“Hospitality Insights”
GST Rates Dampen or Uplift the Spirit of Hotel Industry?

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Abstract

Generating over $200 billion in revenues and employing over 40 million people in 2016, the travel and tourism industry contributed almost 10 percent to India’s GDP. Prime Minister Modi has repeatedly spoken about tourism being an intrinsic part of his vision. ‘Make in India’ and the provision for e-visas were stepped in the right direction. One almost began to believe that the travel and tourism had finally begun to receive the attention it deserved.

But recent events, such as liquor ban on highways and some provisions in the GST suggest the hospitality business has been extended a second-fiddle treatment. CGST Act, UTGST Act, and IGST Act have received the assent of the President on 12th April 2017 and now there is finality and clarity with regard to the provisions contained therein. The stage is set for the rollout of these Acts from the appointed day – 1st July 2017.

This study is an attempt to find out the impact and some suggestions to overcome confusion and anxiety among the owners of Hotels and Restaurants with regard to the liability of tax under CGST Act and SGST Act. The CGST Act and the SGST Act have more or less identical provisions and there is no change of tax liability under these Acts. SGST Act has not become law as yet. The SGST Act will have to be passed by the State Legislature of all the 31 States of Union of India and will become law when the Governor of the State shall grant the assent to the said Act. GST will definitely have an impact the sector be it a small or large scale business.

Keywords: CGST Act, SGST Act, Tourism Industry, Hotel Industry, India

Introduction

As reported by a representative from the UN World Tourism Organization (UNWTO), Tourism industry provides world’s 3rd leading export avenue with regard to a worldwide profit after fuel and chemicals. Tourism is in charge of one out of 11 jobs as well as 10% of the world’s financial outcome. Additionally, tourism’s beneficial to an overall economy may also be expanded by magnetizing a much more diverse blend of tourist arrivals, making use of e-commerce to widen the access of regional tourism businesses, moreover boost the offer to incorporate culturally, wildlife, and heritage tourism.

“AthithiDevo Bhava” (Guest is God) has been one of the principal tenets of Indian tradition since times immemorial. At present, hospitality segment (that includes tourism also) is regarded as the most rapidly growing sectors in India which are likely to grow at the rate of 9% between 2007 and 2016. The growth in travel and tourism has led to the further growth and development of hospitality sector. Subsequently, the hospitality sector is growing worldwide and promoting its actual development in a transforming multicultural environment. Hotels contribute further the output of goods as well as relevant services which create well being of their nations and communities.

Goods and Services Tax (GST) as a tax reform

Migrating to Goods and Services Tax (GST) is a time to revisit the taxation and remove the anomalies. Hotel industry (includes tourism) contributes to 6.23 percent to the National GDP and 8.78 percent of the total employment in the country.

Goods and Service Tax (GST) is a destination based consumption tax which is a levy of tax on all goods and services with the objective of expanding the tax base through wide coverage of economic
activities, mitigating the cascading effect, reduction of exemptions, enable better compliances etc. thereby resulting into formation of common national market for goods and services.

Pre GST Scenario

Hotel Sector in India is presently covered as one of the priorities of the Government and as such is allowed tax relief in the form of abatements vide N.No. 26/2012-ST dated 20.06.2012.

Presently, the hotel industry is plagued by multiple of taxes i.e., Service tax, luxury tax, and VAT which ultimately results in cascading effect (Business Today, 2017). The three taxes that are levied are the VAT and luxury tax by the States and service tax by the Centre. The VAT rate varies from state to state (generally levied between 12% to 14.5%), luxury tax depends on the room tariff and the state (generally varies from Nil to 12%). Similarly, service tax varies on the type of service. For hotels with room tariff in excess of Rs 1,000 and above, service tax is applicable at 60% of room tariff in addition to VAT (ranging between 12 to 14.5%) and luxury tax wherever applicable. In case of restaurants on the F&B bills, service tax is applicable on 40% of the bill or effective rate of 5.8% apart from VAT @ 12 to 14.5%. In case of social functions (marriage, seminars etc.) the applicable service tax rate after 30% abatement is 10.15% (Hotelier India, 2017).

When the VAT, service tax, and luxury tax are combined, the total impact goes up and lies between 20 to 27 percent. As input credit from central taxes cannot be set off against VAT liability and vice-versa, this leads to cascading effect (Jain, 2017).

