

GST ON TOUR OPERATOR - AN ANALYSIS

A. WHO IS A TOUR OPERATOR?

Tour Operator is defined in service tax regime at Section 65 (115) of the Finance Act, 1994 as follows:

“(115) “tour operator” means any person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 or the rules made thereunder.

Explanation.- For the purposes of this clause, the expression “tour” does not include a journey organized or arranged for use by an educational body, other than a commercial training or coaching center, imparting skill or knowledge or lessons on any subject or field;”

There was no specific exemption to tour operator from payment of service tax as such but there was a notification granting abatement in value. There were three situations under service tax regime:

- a. If the gross value includes the cost of **accommodation, transportation, tourist guide, entry to monuments and other services**, the service tax was payable on 25% of the gross value.

- b. When only an **accommodation** has been booked for a client and the invoice value is inclusive of accommodation cost, the service tax was payable on 10% of the gross value.
- c. If it was a residual entry. If the invoice value is other than what is mentioned in (a) or (b) above, the service tax was payable on 40% of the gross value.

In all above situations, the benefit of abatement was available on a condition that no CENVAT credit was to be availed.

However later on vide Notification No. 04/2017-ST dated 12.01.2017, the Government of India had amended abatement available to tour operators vide notification No. 26/2012-ST dated 20.06.2012 also amended by 08/2016-ST dated 01.03.2016. With effect from 22.01.2017, the abatement of 40% of gross amount charged for any tour operator service would be available. Therefore, w.e.f. 22.01.2017, service tax would be charged on 60% of the gross amount charged for any tour operator service. Also restriction on availment of CENVAT Credit of input services had also been removed. Therefore, now CENVAT Credit of input services could be availed. The availment of benefit of abatement is subject to fulfillment of following conditions:

1) CENVAT credit on inputs and capital goods used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004;

2) The bill issued for this purpose indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour.

Comparative analysis of Change in abatement in Tour Operator service

S. No.	Tour Services	Before 22.01.2017	W.e.f. 22.01.2017	Impact
(i)	a tour, only for the purpose of arranging or booking <u>accommodation</u> for any person	Taxable Value 10% (CENVAT Credit of only tour operator bills allowed)	Taxable Value 60% (CENVAT Credit of all Input services allowed)	Taxable Value increased but CENVAT of all input services allowed
(ii)	tours other than (i) above	Taxable Value 30% (CENVAT Credit of only tour operator bills allowed)	Taxable Value 60% (CENVAT Credit of all Input services allowed)	Taxable Value increased but CENVAT of all input services allowed

Coming on liability of tax on tour operator under **GST regime**, no specific definition seems to be there. **Notification No. 11/2017-CT (Rate) dated 28.06.2017 at Sl. No. 23** lays down the applicable rate of GST on tour operator. The SAC code is 9985 under the description **“Support Service”**. There is an

explanation given, which can be taken as a definition pertaining to tour operator. It says:

“Explanation- "tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours.”

Further the explanation to SAC code 998555 says:-

“This service code includes arranging, assembling, and marketing package tours pre-packaged tours, domestic and international; custom package tours for groups, domestic and international

Note: Such a package usually includes buying and reselling passenger and baggage transportation, accommodation, food and sightseeing services. The resulting package tours may be sold to individuals, travel agents or other tour operators.”

The definition is more or less akin to the definition that was given in service tax.

B. GST RATE STRUCTURE

Serial No. 23 of above notification says supply of tour operator service is subjected to levy of GST @ 5% on two conditions:

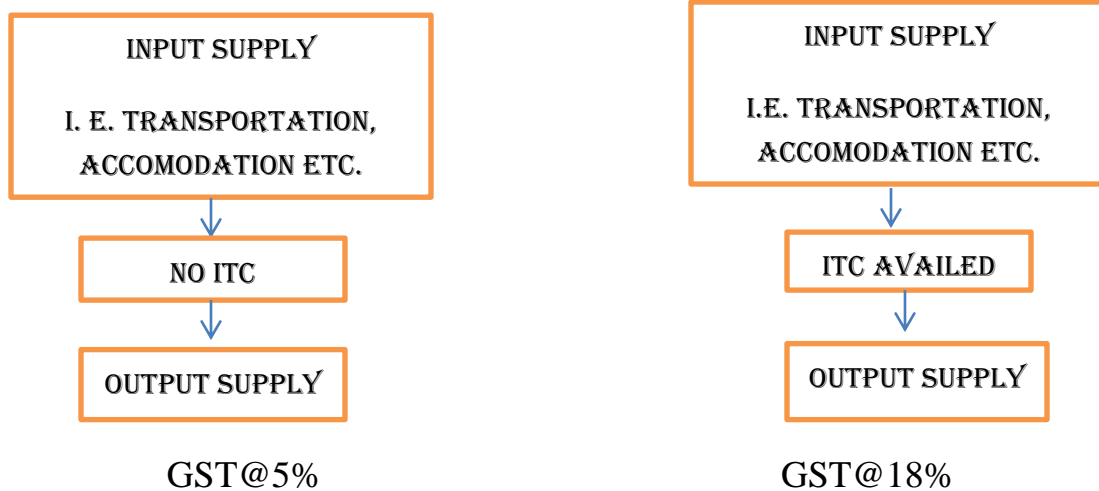
- a. Input tax credit of goods and services used in supplying the service has not been taken;
- b. The bill issued for supply of service indicates that it is inclusive of charges of accommodation and transportation required for such a tour and that the amount charged in the bill is the gross amount charged for such a tax.

