

## GST On Takeaways And Online Food Delivery

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### Abstract

Food and beverage taxes have been controversial for over 50 years. The main controversy arose from the Hindi Catering Corporation case, where a restaurant meal was considered a service due to the decision to pay more than 18% of the remaining food, with the ITC being used to collect all taxes. After many declarations to the government since 01/10 in 2019, the tax rate has changed to 5% if ITC is not used. The author will discuss the above issues that came to the fore after the final decision of the Madras High Court—the legal effect of 5% GST without ITC under VAT communiqué No. Whether foodstuffs are considered goods or services is still unanswered

### Introduction

Direct tax on food and drink is 5 years. Previously, food service was considered a sale and was subject to sales tax. The dispute arose from a Hindi Catering company where a meal at a restaurant was considered a service because the payment decision was more than just food. To override the above decision, Article 29A(f) has been added to Article 366 of the 1950 Indian Constitution by the Constitution (46th Amendment) Act 1982 which covers the supply of food for sale under the Sale of Goods. Tax collection will be determined. The situation changed with the introduction of Finance Act 1994 and VAT 2005. Then, from January 5, 2011, consumers will have to pay service tax, value-added tax and service charge in addition to the food price. To make things easier, the government separated food and services to avoid double taxation and lack of compliance. However, ITC cannot be used for taxable income. Also, taxes and fees are very high, and there are no specific regulations on how to deal with transportation and online services. GST policy should resolve this issue and end this

discussion. In the GST system, service tax and value-added tax are at a single rate, but the rate remains at 18% and the total amount can be collected using ITC. The representatives then had the government reconsider the price offered, which was approved by the Government. From 10 January 2019, the tax rate will change to 5% if no ITC is applied.

After the policy, old problems were fixed, while new issues arose. As per the Communiqué, the legal effect of 5% GST without ITC and whether foodstuffs are considered goods or services have not yet been answered. Therefore, the author will discuss the above issues that came to the fore after the recent Madras High Court decision.

### **Methodology**

Consumption Government and other websites, newspapers, periodicals, various Supreme Court and Supreme Court decisions and related laws and regulations. Legal definition of services before and after SCT services are defined in section 65B(44) of the Finance Act 1994 and expressly excludes name changes to these goods from sale. Based on this exception, it is argued that in many cases the sale of goods or food is not covered by the service tax. Under the GST regime numbered , Article 2(52) of the Law defines goods as "all movable goods, except money and securities, but including receivables and crops". before or under the supply contract" and services are defined under section (102) of the CGST Act 2017 (the "Law"), which means "goods only, non-financial and other securities".

In the pre-GST era, the definition of service was everything and after the GST it has now become a tool, the GST system addresses the issue of distribution of goods and services by clearly dividing the list of taxes that are goods or services. II of the law. Schedule 6(b) provides for the following composite goods to be considered services -

a) Contracts of Employment as may be referred to in Section 2 (119), Section

of the CGST Act b) for products used in food or other products intended for human consumption or drinking (human by, or as part of, a service or other product, if those goods or services are in the form of cash, deferred payment, or other material consideration.

In the previous decision, the applicant had operated a sweet shop and a restaurant in two different parts of the same place, keeping his money and expenses separate. The question facing authorities

is whether the sale of confectionery, soft drinks, cold drinks and other foodstuffs from the counter of a grocery store should be considered goods or services. The Ministry of Justice decided that it was a shipment because it did not meet the above requirements. The basic condition for products to be composite products is to be packaged and mixed with each other in accordance with article 30 of article 2 of the Law. While desserts and other foods are served to customers in restaurants or food stores, restaurant services and food products are always offered as the main service. But when such products are served by a candy store, there is no direct or indirect connection with the restaurant's service, because anyone can buy pieces without going to the restaurant. Since these activities are considered separately from restaurant activities and will continue in case of temporary or permanent closure of restaurants, the sale will be considered as a sale and will be subject to the GST of the goods sold. Swiggy, Zomato etc. If similar reasoning applies to food ordered through online platforms, GST should be applied to restaurant services rice substitutes because these ingredients may not be considered mixed ingredients. During the Covid-19 pandemic, restaurants are restricted due to closures, but online ordering is allowed. In this case, there is no effect on the restaurant service because everyone can shop without going to the restaurant and therefore GST must be charged on the goods sold.

