

CERTAIN ISSUES:

- Fafda Jalebi & Dhokla restaurants ('FJD') seeks your advice on applicability of Service Tax on following bill issued to customers:

Particulars	Amount (Rs.)
Fafda	200
Jalebi	200
Dhokla	300
Chaas (@ MRP)	100
Total	800
Service Charges @ 10%	80
Total	880
Service Tax	????

- Is ST leviable on Chaas?
- Whether ST on services charges is leviable @ 12.36%?
- Is 100% of CENVAT credit eligible?
- Whether credit on goods falling under chptr 1 to 22 can be availed by not opting for 2C?
- Whether MVAT amount paid under composition can be deducted while calculating ST liability

CERTAIN ISSUES:

➤ M/s. All in One Hotels Pvt. Ltd. ('All') is running a star hotel offering composite services to its customers which includes stay, meals etc. It supplies foods at discount to its loyal programmer members. All is having facilities of Mini bar, in-room dining, online booking facilities for its customers. Also banquet hall is available for conducting conference/business customer. The Customers staying in hotel can avail facilities of using LCD, speaker or other equipment on payment of certain additional charges. clarifications is sought for the following:

- Consumption of food/beverage from Mini bar
- In-room dining
- Discount given to customers under loyalty programme
- Forfeiture of advance booking amount
- Charges for LCD, speaker & other equipments
- Composite charges Room stay, food, hall etc.
- Composite package for 3N/4D along with sight seeing etc.

CERTAIN ISSUES:

- Any difference in ST leviability for European plan & American Plan
- Cover charges for an entrance fee charged for bars, nightclubs etc.
- Income earned from display of products in restaurants
- Whether Canteen in factory/office is restaurant or outdoor catering?

CERTAIN CHARGES COLLECTED:

Particulars	Service Tax
Health & Fitness Services	????
Internet Café Services	????
Cleaning Services	????
Renting of Shops in the hotel premises	????
Franchise payments to foreign entity	????

APPLICABLE LEGAL PROVISIONS:

➤ Definition:

- **“Service” – 65B(44)** - means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include -
 - (a) an activity which constitutes merely,—
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution;

➤ Sections:

- **Article 366(29A)(f)** a tax on the supply, 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 (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made

APPLICABLE LEGAL PROVISIONS:

