

Service Tax Provisions Related To Bar & Restaurant Services

Prepared by

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With effect from July 1, 2012, Service is defined under Section 65B(44) of Chapter V of the Finance Act, 1994 (“the Finance Act”) means any activity carried out by a person for another person for a consideration is service, which includes a declared service. Further service tax is applicable unless said service falls under the negative list of services or otherwise exempted specifically.

In terms of Clause (i) of Section 66E, service portion in an activity wherein goods, being food or other articles of human consumption or any drink is supplied in any manner as a part of the activity is a declared service. Thus it implies that service provided by restaurant or caterer is a declared service chargeable to service tax.

Does every Bar & Restaurant Servicer provider need to charge Service Tax?

No, each & every Bar & Restaurant Servicer provider need not to charge Service Tax.

1. The Government vide S. No. 19 of Mega Notification No. 25/2012-ST dated June 20, 2012 (“Notification 25/2012”) read with notification No. 03/2013-ST dated March 1, 2013 (“Notification 03/2013”) granted exemption from payment of service tax to restaurants, eating joint or a mess providing service in relation to food or beverages, other than those having facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.

Resultantly, now, all air-conditioned restaurants, eating joints or a mess including eating joints or mess which are run by companies for the benefit of their employees or run by clubs, associations or Hospitals or by State owned Tourist Homes and air-conditioned restaurants like Pizza huts, McDonalds, KFC, etc., have come under the service tax net irrespective of fact whether they serve alcoholic beverages or not.

***Non Air Condition Restaurant, whether serving liquor or not, would continue to enjoy exemption from service tax. Government thinks A.C. is more harmful than liquor.

Therefore following points should be kept in mind :

- a) The exemption from service tax to restaurants, eating joints, mess etc. will be available only when such restaurant doesn't have the facility of air conditioning or central air heating in any part of the establishment, at any time during the year.
- b) **AC facility for part of the year:** The service tax will be levied even where the air-conditioning facility has operated for a part of the year or in any part of establishment.

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2. **Exemption to Small Scale Service Provider:** The benefit of Service Tax exemption would be available to small scale service providers (AC Restaurants)

- (a) up to aggregate value not exceeding ten lakh rupees in any financial year
- (b) from the whole of the service tax leviable thereon U/S 66B of the said Finance Act in terms of Notification No. 33/2012-ST dated 20-6-2012
- (c) Provided the aggregate value of taxable services from all premises in preceding financial year does not exceed ten lakh rupees.

Further, it is to be noted that this exemption shall not apply to,-

- (i) Taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or
- (ii) Such value of taxable services in respect of which service tax shall be paid under Reverse Charge as specified under sub-section (2) of section 68 of the Finance Act read with Service Tax Rules, 1994.

Changes brought by The Finance Act, 2013

	Before 01/04/2013	01/04/2013 onwards
Bars & Restaurants Services covered within the ambit of Service Tax	<p>Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having</p> <ul style="list-style-type: none">• he facility of air- conditioning or central air-heating in any part of the establishment , at any time during the year, and• license to serve alcoholic beverages.	<ul style="list-style-type: none">• he facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.

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Value on which Service Tax is leviable

The table below shows the taxable portion:

Sl. No.	Description	% of the total amount on which Service Tax to be levied
(1)	(2)	(3)
1.	Service portion in an activity wherein goods, being food or any other article of human consumption or any drink(whether or not intoxicating) is supplied in any manner as a part of the activity, at a restaurant	40
2.	Service portion in outdoor catering wherein goods, being food or any other article of human consumption or any drink(whether or not intoxicating) is supplied in any manner as a part of such outdoor catering	60

It is to be noted that when the food is not being served in a restaurant and is being served as part of outdoor catering, service tax should be levied on 60% of the Total Bill.

Notes :

1. The provider of taxable service shall not take CENVAT credit of duties or cess paid on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986).”.
2. The Service Tax charged on bill amount excluding VAT.

Example of Computation of Service Tax :

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Total Food Bill	Rs. 500
Service Charges*	<u>Rs. 50</u>
Total	Rs. 550
VAT @ 12.5%	<u>Rs. 69</u>
Total Amount before Service Tax	Rs. 619
Service Tax Rate	12.36%
Proportion on which Service Tax to be charged	40%
Net Effective Rate of Service Tax	4.94%
Amount on which Service Tax is to be paid	Rs. 550
	(Rs.500+Rs.50)
Total Amt. of Service Tax (4.94% of Rs.550)	Rs. 27
Total amount payable by Customer	Rs. 646
	(Rs.619+Rs.27)

*Service Charges : This is a charge levied by the Restaurant Owners as payment for the Services rendered like serving the food etc.

About Nathvani Consultants:

We render professional service in the field of service tax compliance in relation to filing of returns, payment of taxes, guidance on manner of charging tax, etc. We are currently providing our services to many reputed clients since the introduction of Service Tax. We will welcome any enquiry from your end.

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