

A Careful Analysis Of Services Provided By A Restaurant

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The Finance Act, 2011 has brought following two services within the ambit of ever-widening Service Tax net with effect from **01.05.2011 vide Notification No. 29/2011 dated 25.04.2011:**

1. Services Provided By A Restaurant
2. Short-Term Accommodation Services

In this article, various aspects of “Services Provided By A Restaurant” have been carefully analysed:

(I) Relevant Taxable Service Sub-Clause i.e. sub-clause (zzzzv) Of clause (105) of Section 65 of Finance Act, 1994

Taxable service means **any service** *provided or to be provided to any person*, by a **restaurant** by whatever name called, **having the facility of air conditioning** in any part of the establishment, at any time during the financial year which has **licence to serve alcoholic beverages**, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises

(II) Essential Features

If the above-mentioned taxable service sub-clause is minutely analysed, following essential features of these services emerge:

- (1) Services shall be **provided by a restaurant**. Since the term ‘restaurant’ has not been defined in the relevant statutory provisions, it has to be understood in accordance with common parlance/dictionary meaning. As per **Oxford Advanced Learners’ English Dictionary [6th Edition]** the term “restaurant” means a place where people pay to sit and eat meals that are cooked and served on the premises. Further, Restaurant should be **air-conditioned and must have a licence to serve alcoholic beverages**. It is important to note that air conditioning may be in whole or any part of the restaurant during any time during the financial year.

(2) Services are to be **provided to any person; and**

(3) Such services are in relation to serving of food or beverage, including alcoholic beverages or both, **in its premises**

(III) Rationale for Levy of Service Tax on These Services

CBEC vide its Letter No. **D.O.F. 334/3/2011-TRU dated 28.2.2011** clarified that the new levy is directed at services provided by high-end restaurants that are air-conditioned and have license to serve liquor. Such restaurants provide conditions and ambience in a manner that service provided may assume predominance over the food in many situations. It should not be confused with mere sale of food at any eating house, where such services are materially absent or so minimal that it will be difficult to establish that any service in any meaningful way is being provided.

Further, the Board in its clarification has also clarified that restaurants provide a number of services normally in combination with the meal and/or beverage for a consolidated charge. These services relate to the use of restaurant space and furniture, air-conditioning, well-trained waiters, linen, cutlery and crockery, music, live or otherwise, or a dance floor. The customer also has the benefit of personalized service by indicating his preference for certain ingredients e.g. salt, chilies, onion, garlic or oil. The extent and quality of services available in a restaurant is directly reflected in the margin charged over the direct costs. It is thus not uncommon to notice even packaged products being sold at prices far in excess of the MRP.

The Board's clarification further states that in certain restaurants the owners get into **revenue-sharing arrangements** with another person, **who takes the responsibility of preparation of food, with his own materials and ingredients**, while the owner takes responsibility for making the space available, its decoration, furniture, cutlery, crockery and music etc. The total bill, which is composite, is shared between the two parties in terms of the contract. Here, the consideration for services provided by the restaurants is more clearly demarcated.

Another arrangement is whereby the restaurant separates a certain portion of the bill as **service charge**. The amount is meant to be shared amongst the staff who attend the customers. Though this amount is exclusively for the services it does not represent the full of value of all services rendered by the restaurants.

(IV) Value of Taxable Services

The gross amount charged by the restaurants to service recipient is subject to service tax. However, **an abatement of 70 % of the gross value i.e. the total price charged by a restaurant** has been allowed by amending the Notification No. 1/2006-ST dated 1.3.2006 vide **Notification No. 34/2011-ST dated 25.4.2011**.

It is also worth mentioning here that aforementioned abatement of 70% is available subject to compliance of following two essential conditions:

(a) The relevant service provider has not taken credit of duty paid on inputs or capital goods or the CENVAT Credit of service paid on input services, used for providing its taxable services under the applicable provisions of CENVAT Credit Rules, 2004.

(b) Service provider has not availed the benefit under Notification No. 12/2003 dated 20.06.2003 which provides exemption from so much of the value of all taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service.

In addition, the abatement of 70% is available on the gross amount charged by the restaurant from the service recipient and it **shall include service charges or service surcharge or special cover charges** shown separately in the breakup of gross amount. However, it has been clarified by the Department Vide its letter bearing No. **334/3/2011-TRU dated 25.04.2011** that the **amount paid by the customers ex-gratia** e.g. as tip to any member of the staff doesn't constitute consideration paid to the restaurant and shall remain outside this levy.

Thus, it may be inferred that following amounts shall be excluded from the gross value of these services:

- a) Amount paid as tip meant for staff members.
- b) Taxes
- c) Value of goods sold at MRP.
- d) Home- delivery service charges.

(V)Concluding Remarks

It is sincerely hoped that the above in-depth analysis will go a long way in helping the readers in understanding the various dimensions of these newly introduced services.