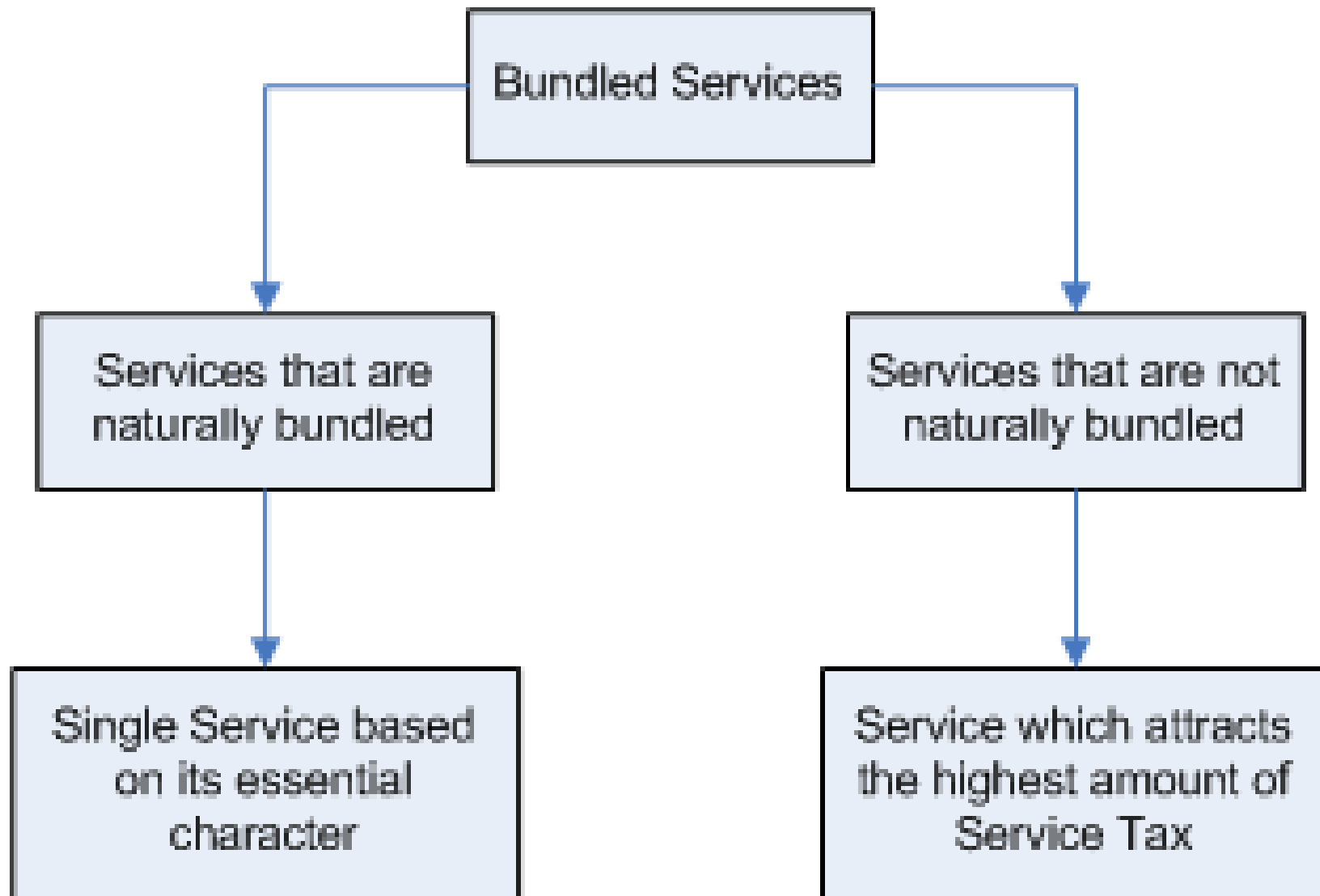
➤ **Sec. 66(e)**.....*agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;*

(i)*Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.*

➤ **Sec. 66F(2)***Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.*

"bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.

APPLICABLE LEGAL PROVISIONS:



APPLICABLE LEGAL PROVISIONS:

➤ Notifications:

- **Clause 19 of 25/12-ST dated 20/06/12** *Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year ~~and a license to serve alcoholic beverages~~. (The condition of license to serve alcoholic beverages omitted w.e.f. 01/04/13)*
- **Clause 19A of 25/12-ST dated 20/06/12** *Services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948, having the facility of air-conditioning or central air-heating at any time during the year (w.e.f. 22/10/13)*

APPLICABLE LEGAL PROVISIONS:

SN	Description	Taxable amount
1	Service portion in an activity wherein goods, being food or any other article of human consumption or any drink(whether or not intoxicating) is supplied in any manner as a part of the activity, at a restaurant	40% (4.944%)
2	Service portion in outdoor catering wherein goods, being food or any other article of human consumption or any drink(whether or not intoxicating) is supplied in any manner as a part of such outdoor catering	60% (7.412%)

- *Sum total of the gross amount charged and FMV of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink(whether or not intoxicating), whether or not supplied under the same contract or any other contract, after deducting -
(i) the amount charged for such goods or services, if any; and
(ii) the value added tax or sales tax, if any, levied thereon:*
- *The service provider shall not take CENVAT credit of duties/cess paid on any goods classifiable under Chapters 1 to 22 of the CETA, 1985*

APPLICABLE LEGAL PROVISIONS:

- **Serial no. 19 & 20 of 12/12-CE dated 17/03/12** *Food preparations, including food preparations containing meat, which are prepared or served in a hotel, restaurant or retail outlet whether or not such food is consumed in such hotel, restaurant or retail outlet – Nil rate*

