

Negative Blues – XI

Dial Trouble for Room Service

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Pre July 2012.

Service tax was leviable on services provided by restaurants having centralized air conditioning and license to serve liquor. Service tax was also leviable on services by way of short term accommodation in hotels.

The relevant definitions of taxable service read as below:

Section 65 (105) (zzzzv) 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.

Section 65 (105) (zzzzw) Taxable service means any service provided or to be provided to any person by a hotel, inn, guest house, club or campsite, by whatever name called, for providing of accommodation for a continuous period of less than three months.

In this context circular 139/8/2011 Dated 10.05.2011 has been issued to clarify certain doubts. One of the clarification read as below:

3.	Is the serving of food and/or beverages by way of room service liable to service tax?	When the food is served in the room, service tax cannot be charged under the restaurant service as the service is not provided in the premises of the air-conditioned restaurant with a licence to serve liquor. Also, the same cannot be charged under the Short Term Accommodation head if the bill for the food will be raised separately and it does not form part of the declared tariff.
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Post July 2012

Section 66 E (i) of the Finance Act, 1994 as introduced vide Finance Act, 2012 declares the following activity as a service.

“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”.

So, provision of food by way of room service is also a “declared service”.

The following exemption is available under S.No. 19 of Notification 25/2012.

“Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a licence to serve alcoholic beverages.”

In view of the wider ambit of the scope of declared service (which covers service portion in an activity wherein food or any other article of human consumption or any drink is supplied in any manner as part of the activity) and the limited scope of the exemption, any food served by way of room service in a hotel, which also has air-conditioning or central air-heating and licence to serve alcoholic beverages would also be a “service” and is taxable. The above exemption cannot be claimed if the hotel has air-conditioning or central air-heating facility and licence to serve alcoholic beverages. So, the food served by way of room service in a hotel having air-conditioning or central air-heating facility and licence to service alcoholic beverages would be subject to service tax. Though a lodge / hotel is not having air-conditioning or central air-heating facility and licence to service alcoholic beverages is providing such room service, the benefit of the above exemption can be denied that the room, in which the food is served, would not be a “restaurant” and the exemption is only for a “restaurant”.

When such room service is provided along with room accommodation it has to be seen whether it will be construed as a “bundled service”. If it is considered as a bundled service, then it has to be seen whether such services are naturally bundled in the ordinary course of business or not and accordingly, the service tax liability has to be determined.

The term "bundled service" is defined in Section 66 F of the Act as,

Explanation.- For the purposes of sub-section (3), the expression "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.

The concept of "bundled service" has been further explained in the guidance note of the CBEC as below:

9.2.1 Services which are naturally bundled in the ordinary course of business

The rule is – 'If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character'

Illustrations -

A hotel provides a 4-D/3-N package with the facility of breakfast. This is a natural

bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.

A 5 star hotel is booked for a conference of 100 delegates on a lump sum package

with the following facilities:

- _ Accommodation for the delegates*
- _ Breakfast for the delegates,*
- _ Tea and coffee during conference*
- _ Access to fitness room for the delegates*
- _ Availability of conference room*
- _ Business centre*

*As is evident a bouquet of services is being provided, many of them chargeable to different effective rates of tax. None of the individual constituents are able to provide the essential character of the service. However, if the service is described as convention service it is able to capture the entire essence of the package. Thus the service may be judged as convention service and chargeable to full rate. **However it will be fully justifiable for the hotel to charge individually for the services as long as there is no attempt to offload the value of one service on to another service that is chargeable at a concessional rate.***

From the above, it may be safely concluded if even when more than one service is provided, if separate values are charged for such services and if such separate values are genuine, the same shall not constitute "bundled service". If one service is given free with another service (giving breakfast free with accommodation), or if a composite price is charged for all services, then only the services would be construed as "bundled services".

Hence, when the room service is charged separately and such separate charges are commercially genuine, the same shall be subjected to tax separately and the room rent shall be subjected to tax separately. While service tax is payable on the room rent at 60 % of the value as per S.No. 6 of Notification 26/2012, for the room service (sale of food), service tax is payable on 40 % of gross amount as per Rule 2C of the Service Tax (Determination of Value) Rules, 2006. Again another dispute could be as this rule is applicable only to a "restaurant", whether the room in which the food is served can be considered as "restaurant" for claiming the benefit of this rule. Another peculiarity – the room rent could be entitled for exemption being less than Rs.1000 but still, the room service would be taxable!

So, when you dial the room service when you check into a room next time, you are in fact dialing trouble.