



## NITYA'S INSIGHT: RATE OF GST ON CANTEEN SERVICES – RECENT AMENDMENT

August 21, 2018

## A. AMENDMENT IN RATE OF GST

The GST celebrated its 1<sup>st</sup> anniversary on July 1, 2018 amidst a mixed bag of emotions of pros and cons, reliefs and uncertainty.

One of the issues which the taxpayers have been grappling for last 1 year is the rate of GST that the canteen contractors ('vendors') are required to charge on the provision of catering services for the taxpayers. The issue gained importance specifically in the light of the fact that credit on such service is barred under GST law.

Till July 26, 2018, the vendors were charging different rates of tax on their services *viz.* 5% or 18%. In the latter case, the cost of such services shot up by 13%.

The issue was considered by GST Council in its 28<sup>th</sup> meeting and basis their recommendation, the Government issued Notification No.13/2018-Central Tax (Rate) dated July 26, 2018 ('Amending Notification') substituting Entry 7(i) of the Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017 ('Rate Notification'). The amendment clarifies that the rate of tax applicable on these services is 5%.

In this context, we have tabulated the applicable rate of tax on these services during different periods effective from July 1, 2017 hereunder:

Nature of Canteen	Rate charged by Vendors	Correct rate to be charged by Vendors	Rate charged by Company	Correct rate to be charged by Company	Way Forward
<b>July 1, 2017 to November 13, 2017</b>					
A.C. Canteen	18%	18%	18%	18%	Credit Note or Refund for excess tax charged by vendor or Company (Refer Note-2)
Non-A.C. Canteen	18%	12%	18%	12%	Credit Note or Refund for excess tax charged by vendor or Company (Refer Note-2)
<b>November 14, 2017 to July 26, 2018</b> ( <i>Distinction in rate of tax for A.C. and Non-A.C. Canteen removed</i> ) ( <i>The amendment made on July 27, 2018 is retrospective – Refer Note-1</i> )					
Canteen (A.C. or Non A.C.)	18%	5%	18% / 5%	5%	Credit Note or Refund for excess tax charged by vendor or Company (Refer Note-2)
<b>July 27, 2018 onwards</b>					
Canteen (A.C. or Non A.C.)	5%	5%	5%	5%	Invoice raised on or after July 27, 2018 will attract 5% if payment is made post July 27, 2018 [Section 14 of the Central Goods and Services Tax Act, 2017]

## Note-1: Retrospective nature of amendment

Based on the following reasons, we are of the view that the present amendment is retrospective in nature:

### **1. Explanation is a tool to clarify the law**

Explanation provided or inserted in any provision is meant only to explain the meaning of the words contained in the provision. An Explanation harmonizes and clears up any ambiguity in the main provision<sup>1</sup>.

Hence, the recently added Explanation only reiterates what was already stipulated under the main Entry 7(i) that the rate of GST on services provided by canteen is 5%.

Further, the Press Note dated July 21, 2018 issued on changes made in 28<sup>th</sup> GST Council meeting, states that the insertion of Explanation to Entry 7(i) of Rate Notification is only to rationalize the entry and clarify that rate of tax on outsourced caterer is 5%.

### **2. Principles of declaratory laws and their retrospective applicability**

The legal jurisprudence and principles of interpretation of a statute contains a concept of declaratory statutes.

A declaratory provision removes existing doubts or declares the meaning or effect of any statute. A declaratory provision can never be interpreted to be prospective in nature, else the amendment would not serve its object<sup>2</sup>.

The Supreme Court on several instances<sup>3</sup>, held that a provision (proviso, explanation etc.) inserted to remedy unintended consequences or an amendment re-defining an expression to give clarity to intent of the legislature, will be declaratory and have retrospective applicability.

We have already discussed that the Amending Notification was issued only to clarify the scope of Entry 7(i) of Rate Notification. Thus, being in nature of declaratory provision, it will apply retrospectively.

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<sup>1</sup> Refer Pg 185-186 of Principles of Statutory Interpretations, Justice G.P. Singh, 8<sup>th</sup> Edition

<sup>2</sup> Refer Pg 429 of Principles of Statutory Interpretations, Justice G.P. Singh, 8<sup>th</sup> Edition

<sup>3</sup> Allied Motors (P) Limited v. CIT, AIR 1997 SC 1361, CIT v. Poddar Cement Private Limited, AIR 1997 SC 2623

## Note-2: Way forward for excess tax paid in past

The following options are available to taxpayers to claim adjustment of the excess tax charged by the vendors or the Company:

### **1. Credit Note**

The outsourced caterer / company can issue a credit note to the company / employees under Section 34 of the Central Goods and Services Tax Act, 2017. This provision permits raising of a credit note where a tax invoice has been issued and the tax charged on the invoice is found to exceed the tax payable.

Notably, credit note needs to be issued before October 20, 2018 for period July 2017 to March 2018.

### **2. Refund**

If the vendor is not willing to issue credit note, the Company can claim refund of excess GST charged on the ground that the burden of excess tax was borne by it. The taxpayer has to ensure that the differential amount of tax has not been expensed off and is shown as 'recoverable' under assets in its books of accounts.

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