The above entry means that in order to pay GST @ 5%, both the above conditions are necessary to be fulfilled. In the absence of meeting anyone of the above condition the GST @18% will get attracted. This aspect needs to be analyzed.

Following different options are available to a tour operator:-

- a. If the tour operator prefers to avail ITC, he will go out of entry at serial no. 23(I) and will go under entry no. 23(III). The GST on output supply will be 18% in this option.
- b. If the gross amount in the bill does not include any of the charges relating either to the transportation or accommodation, still, one goes out of entry at S. No. 23 (I) and will fall under Sl. No. 23(III). The GST @18% will be payable on outward supply.

The above option gives rise to following situations:



Its implication can be understood in following manner:

A= GST on input transportation

B= GST on accommodation

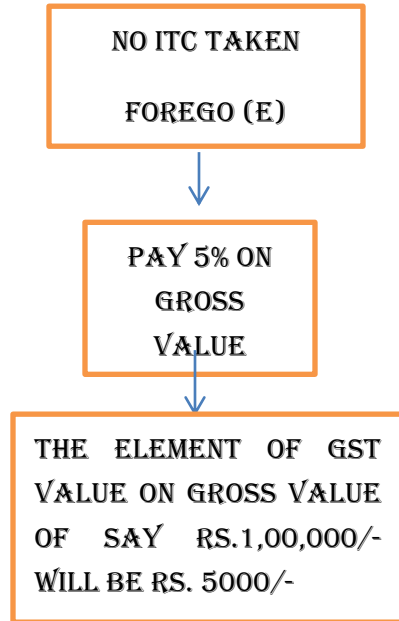
C= GST on other services

D= GST on commission of sub-agent or e-commerce operator

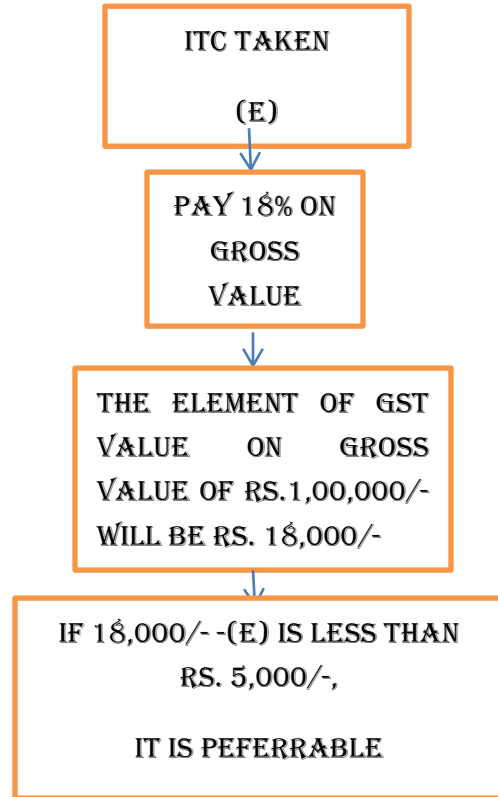
E= A+B+C+D

Total ITC available is = E

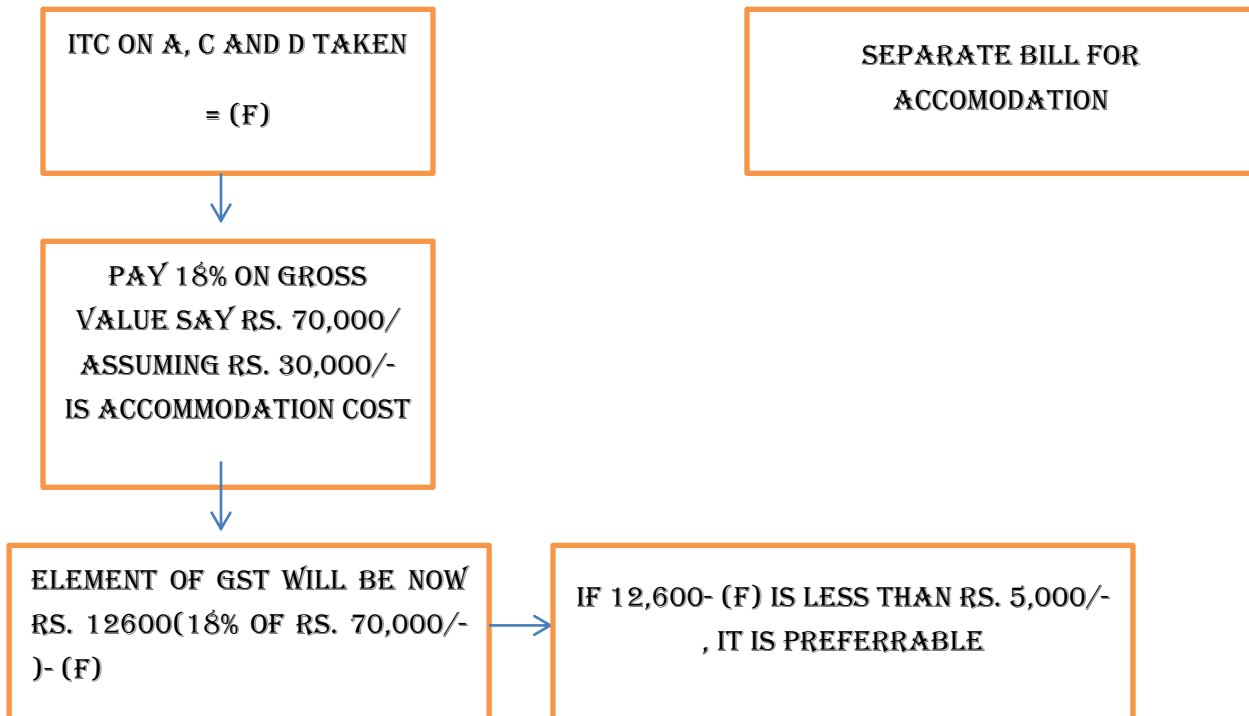
OPTION I



OPTION II



OPTION III



C. INBOUND AND OUTBOUND TOUR

A tour operator organizes a tour for an Indian, which is outbound meaning that the trip will be outside India. In case of *Cox and Kings India Ltd. Vs. Commissioner*, it was held by Hon'ble CESTAT that service tax is not payable as the place of supply is outside India. Though the department can always take a stand that the money is being charged from client at the time of booking in India and that the place of supply is India. If one goes through section 12 and 13 of the IGST Act, 2017.

- a. The place of supply in case of supply of accommodation etc. is also the place where the hotel is located.
- b. The place of supply for supply of food etc. is also the place where the restaurant is located.
- c. The place of supply for admission to any sort of event is the place where the event is being held.
