

ANALYSIS OF RESTAURANT SERVICES INTRODUCED BY FINANCE ACT, 2011

1. Taxable Service

As per 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;

Analysis of above definition

- A. Service should be provided by a restaurant which satisfies the following two conditions:
 - I. having the **facility of air-conditioning** in any part of the establishment, at any time during the financial year,
 - II. which **has licence to serve alcoholic beverages**, in relation to **serving of** food or beverage, including alcoholic beverages or both, in its premises
- B. Services should be provided to any person

Above points clarified that only those restaurants are covered by new levy which will satisfy both the above conditions. One should keep in mind that in point (I) above it is mentioned that restaurant having facility of air conditioning in ANY PART OF THE ESTABLISHMENT are covered. According to author, it does not mean that those restaurant where this facility is available only for the staff of the restaurant i.e. if these facilities are available in the office or any cabin for the staff of the restaurant. Above condition shall be satisfied only if the air conditioning facility is available in any part of the establishment for customers of the restaurant. It is also clear from the above provision that restaurant will be covered by new levy if the facility of air- conditioning is available for any time during the financial year. In other words, facility of air- conditioning need not be available during whole the financial year.

Services To Be Included

- A. It will also cover those restaurants which have entered 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. Here the total bill, which is composite, is shared between the two parties in terms of the contract. (As per Annexure-A of **D.O.F.No.334/3/2011-TRU DATED 28.02.11**).

- B. The levy is intended to be **confined to the value of services** contained in the composite contract and shall not cover either the meal portion in the composite contract or mere sale of food by way of pick-up or home delivery, as also goods sold at MRP. In respect of sale of meal portion, **an abatement of 70%** of value of services has been provided by amending the notification No. 1/2006-ST dated 01.03.2006 vide notification No. 34/2011-ST dated April 25, 2011.
- C. The taxable services provided by a restaurant in other parts of the hotel e.g. swimming pool, or an open area attached to the restaurant **are also liable to Service Tax as these areas become extensions of the restaurant.(As per Circular No. 139/8/2011-TRU DATED 10.05.11).**

Services To Be Excluded

- A. Service Tax is leviable on the service provide by a restaurant which satisfies two conditions: (i) it should have the facility of air conditioning in any part of the establishment and (ii) it should have license to serve alcoholic beverages. **Within the same entity, if there are more than one restaurant, which are clearly demarcated and separately named, the ones which satisfy both the criteria is only liable to service tax. (As per Circular No. 139/8/2011-TRU DATED 10.05.11).**

2. Date of Applicability

The above service has been brought to service tax net wef 01.05.2011.

3. Value of Taxable Service

Value of taxable services shall be determined as per provision of Section 67 of Finance Act, 1994 read with Service Tax (Determination of Value) Rules, 2006.

Value of taxable services may be determined at the option of the provider of taxable services in any of the following manner:

A. Where the restaurant avails exemption under NN 1/2006-ST dated 01.03.2006:

In above case, value of taxable services shall be the total price charged by the restaurant. In that case, an exemption of 70% of gross value shall be given as per notification No. 1/2006-ST dated 01.03.2006 amended by notification No. 34/2011-ST dated April 25, 2011.

Provided that this notification shall not apply in cases where, -

- I. the CENVAT credit of duty on **inputs or capital goods** or the CENVAT credit of service tax on **input services**, used for providing such taxable service, has been taken under the provisions of the CENVAT Credit Rules, 2004; or
- II. the service provider has availed the benefit (i.e., exemption regarding goods and material sold during the course of providing taxable services) under the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2003-Service Tax, dated the 20th June, 2003[G.S.R. 503 (E), dated the 20thJune, 2003].

B. Where the restaurant does not avail exemption under NN 1/2006-ST dated 01.03.2006:

In this case, value of taxable services shall be the total price charged by the restaurant. However, as per NN 12/2003-ST dated 20.06.2003, value as is equal to the value of goods and materials sold by the restaurant is exempted from the service tax leviable thereon under section (66) of the said Act, subject to condition that there is documentary proof specifically indicating the value of the said goods and materials.

Notes:

- I. It is clarified that the exemption is available on the gross price charged by the restaurant for the taxable service, including any portion shown separately e.g. service charge. However the amount paid by the customer 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. (As per **D.O.F.No.334/3/2011-TRU DATED 28.02.11**)
- II. 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. (As per **Circular No. 139/8/2011-TRU DATED 10.05.11**).
- III. For the purpose of service tax, State Value Added Tax (VAT) has to be **excluded** from the taxable value. (As per **Circular No. 139/8/2011-TRU DATED 10.05.11**).

4. Accounting Code

As per Circular No.136/5/2011-TRU DATED 20.04.11, accounting codes for the purpose of payment of service tax are as follows:

S. No.	Taxable Services	Accounting Code		
		Tax Collection	Other Receipts	Deduct Refunds
(1)	(2)	(3)	(4)	(5)
1.	Service provided by a restaurant having air-conditioning and license to serve alcoholic beverages in relation to serving of food or beverage, including alcoholic beverages or both, in its premises [Finance Act 1994, Section 65(105) (zzzzv)]	00441067	00441068	00441069

5. Provision in respect of payment of service tax in case of New Services

Rule 5 of Point of Taxation Rules, 2011 Payment of Tax in Case of New Services

Where a service, *not being a service covered by rule 6 (i.e., Determination of Point of Taxation in Case of Continuous Supply of Service)*, is taxed for the first time, then, –

(a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;

(b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within the period referred to in rule 4A of the Service Tax Rules, 1994.

