

Food from McDonalds, Dominos & Pizza Hut to get cheaper as FinMin may cut service tax on takeaway, home-delivery

The finance ministry may soon clarify that takeaway and home delivery of food will not attract service tax, a move that will be welcomed by the likes of McDonalds, Dominoes and Pizza Hut.

"The ministry is examining the issue. There is a strong view that takeaways and home deliveries should not attract service tax," a senior government official told ET.

Finance minister P Chidambaram is also understood to have favoured this reading of the service tax rules.

The finance ministry's clarification, if it finally materialises, will bring the much-needed relief to the industry that has made several representations to the government seeking clarity on the issue and even pitching for deferment of the new levy.

The confusion stems from the union budget 2013-14 that had extended service tax to all air-conditioned restaurants from April 1 this fiscal.

As a result air-conditioned restaurants began charging service tax from their customers even if food was delivered at home or packed and carried away.

This is because the Central Board of Excise or Customs, the apex body in charge of administering indirect taxes, did not clearly spell out the applicability of service tax to takeaways and home deliveries.

The confusion has resulted in some service providers imposing tax while others have collected the tax but not deposited it.

Earlier, service tax was levied only on air-conditioned eateries that served alcohol.

No Constitutional Provisions For Such Tax

The finance ministry has now concluded that the tax could not be levied on these services after examining the structure of the tax and constitutional provisions. It has relied on the interpretation of Article 366 of the Constitution, following the 46th amendment, that empowered state governments to levy sales tax on supply of food during the course of a service.

Experts also say court judgements clearly spell out that supply of goods would attract states sales tax.

"Prior to the amendment also it was held by courts that in case of takeaways, the dominant intention is supply of goods and services, if any, are only incidental. Hence, it was held that these transactions are liable to sales tax/ VAT," said Prateek Jain, partner, KPMG.

Smita Jatia, Managing Director, Hardcastle Restaurants, which runs McDonald's in the West, said the service tax has not had much of an impact on business. The government's recent imposition has not impacted the demand in our business and we continue to see a steady growth. Value has been the cornerstone of McDonald's, globally. "

Service tax is leviable at 12%. Restaurant service enjoys 60% abatement, implying that tax applies only on 40% of the total billed amount

(Economic Times)