- d. The place of supply in case of transportation is the place where the passenger embarks on the conveyance.

There is however no specific place of supply mentioned for tour operator.

Likewise for Inbound foreign tourists, *Hon'ble High Court of Delhi in the case of Indian Association of Tour Operator Vs. UOI*, held that since the service provided to them are paid for in-convertible currency, it will not be amenable to service tax.

The above judgments were in service tax regime. The place of supply again has to be determined as per section 12 and section 13 of the IGST Act, 2017.

D. APPLICABILITY OF RCM ON TOUR OPERATOR

In normal course, a tour operator located in India has the business relationship with the various hotel, cab operators, tour guides etc. located in foreign territory. As per these agreements, the tour operator pays the charges incurred on these expenses to

the service provider located abroad i.e. non-taxable territory. The entry at Sl. No. 1 of Notification 10/2017-CT (Rate) dated 28.06.2017 lays down that any service supplied by any person who is located in a non-taxable territory to any person who is located in a taxable territory, the liability to pay tax is on the recipient i.e. the tour operator, here in India, subject to place of supply as given in section 12 and 13 of the IGST Act, 2017.

E. GST ON TRAVEL AGENT

Though, most of the companies do operate as Tour Operator services, the tour operator may provide services as an agent as well and charge commission on its service and take reimbursement of the expenses that they incurred in providing such services. This model is prevalent in case of small /startup travel agencies. In this model, the agent must pay tax only on the commission/ markup it made on the complete package and not on the complete invoice amount which is not even its income. This form of service is categorized as 'Intermediary' and services like Boarding & Lodging etc. is taken by the agent on behalf of customer. The entity will act as 'Pure Agent' and take reimbursement on actual basis from the customer.