The present rate of service tax is 15% including cesses viz Swachh Bharat Cess (SBC) and Krishi Kalyan Cess (KKC) (The Subramanian Committee Report on the Revenue Neutral Rate and Structure of Goods and Services Tax).

Impact in GST Regime:

Constitutional Validity of Service Tax on “Accommodation Services”

According to the Model law on GST which neither contains the exemptions nor the rates of taxation, it appears that all services in relation to hotels and restaurants would be subject to levy of GST as the same is to be treated as ‘supply’.

The Constitutional validity of service tax on the provision of Short-Term accommodation service by a hotel, guest house, etc., and service provided by restaurants was once again challenged before the Hon. Delhi High Court Federation of Hotel and Restaurant Association of India v. UOI in WP (C) No.6482 of 2011, dated 12.08.2016 [2016(44)S.T.R.3(Del.)]. The Hon’ble High Court of Delhi, in this case, upheld the constitutional validity of the levy of Service Tax on restaurant services but, struck down the validity of Service Tax on Short-Term Accommodation Services (Central Board of Excise & Customs).

Entry 62, List –II, i.e., State List, which empowers only the State Legislatures to levy a tax on Accommodation services. The said Entry reads as follows- 62 “taxes on luxuries including taxes on entertainments, amusements, betting, and gambling.” Parliament has no power to levy service tax on Accommodation services under the residuary entry in the Seventh Schedule to the Constitution. The same principle has been upheld by the Hon’ble Apex Court in Godfrey Philips India Limited v. State of UP –(2005) 2SCC 515.

Article 246 A introduced by the Constitution (One Hundred and First Amendment Act) empowers Parliaments and the Legislatures every States to tax accommodation services (Central Board of Excise & Customs).

Points

- Separate Registration for every state
- Import of service, for the purpose of business or not, will be liable for GST in India.
- Advance of money against supply and interstate branch transfer is taxable event, GST will be applicable
- Alcohol for human consumption is outside of GST for now
• Small restaurant can take the benefit of Composite Levy [Turnover below 75 lacs]

Composite Supply and Mixed Supply
When supply involves multiple (more than one) goods or services, or a combination of goods and services (Khanna & Karan, 2017).

Composite Supply
The Supply of two or more goods or services, which are naturally bundled and one of which is principal supply. It shall be deemed to be a supply of that principal supply and GST rate applicable to principal supply will berate on composite supply.
Example: Night Stay [12%] + Breakfast [18%] is composite supply. GST will be chargeable to rate applicable to principal supply i.e. Night Stay (Economic Times, 2017).

Mixed Supply
The supply of two or more individual goods or services, which are not naturally bundled, is called mixed supply. It shall be deemed to supply goods or services therein, which are attracting highest rate of GST
Example: McDonald's combo of burger [18%] + Cold drinks [28%] is the mixed supply. GST will be chargeable at the highest rate on mixed supply value (Shah, 2017).

Place of Supply Services
Which tax to be levied [CGST + SGCT or IGST] depends on the place of supply of services. The place of supply of services that are directly in relation to immovable property or such place will be the location of such property for
1. Lodging accommodation by a hotel, inn, guest house, homestay, by whatever name called.
2. Organizing any marriage or reception or business event or matters related thereto
3. Any ancillary to above services.
   If the location of the immovable property or such place is located outside India, the place of supply shall be the location of the recipient. For example, if any Indian national organizing foreign conference then GST is to be paid by such recipient of service as the import of service is liable for GST under the scope of supply (Vibhav HR, 2017).
So mostly every hotel, Tax that will be levied is CGST + SGCT and not IGST

Valuation
General provision state value of supply shall be transaction value if following conditions are satisfied
a. Transaction value having a price [paid or payable]
b. Between persons, not related.
c. And that price is the sole consideration.

Value includes
i. Taxes levied under any other than GST.
ii. Any amounts paid by the recipient that is the obligation of the supplier to pay
iii. Incidental expenses.
iv. Interest, late fee or penalty for delayed payment.
v. Subsidy realized by the supplier on the supply other than subsidies received from Central Government or State Government.
Discount after the supply of service is specifically linked to relevant invoice and ITC the component is reverse by the recipient.