#### **Provision of food as part of a service**

Indian Constitution 1950 Section 366 (29A)(f) and Annex II Section 6(b) of the Act, although the same, the reality is very different. The former treats food service as a supply, the latter as a service. The courts have yet to decide the truth, although experts say the clause has been tacitly removed. Also the words don't say "in the restaurant". For this reason, it is generally believed that even home delivery will be welcome, as it covers any type of food or beverage. However, this can be a very compelling argument. GST rate for food in restaurants and other eateries Class of service for catering services 99633. According to the Definition of the Catering Services Classification Chart, service code 996331 is "restaurant, cafe, and similar food and beverage businesses, including take-out, room service, and home delivery." defines the services provided by "However, the above classification may be relevant because these words are only used descriptively and not in the Basic Law.

Sl. no.7 (ii) no. NO. 11/2017-CT. (R), GST rate on 28 June 2017 is 5% [2.5% CGST + 2.

5% SGST] GST is not paid for "Restaurant Services" items other than "Designated Places". In Article 4(xxxii) of Communiqué No, "restaurant service" is defined as "food or other goods intended for human consumption or service provided by or as part of a service obtained from a restaurant", restaurant, meal (including restaurants, canteens). is defined. Eating such food in or out of the place where it is served, or giving other food or drink to people to eat or drink. "Furthermore, in clause 4 (xxxvi) of the above statement, an "entity" means "an organization providing 'hotel accommodation' services where the cost per unit of service exceeds Rs 7,500 per unit per day or equivalent. . General idea," is that the term "off site" also covers delivery and online ordering. The author believes that the above statement only applies to the situation where customers ask restaurants to pack leftover food, that this has become a practice and does not belong to takeout or online ordering. He also succeeded in adjudicating the Hindi Catering company's ruling, in which the court said customers were not entitled to take leftovers at the restaurant. In the previous instruction, it was desired to clarify whether packaged foods are included in the above classification. The law said no and said, "Products that are basically inedible and require further cooking and other packaged foods that have not been processed by the applicant and are sold on a purchase order will be taxed at the appropriate rate and will not be charged. Since these rates from group 99633 (HSN code) relate only to services, "Therefore, ITC can also be used for the supply of such goods. However, most of the online food delivery is accessible, so the decision will not be affected much. In addition, the previous decision applies only to the applicant and related employees. Therefore, other applicants cannot rely on these decisions as they are purely beneficial.

#### **Final judgment of Madras High Court in service tax case**

Anjappar Chettinad A/C Restaurant & Ors v Chennai GST and Madras Central Revenue Commissioner Office Joint Commissioners A series of Petitions & Ors, 4 plaintiffs' restaurant services, outdoor services forest and mandaps filed a lawsuit at the Court of Cassation, where he registered a service tax for his maintenance. Service tax on shipping/parcel for various periods ending in June 2017, Before the introduction of the GST system, applicants did not pay fees. In their view, the sale of packaged goods is a pure business that has nothing to do with services. They rely on the definition of "service" in the Finance Act 1994, which explicitly excludes the transfer of ownership to goods sold. In addition, the Ministry of Finance clarified that the service tax does not apply to food purchased from elsewhere. On the other hand,

Ministry of Finance No. declared the activity of "supplying food or other goods for people to eat or drink" as a tax service pursuant to article 66E (1) of the 1994 Finance Act. They argued that the sale was irrelevant as the restaurant usually serves and selling is the only condition at the time of service. The question that arises in court is whether the business can be classified as a sale of goods and services and taxed accordingly. The court examined the services offered by restaurants and classified some of the services that are taxable or not. Madras HC agreed that "sales of food and beverage, selection and purchasing services of ingredients, preparation of ingredients for cooking, and actual preparation of food and drink will not be taxable". This is a delivery order or online delivery. When the actual preparation of the food or beverage is complete and ready for delivery or take-out, it is sent to a separate counter, often away from the main dining area where there is no cold air.

