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Judicial Tussle over Service Tax on Restaurants

Introduction

The basic premise of any Welfare State is to fulfil the increasing developmental needs of the country and its citizens by way of public expenditure. Despite being a developing country, India still is striving to fulfil the prime responsibility and obligations of a welfare State within its limited resources. It is an irrefutable fact that in India, services constitute a larger proportion of the consumption of the rich rather than of the poor as the demand for services is income elastic. Depending upon the socio-economic conditions and compulsions, each country needs to devise a taxation mechanism that taxes its service sector, as it occupies the centre stage in almost all economies. Although there are countries that chose to tax all the services with very few and limited exemptions, India followed the approach of selective taxation.

Evaluating the figures taken from Economic Survey 2012-13, it was reported that, "*Service tax has now emerged as a significant contributor to tax revenue over the last 19 years. Even compared to 2007-08, its share as a percentage of gross tax revenue has increased more, compared with that in excise and Customs. In 2007-08 the share of indirect tax revenue as a per cent of gross tax revenue was 47.0 per cent, which is now 46.8 per cent (BE) in 2012-13.*"

The concept of service tax was introduced in India by the Finance Act, 1994, where only three services were taxed, whereas it now covers around eighty-one services. The Service Tax is legislated by the Parliament under the residuary entry i.e. Entry 97 of List I of the Seventh Schedule to the Constitution of India. Service Tax was levied on the recommendations made by Dr. Raja Chelliah headed Tax Reforms Committee, who pointed out that the indirect taxes at the central level needed to be broadly neutral in relation to production and consumption of goods and should, in course of time, cover both commodities and services. Outlining the basic objective of Service Tax Regime in India, the committee stated that Service Tax Regime in India needed to broaden the tax base, augment revenue and involve larger participation of citizens in the economic development of the nation.

Since its inception, service tax law has undergone a huge paradigm shift from the selective approach to the negative list based approach of taxation of services. Further, Sec. 65 of the Finance Act deals with the taxable services, which describes "Taxable Service" as any

service provided or to be provided to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner. Furthermore, the Central Government by the Finance Act, 2011, an amendment was made to Chapter V of the Finance Act 1994, relating to service tax, inserting sub clause (zzzzv) and (zzzzw) to clause 105 of Section 65, thereby, including the air conditioned restaurants which have license to serve alcoholic beverages within the service tax net. Restaurants / hotels provide a number of services in combination with the meal and beverages for consolidated charge. The services related to the use of restaurant space and furniture, air conditioning, well dressed waiters, linen, cutlery, crockery, music on a dance floor, etc. sub clause (zzzzv) authorise Central Government to levy service tax on service provided or to be provided to any person, by a restaurant, by whatever name called, having the facility of air conditioning in any part of the establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises.

This issue of tax on restaurants / hotels or like institutions is multifaceted and controversial one. The Parliament of India by 46th Constitutional amendment inserted Article 366 (29A) (f), thereby allowing State Governments to levy Sales tax on the supply of food by restaurants / hotels and other like institutions, which was affirmed by the Supreme Court of India as well. As a result, restaurants paid sales tax to respective States as per respective State VAT Acts. In the year 2011, Chapter V of the Finance Act 1994, relating to service tax, was amended and Sec.65 (105) (zzzzv) was inserted. The insertion of this Sec.65 (105) (zzzzv) levied the service tax on the supply of the food by restaurant/ hotels or like institutions, as a result the food items sold by restaurants were charged for dual taxes one by Central taxing authorities and other by the State taxing authorities. However, the issue as to whether the sale of food and/or liquor made by Restaurants/ Hotels or like institutions would be levied for sales tax (VAT) by concerned State or leviable to Service tax by central government arisen which till date not resolved and various High Courts are holding different and contrasting view on the issue. It remains to be seen, if the legislature steps in to remedy this issue.

Position prior to Finance Act, 2011

To enter the domain into the field of taxation, States explore the same either through legislature or through interpretation; as sales tax is one of the major sources of the revenue for States. Constitution of India as per Entry 54 in List II (State List) allows the States to levy VAT on supply of food. In pursuance of this, State of Punjab levied VAT on the lodging/boarding facilities provided by hotels where food served (inclusive of accommodation + food + other

incidental activities). SC, deciding on the said issue, held that transaction was essentially of service (accommodation) and additionally food was served at prescribed hours, which was incidental to the service of accommodation.[1] Further, SC held that meals served to the casual visitors in the restaurant/ hotels would not amount to the sale, as the supply of food is the service rendered for the satisfaction of the human need (bodily want).[2]

Table below is the list of cases along with observations which lead to the Constitutional 46th amendment:

Table: 1

S. No.	Case name	Issue	Observations
1.	State of Punjab vs. Associated Hotels of India Limited.[3]	Whether or not the sales tax would be payable by the hotelier on meals at fixed hours served to the guests coming for stay.	➢ Transaction was essentially of service in the performance of which hotelier serves the meals at stated hours. ➢ The Revenue could not split transaction into two parts, one of service and the other of sale of food-stuffs, and to split up also the bill charged by the hotelier as consisting of charges for lodging and charges for food-stuff served.
2.	Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi.[4]	"Whether or not the service of meals to casual visitors in the Restaurant is taxable as a sale when charges are lump sum per meal.	➢ True essence of the transaction was service and it did not involve a transfer of the general property in the food supplied. Thus, could not be split up into two parts, one of service and the other of sale of foodstuffs. ➢ Service of meals to non-residents in the restaurant was in the nature of service provided to the guests and was not taxable under sales tax. A restaurateur provides many services like linen, crockery, music, cutlery etc. in addition to the supply of food. ➢ The supply of meals must be regarded as ministering to a bodily want or to the satisfaction of a human need.

[1] State of Punjab v/s M/s Associated Hotels of India Limited reported in (1972) 1 SCC 472.
[2] M/s Northern India Caterers (India) Limited v/s Lt. Governor of Delhi, reported in (1980) 2 SCC 167.
[3] Supra 1
[4] Supra 2

The two judgments from the Apex Court creates confusion as to whether, while taxing sale or purchase of goods the State Legislature can impose a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration. Therefore, Parliament of India, to put an end to the said confusion, amended the Article 366 of the Constitution to include a tax on the supply of food or drinks by way of service or as a part of service (Deemed sale) within the exclusive power of the State Legislatures under Entry 54 of the List II.[5] As amended, Article 366(29A) defines the term 'tax on the sale or purchase of the goods' and empower the State to impose sales tax on sale/ purchase of all kinds of goods except the newspaper and inter-State sale. Furthermore, Article 366(29A) (f) permits the State to impose a tax on the supply of food and drink by whatever mode it may be made.

In addition, Article 366 (29A) (f) of the Constitution made it possible for the State to levy sales tax on the food served by hotels/ restaurants where the sale of food was made as part of the service by hotels/ restaurants. This, 46th Amendment was further challenged on the ground of nature of activity and scope of the Entry 54 of second list of 7th Schedule, which allows the State to levy taxes on the sale or purchase of goods other than newspapers, introduced the concept of deemed sale as to include the transactions of nature of predominant service, where along with service sale of some eatable made.

Following are the leading cases on the validity of the Article 366 (29A) (f), which levies sales tax on the supply of food items by restaurant to its patrons.

Table: 2

S. No.	Case name	Issue	Observations
1.	K. Damodarasamy Naidu and Bros etc. vs. State of Tamil Nadu anr. etc.[6]	Whether or not the States are entitled to levy sales tax on the sale of food and drink as per the Entry 54 of the List-II of the Seventh Schedule to the Constitution, which allows the State to levy 'taxes on	➢ While selling food items, soft drinks, water and other edibles at such counters the services are materially absent or minimal. Therefore, the tax is on the supply of food or drink and it is not of relevance that the supply is by way of a service or as part of a service. In our view, therefore, the price that the customer pays for the supply of

[5] Article 366 (29A), inserted by Constitution (Forty Sixth Amendment) Act, 1982,
[6] 1999 (3) Suppl. SCR 597

		the sale or purchase of goods other than newspapers'.	food in a restaurant cannot be split up.
2.	Tamil Nadu Kalyana Mandapam Assn. vs. Union of India.[7]	1. Whether or not the imposition of service tax on the services rendered by the mandap-keepers was intra vires the Article 366 (29A) (f) of the Constitution. 2. Whether or not the imposition of service tax on the catering services, would amount to a tax on sale and purchase of goods. .	➢ A tax on services rendered by mandap-keepers and outdoor caterers is in pith and substance, a tax on services and not a tax on sale of goods or on hire purchase activities. ➢ Article 366(29A) (f) permits the State to impose a tax on the supply of food and drink by whatever mode it may be made. It does not conceptually or otherwise includes the supply to services within the definition of sale and purchase of goods. ➢ Taxable services, therefore, could include the mere providing of premises on a temporary basis for organizing any official, social or business functions, but would also include other facilities supplied in relation thereto. No distinction from restaurants, hotels etc. which provide limited access to property for specific purpose. ➢ Levy of service tax on Kalyana Mandapams upheld; Tax on catering services is not a tax on sale and purchase of goods

Post the Kerala HC ruling, leading tax expert, posed a strong question in relation to declared service and stated, "*the clause 29A was introduced, as it was felt necessary by the experts to declare those transactions as deemed sale of goods which could otherwise lead to a dilemma in classification between sale of goods and/or services. Yet another question arising out of this situation is - shouldn't there be a similar provision in the Constitution to declare the other portion of such transactions as the deemed/declared services, before the same could be brought under the tax net of the central government?*"