Input Tax Credit
• Business’s using Food & Beverages, Outdoor Catering service will not allow ITC.
• Input tax credit on Hotel construction will not allow.
• Input tax credit of once state can be transferred and utilized to another state by applying Input Service Distributor (India Infoline News Service).
For example, A Company has Branch-A which is a registered taxable person in Andhra Pradesh conducts a conference in a hotel in Mumbai (Maharashtra) where CGST+SGST is charged by the hotel. This Company also has Branch- M which is a registered taxable person in Maharashtra. CGST-SGST has been charged by the hotel, input tax credit would not be available to Branch-A as the tax paid in Maharashtra is not a creditable tax in Andhra Pradesh. The company needs to obtain ISD registration in Maharashtra and distribute this credit entirely to Andhra Pradesh.

Depending on the provisions of Model Law, it could be asserted that hospitality industry sector is likely to be influenced both positively and negatively under the GST regime.

(i) The various taxes is definitely replaced by one single tax, the rate of which will be between 16%-18 %. The hotel sector would certainly benefit in the form of the reduced tax rate that should help out with attracting an increase in tourists in India.

(ii) There are likely to be concerned in the valuation of restaurant products and services considering the industry practice of discounts/offers/policies such as incentives. The suggested valuation guidelines are very different from the present ones and consequently, this industry needs to frame a suitable strategy for such discounts in advance which makes it an integral part of the documentation.

(iii) Service providers having centralized registration will need to secure registered in each and every state whether providing hotel services on an individual account or through the agent (franchise).

(iv) Service providers will have an alternative to take different registration or even individual business verticals which needs to be reviewed on a case by case basis.

(v) The procedure for almost all the invoices/receipts towards inward and noticeable supplies will become cumbersome as every one of them needs to be uploaded to the system.

(vi) The consistency and also a number of returns to be submitted will go up.

(vii) There is certainly a provision for GST audit in case the turnover is more as compared to the given limit.

(viii) The web-based businesses may have to update the existing models, as the VAT rate arbitrage included in the existing law may not be included in GST. Tax Collection at Source (TCS) provisions has been introduced on e-commerce operators in the Model GST Law. In spite of this, it includes no provisions associated with the collection of tax at source under the present tax plan.

(ix) Alcoholic beverages and even electricity are out of the purview of GST net. The taxation on alcoholic beverages is definitely different as compared to the single GST rate. The hotel sector consumes a lot of electrical energy as a prime consumable and levy of electricity duty would certainly also not be within GST. Consequently, the hotel sector would not manage to avail the input credit on the two things that may have an undesirable impact on this industry.

(x) The hotel sector usually spends a large sum of money on construction and renovation. They need to shift with the circumstances in order to stay competitive and attract visitors. The money paid out as taxes on the construction plans cannot be utilized as input credit to trigger the taxes paid on the services provided by the hotels and restaurants. The R&D cess that is applicable to technical expertise fees and franchise contracts in the industry is going to become a section and parcel of GST.

Industry Players Views
Hospitality Biz speaks to few industry players to gauge the impact of this development.

Nakul Anand, Chairman, FAITH
Upon implementation, this slab (28% GST) will make India hugely uncompetitive while quoting rates in the global market. A levy of 28% has the potential to create unprecedented damage to the tourism industry from which India will find it extremely difficult to recover. Not only will this impact inbound tourist traffic, but also spur the domestic meetings and conferences
Manav Thadani, Chairman - Asia Pacific, HVS

The introduction of GST is appreciated by the industry. However, to club luxury hotels along with the sin item is not correct as they have been placed in the highest bracket of 28%. Is eating in hotel restaurants a crime? Is having AC in the Indian climatic conditions a crime? At INR 5,000 (USD 80) we are at the budget level for most of our neighboring countries. If they wanted to keep a difference the slab level should have been at least double of what is prescribed. So overall I have to admit most of us are disappointed with the GST rates. HVS is already working on putting together a comparison report as to where we stand on taxes with our neighboring cities in Asia and at a global level. The question is if we are going to remain competitive enough or have we priced ourselves out of the same already.

