

GST – Restaurant services provided through E-commerce operators

Notification 17/2021 CT (Rate) dated 18 November 2021, effective 1 January 2022, makes E-commerce operators (ECOs) liable to pay GST on following services provided through them, as if they are the service suppliers, by inserting section 9(5)(iv):

- a. Supply of services of transportation of passengers by a radio taxi, motor cab, maxi cab, motorcycle, omnibus or any other motor vehicle. (Earlier transportation of passengers only by a radio taxi, motor cab, maxi cab and motor cycle were covered).
- b. Supply of restaurant service other than (i.e., excepting) the services supplied by *restaurant, eating joints etc. located at specified premises*.

This article deals with restaurant services by E-commerce Operators (ECOs), e.g., Swiggy, Zomato and other food delivery apps/service providers.

'Restaurant service' means supply, by way of or as part of any service, of foods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

What is specified premises?

Specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation above INR 7,500 per unit per day or equivalent. (Notification no. 17/2021 CT Rate referred supra)

Example

Hotel Taj President provides hotel accommodation service. It has various rooms having declared tariff of INR 4,000, INR 5,000, INR 7,000, and INR 10,000 per unit per day. A restaurant in Hotel Taj President supplies restaurant services through Swiggy. **Whether Hotel Taj President is termed as 'Specified Premises' under GST?**

Answer: YES. The definition reads as: hotel accommodation service having declared tariff of **any unit of accommodation** above INR 7,500 per unit per day. Because Hotel Taj President has a room with a declared tariff of above INR 7,500 per unit per day, Hotel Taj President is termed 'specified premises.'

Is Swiggy liable to pay GST on restaurant service supplied by a restaurant in Hotel Taj President?

Answer: NO, since section 9(5)(iv) (inserted through Notification 7/2021 CT) reads as: "Supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises".

As seen earlier, Hotel Taj President falls under the definition of specified premises, and the restaurant supplying the 'service' is located at the specified premises. Hence, Swiggy is not liable to pay GST, but the restaurant located in Taj President is liable to pay it on supply of restaurant service through Swiggy.

On the other hand, if a restaurant like Mainland China (with no room/hotel accommodation facility) delivers food through Swiggy, then Swiggy is liable to pay GST and comply with relevant provisions. Also, the same would be the case where Swiggy delivers food from a hotel with the highest room tariff below INR 7,500.

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CBIC issued various clarifications vide *Circular No 167/23/2021 – GST* on 17 December 2021, which is attached.

Accordingly, the GST rate on restaurant services is 5% without ITC. Also, the ECOs will have to discharge GST entirely in cash.

A. Likely impact of the notification on customers

1. Restaurant not registered under GST

Earlier, no GST was applicable on restaurant service supplied through ECO by unregistered restaurants. But now, GST is applicable on restaurant service (by unregistered restaurants) supplied through ECO. This would probably increase the price for customers, as more restaurant services will come within the tax net.

2. Restaurants who opted for composition levy under GST

Earlier, no GST was applicable on restaurant service supplied through ECO when the restaurant opted for a composition levy under GST. But now, GST is applicable on restaurant service provided through ECO even if the restaurant has opted for a composition levy under GST. This would probably increase the price for customers.

B. Likely impact of the notification on ECO

Earlier, the supplier was required to raise an invoice in case restaurant service was supplied through ECO. Now, ECO is required to raise an invoice for restaurant service supplied through it. This will increase the compliance burden for ECO.

C. Likely impact of the notification on restaurants

Restaurants need to bifurcate the restaurant services supplied through ECO and restaurant services supplied by them directly for billing purposes.

E.g., Dominos supplies restaurant services through other ECOs and its own App.

- For restaurant services supplied through ECO, the invoice is required to be issued by ECO.
- For restaurant services supplied through its App, Dominos is required to issue the invoice.

Weblink <https://cbic-gst.gov.in/pdf/central-tax-rate/Notf-17-2021-english-CGST.pdf>
<https://cbic-gst.gov.in/pdf/Circular-167-17-12-2021-GST.pdf>

Therefore

With effect from 1 January 2022, there is an increased compliance burden on the restaurants and the ECOs. The hitherto exempt supply of unregistered restaurants & restaurants opting for composition levy will fall under the GST purview, thereby increasing the cost to the end-consumers.