



CRITICAL ASPECTS OF GST – HOTEL INDUSTRY

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Hotel industry is one of the major impacted industries due to Corona virus (Covid 19) Pandemic. It is high time for the industry to reduce their costs and ensure that they are not hit with GST non-compliance notices. Since, the substantial business of the industry would be B2C (business to customer), any future demands by GST authorities would become cost.

Considering the vast experience in the hotel industry, the author wishes to explain the GST related burning issues faced by the hotel industry as on date along with possible solutions.

Advances adjustment and time of supply:

With respect to advances received for provision of services, GST needs to be discharged at the time of receipt of advances and to be adjusted at the time of raising of invoices. Possible issues could be:

- Discharging GST at one rate at the time of advance receipt and different rate applicable at the provision of service. Typical example could be at the time receipt of advance, hotel might have paid GST @ 18% but the room provided having a tariff between Rs. 1,000/- to Rs. 7,500/- where the rate of GST is 12%.
- Not adjusting the advances on which already GST discharged. This results in double payment of taxes.
- Income accrued in the books of accounts but the invoice not raised. Typical example could be guest who was not checked out at the month end but income recognized in the books of accounts for the stay up to month end.
- Restaurant bill generated and posted to guest's ledger but the check-out is pending.

Maintaining proper track of advances received and adjustment of the same would solve this issue. Considering 30 days' time available for raising the invoice after completion of service, in case of restaurant and other ancillary services, time of supply can be postponed to the date of invoice. On completion of services, it is suggested to raise the charge slips instead of tax invoice for the In-house guests. Final invoice can be raised at the time of checkout. Few hotels following the process of complete checkout at the month/day end and fresh check-in at the next month/day start.

Most of the hotels would be using separate software for operational purpose. The balances in such software and the books of accounts needs to be reconciled regularly to avoid huge differences at the year end.

Composite supply and mixed supply:

It is normal in the industry to provide few complimentary services or few services as a bundle. For example, in the FAQ's issued by the Government, it was clarified that complimentary breakfast is an industry practice and would be treated as main service of accommodation service. Care should be taken while examining the different treatment for composite and mixed supplies. Typical examples could be:

- Complimentary rooms provided for a banquet event.
- Destination weddings where the rooms and banquet services provided as single price package
- For a Valentine's Day event, accommodation and restaurant services provided at a single price.

With respect to Composite supplies, the services should be naturally bundled. Much care should be taken when the principle supply would be of lower rate and the ancillary services would be of higher rate. Wrong classification of mixed supply as composite supply would lead to differential tax demand in future.

Supplies to SEZ unit and place of supply:

With respect to services provided to SEZ unit, still few doubts exist whether CGST + SGST or IGST should be discharged. Supplies to SEZ units would be specific in nature and IGST should be charged.

With respect to any banquet or any renting services provided, if the entity receives a certificate from the SEZ unit stating that it is for authorised operation, the entity can raise the invoice without GST after obtaining LUT or charge IGST.

Most of the services provided by hotel would be intra-State and liable to CGST + SGST. With respect to ancillary services provided which are not relating to immovable property, IGST could be leviable where the transaction is an inter-State supply.

Booking Cancellation Charges (No show charges):

This is the most common phenomena observed in the industry. Cancellation charges generally depends on the time of cancellation i.e. where the time is less, cancellation charges are more.

Most of the hotels discharging GST @ 18% on such cancellation charges collected considering it as tolerating an act even though there is no actual service provided. The author is of the view that there is no liability of GST on such cancellation charges collected as there is no supply involved. CGST Amendment Act, 2018 made it clear that conditions specified in section 7(1) (a) of CGST Act should be satisfied to treat the transaction as supply and Schedule-II activities are merely for classification of activities as supply of goods or services.

TDS or TCS compliance:

TDS provisions would be applicable for the services provided to Govt. departments, PSU, etc. Certain amount of GST would be deducted by such Govt. entities and file TDS returns.

With effect from 1st October 2018, TCS provisions applicable for the bookings done through E-commerce Operators. The E-Commerce Operators shall collect one percent of the net value of taxable supplies made through it where the consideration with respect to such supplies is to be collected by the operator and file TCS Returns.

Presently, most of the hotels are not aware of such provision. The hotel should check and accept the entries in the TDS and TCS returns filed by customer/e-commerce operators so that the amount would be credited to Electronic cash ledger of the entity.

Reversal of credit for exempted supplies (Rule- 42 and 43 of CGST Rules):

Most of the hotels would be accompanied with a restaurant. If the declared tariff of unit of accommodation is above Rs. 7,500/- per unit per day or equivalent, the restaurant should adopt GST @ 18% with input tax credit benefit otherwise for the services provided through restaurant the rate of GST would be 5% without input tax credit.

With effect from 01st October, 2019, the same treatment provided for restaurant services needs to be followed for banquet services and outdoor catering services also.

Typically following would be exempted services by an hotel:

- Restaurant services, banquet services, outdoor catering services by a hotel where the declared tariff of a unit of accommodation do not exceed Rs. 7,500/- per day or equivalent.
- Liquor sales (even though it is non GST sales, it is also considered as exempted sales)
- Rent a cab services where the entity opts to discharge at 5% GST
- Accommodation services where the value of supply for an unit of accommodation is below or equal to Rs. 1,000/- per day or equivalent.

Even though the few of the above services chargeable at 5% GST without ITC, the same needs to be treated as exempted services and proportionate credit to be reversed. In simple terms, with respect to goods or services used exclusively for exempted supplies, no input tax credit can be availed. With respect to goods or services used exclusively for taxable supplies, 100% input tax credit can be availed. With respect to inputs and input services commonly used for both taxable and exempted supplies, credit proportionate to the value of taxable supplies can be availed.