Mandeep Lamba, MD-India, Hotels & Hospitality Group, Jones Lang LaSalle Property Consultants India

While I think it is a welcome initiative to create various tariff slabs, it really is unfair to classify hotels with a room tariff of INR 5,000 in the luxury segment to attract the highest GST tax slab. This step is regressive and will slow down our inbound tourism arrivals and make India less competitive within the region at a time the industry needs all the support it can get from the government after having witnessed almost eight consecutive years of difficult times and has been struggling to find a balance which seemed to now be in sight with operating performances showing signs of steady improvement across key cities. I do hope that the government will review its decision and look to cap the GST at 18% for the hospitality sector recognizing the sector as a leading foreign exchange earner and employment generator.

Dr. Ankur Bhatia, Executive Director, Bird Group

The hospitality industry in India, a big contributor to the country’s economic growth is on a high growth trajectory and is expected to reach INR 2,796.9 thousand crores by 2022. The industry also contributes significantly to employment, FDI and Foreign exchange. However, recently the industry has already been severely impacted by the Supreme Court liquor ban and the much-awaited Goods and Services Tax (GST) rates has come as another shocker. These high and complex GST rates will create further impediments to the industry’s growth which is still maturing. At the same time, the new tax structure will also position India poorly as a destination vis-à-vis our competitors in the international market that has much lower taxation.

Shwetank Singh, VP – Development & Asset Management, InterGlobe Hotels

The Goods and Services Tax (GST) is a great move by the government to make the tax base transparent and inclusive. It will bring in a lot of simplicity in the current taxation structure that comprises various levies and is complex for the end consumer. The hospitality sector is projected to cater to 7.2% of the GDP by 2026 and we anticipate uniformity in the tax structure for hotels that will dispel the current confusion and help us grow. As per the proposed structure, the hotels that have room rates above INR 5,000 will fall in the higher tax bracket whereas, for the mid-market and economy range, the business continues unwavering in the 18% bracket. I feel, there is a further need for the government to simplify this so as to curb any
inflationary trends due to the new tax regime.

CK Baljee, Chairman & MD, Royal Orchid Hotels
The GST rates on hospitality industry came with a big surprise for us. And for a group like ours which got 5-Star, 4-star and budget hotels in the portfolio it’s a mix of good and bad news. On one side it is positive for the budget hotels as the rates are lower than the one operating at present and will definitely ease the pockets of travelers, but on the other side staying in luxury hotels will get more expensive as it got the highest tax incidence of 28%. This will bring additional burden to guests who are choosing a luxury stay because even the restaurants in these hotels will attract 28% rate which I personally feel is a little unfair

SM Shervani, MD, Shervani Hospitality & former President, FHRAI
It is sad that in today’s day and age the government sees INR 5,000 as a luxury. India has to compete with its neighboring countries. Liquor ban, portion control, and high taxation will kill the industry. The government is charging zero tax to five-star hotel rooms which charge above INR 5,000 for their rooms. My advice to hoteliers is to give glucose free to every guest and claim to be in healthcare!

Sanjay Sood, President, HRANI
It has come as a shocker to the hospitality industry. Four tax slabs of 5%, 12%, 18% and 28% are too complex, high and uncompetitive. GST quantum of 28% on the rooms above INR 5,000 is disproportionate, excessive and absolutely contrary to the stated aim of government to promote tourism.

Garish Oberoi, VP, FHRAI & Treasurer, HRANI
Unfortunately, hotel projects are being viewed as juicy pieces of enterprise and soft targets through which the maximum can be extracted through taxes or otherwise. It is really sad to note that after various industry associations’ representations to the FM including GST Council and state/central governments, the hotels and restaurants are badly hit by the same. We are depressed to note that the hotel rooms with the tariff above INR 2,500 and up to INR 5,000 and AC restaurants with liquor bar is considered as luxury with an applicable rate of 18% and the most hurting is rooms above INR 5,000 will be levied at 28% is putting a damper on hospitality and tourism industry.

Dilip Datwani, President, HRAWI
The Government should realize that while neighboring countries like Myanmar, Thailand, Singapore, Indonesia and others levy taxes ranging from 5 to 10%, we cannot afford to have this kind of complex and high GST. This is simply not viable. Tourists will simply skip India.