The court also noted that the tax only begins when the food and drink on the table is charged for service until the bill is presented. This will include services such as "seats, decorations, music and dance arrangements, life and other information from the Golden Lord, the landlord, the people doing the dress business, and the use of quality plates and utensils." When GST is received, it is paid in Rs. Failure to provide customer service will result in a \$25,000 fine and fresh fruit is exempt under GST law. Restaurants do not provide takeaway and online delivery of food and beverages not consumed in the restaurant. Therefore, the court decided that service tax would not be charged under the service tax law. The above decision could have significant implications for the current GST regime. If this decision is correct in the current system, we could see a reduction in taxes and lower overall costs for consumers. GST for online delivery service providers Similarly, if the restaurant's food ordering service is provided by an e-commerce operator such as Zomato, Swiggy, the business partner number is "Restaurant Services" subject to Goods and Services Tax in accordance with Section 9(5). ) CGST Act. In this respect, it is also important to determine the nature and function of the "restaurant service". If Madras HC's decision is credible, online food delivery will not be eligible for all restaurant services and suppliers will also be exempt from GST. However, since the definition of "restaurant service" in terms of GST clearly includes "eating on-site or off-site", it is up to the e-commerce business owner to work for the SCT exemption.

### **Conclusions/Recommendations**

- The reasons applied in the Madras HC case should also apply to the GST. While the GST Act clearly states that takeaway and online orders at restaurants are subject to 5% GST, the Act provides no justification or explanation.
- In this case, the price should open the door for any restaurant service provider looking to answer the question of why online delivery is made for the restaurant.
- It is now critical for restaurants and others to review their business models, especially franchise restaurants that still apply GST on franchise fees and tax rate.

### **Results**

- With the emergence of air-conditioned kitchen units under the supply-only model, there has been a need for the authorities to reconsider the GST model based on the supply of units. This cooking is outside the definition of restaurant services and is subject to GST (as the supply of goods is taxed at a different rate used for food). GST is subject. This is important because many people have their goods priced at 0% GST or even 5% GST, they have the opportunity to take advantage of ITC and thus lower their tax bill. Therefore, the final order is a good first step and a hope for suppliers.
- E-commerce food foragers face commercial concerns that these ECOs are declining as they spend more money on customer acquisition and retain in anticipation of long-term action to achieve economies of scale. To solve the above problems, ECO explores new business models such as food distribution between cities, encourages restaurants to create air-conditioned kitchens for meals and even creates a network of home kitchens to know the cost of daily meals. from their platforms. Given the above changes in the industry and the general judgment seen in the Madras High Court decision, it is time for the government to formulate clear guidelines for the industry to protect some taxpayers. It is not necessary to comply with some taxpayers.

### **Acknowledgement:**

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### **References:**

- In Re: Kundan Mishthan Bhandar, (2019) 74 GST 209.
- <sup>2</sup> M/s. Northern India Caterers (India) Limited vs Lt. Governor of Delhi, AIR 1980 SC 674.
- <sup>3</sup> In Re: Mountain Trail Foods Private Limited, (2020) 77 GST 343 (AAR).

<sup>4</sup> Anjappar Chettinad A/C Restaurant & Ors vs Joint Commissioner, Office of the Commissioner of GST and Central Excise, Chennai & Ors, 2021-VIL-442-MAD-ST.

<sup>5</sup> Ministry of Finance, No. DOF 334/3/2011-TRU dated 28.02.2011. <<https://www.cbic.gov.in/resources//htdocs-cbec/ub1112/dojstru2.pdf>>.

<sup>6</sup>Ibid.

<sup>7</sup>Rahul Bose Episode: JW Marriott Hotel fined Rs 25,000 for levying GST on bananas' (ET Times 2019)

[https://economictimes.indiatimes.com/industry/services/hotels/-restaurants/chandigarh-hotel-fined-rs25000-for-illegal-collection-of-tax-on-an-exempted-item/articleshow/70412739.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/industry/services/hotels/-restaurants/chandigarh-hotel-fined-rs25000-for-illegal-collection-of-tax-on-an-exempted-item/articleshow/70412739.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

8. <https://www.cbic.gov.in>