GST liability on the ancillary services provided:

Different treatments followed by different entities with respect to following services:

- Sale of Cigarettes and other tobacco products
- Sale of Hukkah
- In room dining
- Sale of cool drinks / aerated water
- Mini bar sales (sale of snacks, beverages, etc. which are already provided in the room)

In the author's opinion, the said services could be treated as restaurant services. Different treatment would be needed based on the facts and circumstances and on considering cost benefit analysis while staying within the four corners of the law.

With respect to rent a cab services provided, the rate of GST would be 12% with ITC and 5% without ITC. If the entity opts for 5% without ITC, the compliance specified under Rule-42 and 43 needs to be complied considering such turnover as exempted turnover.

With respect to other services like laundry, internet, spa services, gym services, etc. general rate of 18% needs to be followed subject to exception. In case of sale or purchase of foreign currency, separate valuation procedure prescribed can be followed. In case of renting of premises for an event, 18% GST needs to be discharged.

Input tax credit related:

Still many hotels are under the impression that input tax credit can't be availed with respect to repairs and maintenance of immovable property. It is clear that ITC can be availed on repairs and maintenance of building or plant and machinery, when such expenses are not capitalised.

It is also clear that ITC can be availed on the furniture, Chillers, DG sets, HVAC, passenger lift, decorative items and interiors which are not in the nature of immovable property. With respect to restaurant, ITC can be availed on crockery and cutlery, kitchen equipment, etc. if the restaurant discharging output GST @ 18%.

ITC can be availed on general business expenses like bank charges, insurances expenses other than health and life, stationery purchase, etc.

ITC can be availed on the perquisites (like food and travel) provided to employees when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company. With respect to few expenses like health and life insurance of employees, rent a cab, etc. ITC can be availed if it is a statutory requirement.

In case of hotels under construction, availing input tax credit on Cement, Steel, other construction material and construction services can be examined considering the Orissa High Court Judgement in the case of Safari Retreats Pvt Ltd wherein it was held that input tax credit (ITC) on inputs and input services used for construction of a shopping mall, to be availed against GST payable on rent income receivable from tenants of such constructed shopping mall.

Reverse charge and import of services:

With respect to multi chain branded hotel, there would be lot of payments like royalty, management fees, operational fees, training fees, etc in foreign currency. Each transaction should be examined with respect to reverse charge applicability and discharge the tax accordingly. One should not miss that with respect to

associated enterprises, the time of supply would be date of entry in the books or date of payment whichever is earlier.

In general, the liability under reverse charge for GTA Services, legal services, security services, sponsorship services, rent a motor vehicles services, etc. needs to be examined. With respect to liquor licence fees paid to State Govt., there is no liability under reverse charge. If already paid, refund can be claimed.

With respect to reverse charge liability on the ocean freight portion for import of goods on CIF basis, the hotel can examine the law laid down by Gujarat HC in the case of Mohit Minerals wherein it was held that entry 10 of notification is ultra vires the IGST Act.

Reverse charge liability with respect to goods or services procured from un-registered persons (Section 9(4) of CGST & Section 5(4) of IGST Act) deferred with effect from 13.10.2017.

Cross Charge and ISD:

There would be temporary shifting/transferring of human resources from one entity to other entity/other branch of same entity in different State. The reason could be for staff shortage or for providing training, etc. GST needs to be discharged for the said services provided. If the resources are sent outside, it can be considered as export of service subject to fulfilment of conditions specified for export of services.

With respect to common services received at the head office of the entity, the option of ISD needs to be examined for transferring the common credits to the respective units.

FTP benefits to be availed:

With respect to services provided where the entity has received money in convertible foreign currency from a foreign national, the entity can be eligible to get a transferable duty credit scrip as a benefit under Foreign Trade Policy (FTP). The benefit ranges from 3% to 5% of net foreign currency earned.

Hotels can also examine the option of importing capital goods under EPCG option without payment of import duties. Export obligation specified needs to be fulfilled within the time limit specified to avoid interest and other penal consequences.

COVID related:

i. Insurance claims received:

Most of the hotels would have insured towards Contingent Business interruption which covers the losses beyond business's control. Insurance company would compensate the loss of business for such period. Situations like **Covid-19** could be covered in that. There is no GST liability for the compensation received as there is no supply of goods or services involved. However, with respect to goods lost, stolen, destroyed, written off, the provisions relating to ITC restriction needs to be examined.

ii. Impact of hotels taken over by Govt for developing isolation wards:

Few States like Madhya Pradesh, Rajasthan, etc. ordered to convert few hotels and resorts as isolation wards. This is done under Disaster Management Act. Few hotels are offering free stay to health workers. Few hotels done this as a part of Corporate Social Responsibility. There is no consideration paid in all these cases. In the author's opinion, the said transaction would not fall under Schedule-I and there is no liability under GST.

Other Compliances:

- ITC needs to be reversed (along with requisite interest) with respect to such instances where the payment not made within 180 days from the date of invoice. ITC can be re-availed in making payment to the vendor/s.

- Self-invoice to be raised for the reverse charge liability discharged transactions where the supplier is not registered.
- Input tax credit needs to be reverse for the credit notes issued by the vendors when the credit note issued with GST.
- Anti-profiteering compliance, as GST rate is reduced during the FY 2019-20
- Luxury tax abolished after implementation of GST. If any such tax discharged, it is suggested to claim refund of such tax.
- Splitting the total bills towards accommodation, food and beverages, etc. would help the customer for deciding eligible ITC. There is no restriction for availing ITC by the customer if the accommodation service is related to business and not for vacation of employees of the customer.

Many more.....

Conclusion:

GST is in the initial years of implementation and many grey areas needs to be clarified by the Government. The author tried to cover few aspects where presently many non-compliances are there.