Section 2(13) of IGST Act, 2017 defines Intermediary as under:

“Intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account”

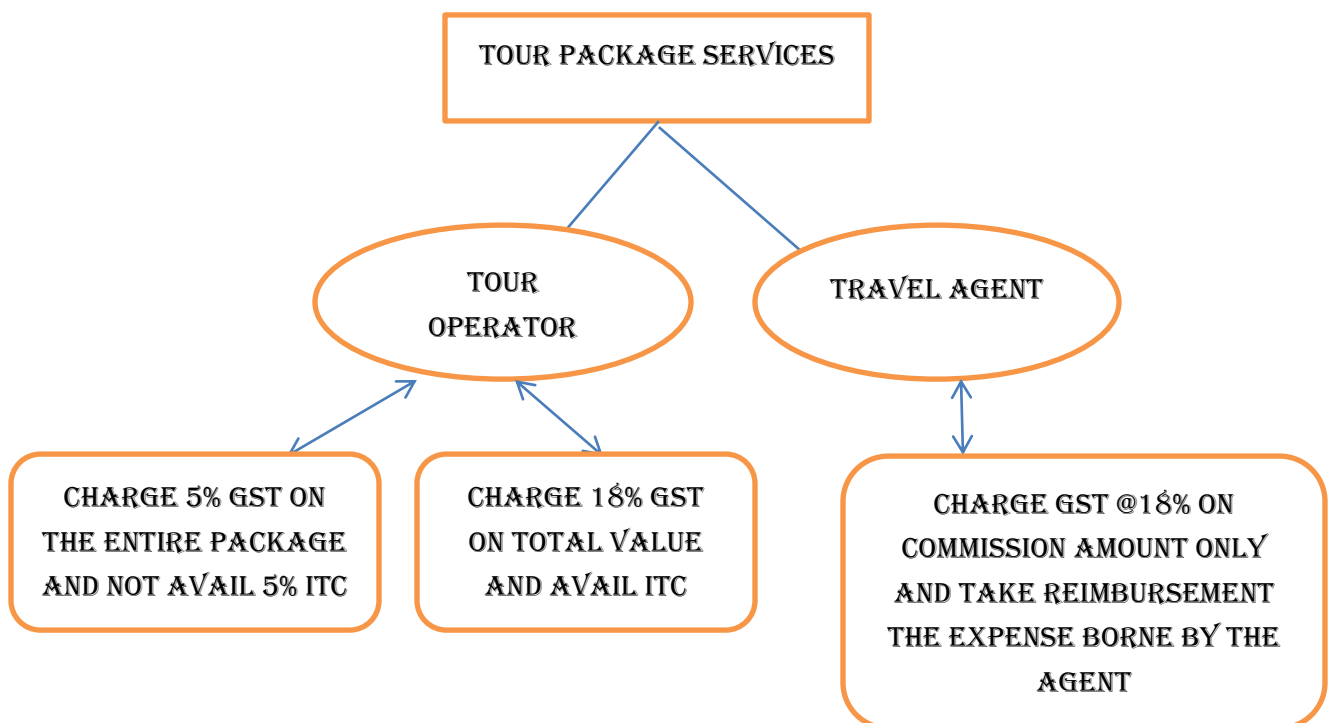
Explanation to Rule 33 of CGST Rules, 2017 further defines ‘Pure Agent’,

“Pure agent” means a person who enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both; neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply; does not use for his own interest such goods or services so procured; and receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.”

In this case, the agent independently enters into an agreement with the customer to act as his pure agent and authorize itself to incur the expenses for services like hotel booking, booking local transports, miscellaneous activities etc. on behalf of traveller. The agent, in this case, will charge its commission from the traveller and will take reimbursement of the expenses on actual basis which it incurred on behalf of customer.

For example, if an agent books the package of the traveller let's say for Rs. 1,60,000/- and keeps his commission as Rs. 10,000/- from this complete package then he would have to pay 18% on this Rs. 10,000/- commission only i.e. Rs. 1,800/-. In this case, he will indicate separately in the invoice for the payment made by the tour operator as pure agent on behalf of the customer.

Explanation of above discussion by way of graphical flow chart:



Hence on concluding our article, it is important to mention that the GST shall be charged and paid at the time of payment or invoice whichever is earlier. Therefore, for the purpose of GST, the tour operator shall recognize its revenue on the payment basis.