Food preparations, including food preparations containing fruits and vegetables, which are prepared or served in a hotel, restaurant or retail outlet whether or not such food is consumed in such hotel, restaurant or retail outlet – Nil rate

JUDICIAL PRNOUNCEMENTS:

- Decision of **Hon'ble Kerala High Court** in the case of Kerala Classified Hotels & Resorts Association & Otrs Vs. UOI & Otrs. 2013-TIOL-HC-Kerala-ST **Service Tax on restaurants and hotels beyond the legislative competence of the parliament....** petitioners entitled to seek refund for taxes already paid.

TRAVEL & TOURISM



8th February 2014

SERVICES BY TOUR OPERATOR:

Scope	Accommodation booking service	Package tours	Tour operator – Other services
Abatement	90%	75%	60%
Effective rate	1.236%	3.09%	4.944%
Conditions	Amount shall be inclusive of cost of accommodation	Bill to be inclusive of all charges for the tour	Bill to be inclusive of all charges for the tour
CENVAT Credit	No CENVAT Credit		

- "package tour" means a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour.
- "tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours,

8th February 2014



ISSUES

VALUATION OF SERVICES PROVIDED BY TRAVEL AGENTS

- Option to Air travel agents to pay Service Tax as follows: (Rule 6(7) of STR, 1994)
 - 0.6% of Basic Fare in case of domestic flight
 - 1.2% of Basic Fare in case of International flight
- Whether ST is required to be charged on any amount charged separately to customers?
- Whether non-IATA agents has option to follow rule 6(7) of STR, 1994

VALUATION OF SERVICES PROVIDED BY TRAVEL AGENTS

Rule 6(7) of STR, 1994 - The person liable for paying the service tax in relation to the services of booking of tickets for travel by air provided by an air travel agent, shall have the option, to pay an amount calculated at the rate of 0.6% of the basic fare in the case of domestic bookings, and at the rate of 1.2% of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66B of Chapter V of the Act and the option, once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances.

Explanation. - *For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.*

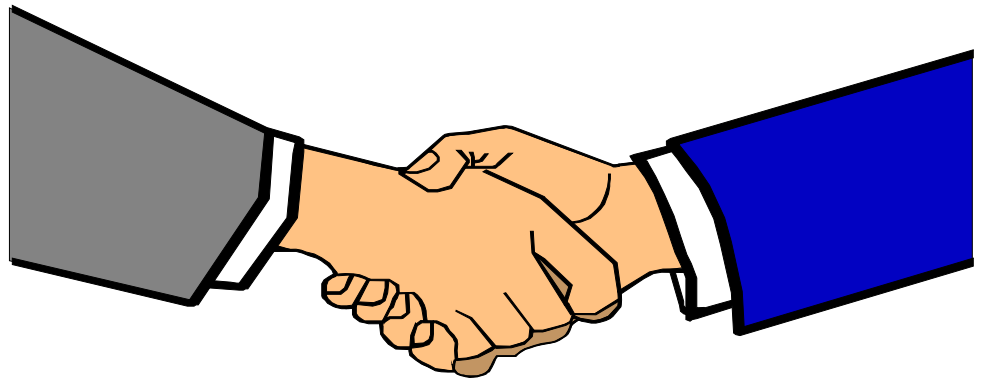
CERTAIN ISSUES:

- Outbound Travel... Whether Taxable?
- Whether Tour operators are intermediary for the purpose of PPSR?
- Amount received from Global Distribution system
- Amount charged for assistance in obtaining Visa/Passport registration
- Referral fees received from foreign exchange dealers
- Cancellation charges recovered

LEGAL PROVISIONS:

- *Rule 2(f) of PPSR,12 - "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the main service) between two or more persons, but does not include a person who provides the main service on his account.*
- *Rule 11 of PPSR,12. Place of provision of passenger transportation service.- The place of provision in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.*

Thanks



CA. Narendra Soni