Rishi Puri, VP, Lords Hotels & Resorts
Post successful initiatives like Make in India, Swachh Bharat, and Startup India, we were hoping for a more reformative GST that would have rationalized the tax structure and made India a more competitive tourism destination. Unfortunately, the recently announced GST rate for hotels will do just the opposite. By increasing the rate to 28% for mid-to-high class hotels priced above INR 5,000, inbound tourism will take a hit by at least 10%. More ironic is the zero tax on hotels with tariffs of INR 1,000 or below. The signal that is being sent out is, India would prefer only back-packers and for those with more money spends should look for other destinations.

Ritesh Agarwal, Founder & CEO, OYO
A lower tax rate for budget hotels sector will ensure that the industry’s quality upgrade continues while delivering standardized accommodation to millions of middle-class travelers. This will also save and create thousands of new jobs which could have been
impacted by higher tax rates. Hotels are the single biggest contributor to tourism industry which accounts for 7.5% of the GDP. I would like to thank hundreds of people who worked behind-the-scenes to ensure that concerns and representations of budget hoteliers were heard at the highest levels of government.


**Conclusion**

GST becoming a dynamic & comprehensive legal guideline which are designed to replace almost all of the Indirect Taxations of our Nation. For GST to work there need to be identical GST laws /procedures across states and even the center. Meanwhile, those state who will be not opposing against the execution of GST might prefer assurances that their current revenues will likely be protected.

Because it is a major indirect tax reform regulations in India, generally there would be different legislation and procedures. The majority of concerns expressed regarding the execution of GST tend to be divided into three types: i) Design Issues ii) Functional Issues iii) Infrastructure Issues

Organizations specializing in food and beverages providers could be the greatest beneficiaries of GST within the hospitality industry. Food and beverages payments include multiple components that will inflate the bills by 30-35%. A single-slab tax will certainly benefit customers as well as should lead to cost savings of 10-15% on the total bill.

The restaurant business has been stuck with high and even multiple taxations. On the other hand, liquor needs to be incorporated in GST. Exempting it defeats the actual intent of bringing in a uniform single tax framework. This enables states to include their own taxes without a cap with independent accounting needs and leads to dual-compliance for the restaurant/hotel sector. It is neither suited to 'Ease of doing business' nor for the customers, "Everybody wants consolidation of taxes as it results in greater transparency tending to assist guests and buyers understand total costs. We accepted the development," said Raj Rana, CEO, South Asia, for hotel group Carlson Rezidor. "Some states have luxury tax and that impacts room rates. If India aspires to be competitive, then the tax structures to need to be competitive."

Luxury and other service taxes in hospitality add up to above 22%, as compared to the proposed 18% under the GST regime. Overall, GST should be beneficial for the industry assuming the multiplicity of taxes will move away from food and beverages.

The lacunas in the current regime of indirect taxation in India need for the biggest milestone in this particular field for facilitating the simple doing business efficiently and effectively. Hoping that GST will likely be pinnacle which aims at developing an efficient and harmonized implementation or a destination-based tax system that will eliminate the issues faced by the industry leading to cost optimization and the free flow of transactions.

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**Tables**

### Rate of GST

#### Accommodation Service

<table>
<thead>
<tr>
<th>Room Tariff [in Rs.]</th>
<th>GST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to Rs. 999</td>
<td>Exempted [No GST]</td>
</tr>
<tr>
<td>1000 to 2499</td>
<td>12%</td>
</tr>
<tr>
<td>2500 to 7499</td>
<td>18%</td>
</tr>
<tr>
<td>5 Star Hotel &amp; Tariff Rs. 7500 or above</td>
<td>28%</td>
</tr>
</tbody>
</table>

#### Supply of Services

<table>
<thead>
<tr>
<th>Service Description</th>
<th>GST Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supply of Food or any drink in a premises Banquet Services [MICE] specially arranged for organizing a function together with renting of such premises</td>
<td>18%</td>
</tr>
<tr>
<td>Services by way of admission to entertainment events or access to facilities including casinos, ballroom or any event</td>
<td>28%</td>
</tr>
</tbody>
</table>

#### Catering Service

<table>
<thead>
<tr>
<th>Service Description</th>
<th>GST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supply of Food or any drink in outdoor catering</td>
<td>18%</td>
</tr>
</tbody>
</table>
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