ANALYSIS OF RULE 5

S. No.	Particulars	Rule 5 (a)	Rule 5 (b)
1	Example	a.) Invoice issued on 15.04.11 of Rs. 10,00,000/- b.) Payment received on 20.04.11 of Rs. 8,00,000/- and on 01.05.11 of Rs. 2,00,000/- c.) Service is first time become taxable on 30.04.11	a.) Invoice raised on 20.04.11 b.) Payment received on 15.04.11 c.) Completion of service is on 06.04.11 d.) Service is first time become taxable on 16.04.11
	Analysis	i.) In the above case invoice has been issued on 15.04.11 and against the same Rs. 8 lac has been received before service first become taxable (i.e. on 30.04.11) therefore no service tax liability will arise on Rs. 8lac. ii) However, ` 2 lac has been received after service first become taxable (i.e. after 30.04.2011), therefore assessee has to deposit service tax on the same amount.	Here service tax is not payable because assessee has received payment before service become taxable and issued invoice within the time limit specified under Rule 4A of the Service Tax Rules, 1994
	Conclusion	In case of a service which is first time become taxable, assessee should make the necessary arrangement for the collection of invoice issued before the date service first time become taxable.	Under rule 5 (b), assessee should try to issue invoice within the time specified in above rule and collect the payment before service become taxable.

6. REGISTRATION

Provisions related to registration under Finance Act, 1944 are laid down u/s 69 read with Rule 4 of Service Tax Rules, 1994.

As per rule 4 (1) of said rules, every person liable for paying the service tax shall make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within a **period of thirty days** from the date on which the service tax under section 66 of the Finance Act, 1994(32 of 1994) is levied.

Provided that where a person commences the business of providing a taxable service after such service has been levied, he shall make an application for registration within a period of thirty days from the date of such commencement.

Registration under above Rule 4(1) is required if service provider is not registered under service tax act at all. However in case of service provider who is already registered in respect of any taxable services is required to make application under Rule 4(5A) for amendment in service tax registration certificate.

7. INVOICE AS PER RULE 4A OF STR, 1994

Provisions related to issue of invoices are laid down under Rule 4A of Service Tax Rules, 1944 as under:

(1) Every person providing taxable service shall, **not later than fourteen days from the date of completion of such taxable service or receipt of any payment** towards the value of such taxable service, whichever is earlier issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of taxable service provided or to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :-

- (i) the name, address and the registration number of such person;
- (ii) the name and address of the person receiving taxable service;
- (iii) description, classification and value of taxable service provided or to be provided ; and
- (iv) the service tax payable thereon.

Therefore it should be kept in mind that invoice etc should be raised within 14 days from the date of completion of such taxable service or receipt of any payment and should be serially numbered and contain above details.

8. DEPOSIT SERVICE TAX ALONGWITH INTEREST

Provisions related to deposit of service tax are contained in section 66, section 68, Rule 6 of Service Tax Rules, 1994 and Section 75. Service tax is required to be deposited at the rate specified under section 66 in such manner and within such period as provided under Rule 6 of Service Tax Rules, 1994. If service tax is not deposited in time then it should be deposited alongwith interest under section 75.

9. INPUT CREDIT AS PER CENVAT CREDIT RULES, 2004

Credit of duty paid on input and capital goods and service tax paid on input services may be availed and utilized as per provisions of CENVAT Credit Rules, 2004.

10. RETURNS UNDER FINANCE ACT, 1944

A. Under Finance Act, 1944 return is required to be filed by following persons:

- I. Provider of taxable service or receiver of taxable services ,as the case may be , as per provisions of section 70 read with rule 7 of Service Tax Rules, 1994.
- II. Provider of output service availing CENVAT Credit as per provision of Rule 10(9) of CENVAT Credit Rule, 2004.
- III. Input credit distributor as per provision of Rule 10(10) of CENVAT Credit Rule, 2004 read with Rule 4 of Service Tax (Registration of Special Category of Persons) Rules, 2005.

B. Time Limit for Submission of Return:

S. No.	Return By	Due Date	May be Revised Within	Section or Rule
1	Person referred in point 1 above.	25 th of the month following the particular half year.	90 days from the date of filing of return.	See point 1 above.
2	Person referred in point 2 above.	Last day of the month following the particular half year.	60 days from the date of filing of return.	See point 2 above.
3	Person referred in point 3 above.	Last day of the month following the particular half year.	60 days from the date of filing of return.	See point 3 above.

Therefore, return should be filed within the time limit specified under above table and as per provisions of section and rules given in said table.

11. RECORDS AS PER RULE 5 OF STR, 1994

There is no records specified to be maintained under above provision but records maintained under any other law are acceptable. At the time of filing of return first time, records maintained by assessee are required to be furnished in duplicate.

12. Point of Taxation Rules, 2011

As per Point of Taxation Rules, in normal situation , services shall be deemed to have been provided as under:

1.

Date of invoice or payment, whichever is earlier

(if the invoice is issued within the prescribed period of 14 days from the date of completion of the provision of service.)

2.

Date of completion of the provision of service or payment, whichever is earlier

(if the invoice is not issued within the prescribed period as above.)

3.

Date of receipt of advance payment

With Warm Regards,

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