[7] (2004) 5 SCC 632

It is interesting to note that the observation of the Apex Court in abovementioned two cases were contradictory and the question as to whether the transaction is sale or service and whether the bill be allowed to split-up again raised with the inception of the sub clause (zzzzv) and (zzzzw) to clause 105 of Section 65, of Finance Act 1994, by Finance (Amendment) Act, 2011. The Court, in Damodarasamy Naidu case (supra), held that State can levy sales tax on sale of food by restaurant/ hotel, and observed that hotels/ restaurants provide service as part of the sale and the transaction cannot be split up, whereas, in TN Kalyana Mandapams association (supra) the SC observed that catering services rendered would not amount to sale of goods. Although

Judicial Controversy post service tax levy on 'Restaraunts' - Hospitality Industry in a fix!

"No tax shall be levied or collected except by authority of law." The aforementioned provision implies that a tax can only be levied by the Government (Centre/ State). Entry 92C of the Union List read as "Taxes on the Services" which means that Central government can levy Service Tax. Service tax was introduced in India by the Finance Act, 1994. Finance Act 2011 made an amendment to Chapter V of the Finance Act 1994, relating to service tax, inserting sub clause (zzzzv) and (zzzzw) to clause 105 of Section 65, brought a paradigm change by bringing all the listed services under Service tax regime except the services specifically exempted by exempted list or the Negative List. Amended sub clause (zzzzv) and (zzzzw) to clause 105 of Section 65 of Finance Act 1994, authorise Central Government to levy service tax on service provided or to be provided to any person, by a restaurant, by whatever name called, having the facility of air conditioning in any part of the establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises. Central Government further amended the rule 2C of the Service Tax (Determination of Value) Rules, 2006, with effect from May 1, 2011, which determines the value of service portion involved in the supply of food or any article of the human consumption or any drink (toxic/ non-toxic) in a restaurant/hotel or as outdoor catering.

Following table specifies the percentage of the total amount charged for such supply of food or drink in any manner as a part of the activity at a restaurant or as outdoor catering:-

Table: 3[8]

S. No.	Description	Percentage of the total amount

[8] Notification No.01/2006-ST, dated 01-03-2006

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

Normal rate of service tax as per Determination of Value Rules, 2006, is 12.36% and from the table we can see that the Service Tax payable on food served in a restaurant would be 12.36% on 40% (or 4.94%) of the total bill amount. Which means that as per law restaurants/ hotels can charge Service Tax on the food they supply on the food. Ministry of Finance, Government of India by issuing circular no. 139/8/2011TRU dated 10.5.2011 clarified the scope of the said amendment. The circular States that the taxable services provided by a restaurant in other parts of the hotel like swimming pool, open area attached to the restaurant would become extensions of the restaurant and would also be made liable to service tax.

Table below is the clarification made by Revenue Department regarding the services liable to Service Tax provided by specified restaurants:

Table: 4[9]

S.No.	Question in Matter	Board's Clarification
1.	If there are more than one restaurants belonging to the same entity in a complex, out of which only one or more satisfy both the criteria relating to air-conditioning and licence to serve liquor, will the other restaurant(s) be also liable to pay Service Tax?	Service Tax is leviable on the service provide by a restaurant which satisfies two conditions: (i) it should have the facility of air conditioning in any part of the establishment and (ii) it should have license to serve alcoholic beverages. Within the same entity, if there are more than one restaurant, which are clearly demarcated and separately named, the ones which satisfy both the criteria is only liable to service tax.
2.	Will the services provided by taxable restaurant in other parts of the hotel e.g. swimming pool, or an open area attached to a restaurant be also liable to Service Tax?	The taxable services provided by a restaurant in other parts of the hotel e.g. swimming pool, or an open area attached to the restaurant are also liable to Service Tax as these areas become extensions of the restaurant.
3.	Is the serving of food and/or beverages by way of room service	When the food is served in the room, service tax cannot be charged under the

[9] Circular No. 139/8/2011TRU, dated 10.5.2011

	liable to service tax?	restaurant service as the service is not provided in the premises of the air-conditioned restaurant with a licence to serve liquor. Also, the same cannot be charged under the Short Term Accommodation head if the bill for the food will be raised separately and it does not form part of the declared tariff.
4.	Is the value added tax imposed by States required to be included for the purpose of service tax?	For the purpose of service tax, State Value Added Tax (VAT) has to be excluded from the taxable value.

The circular further clarifies the queries and doubts rose by the various restaurants owners and defined the "declared tariff" as charges for all amenities provided in the unit of accommodation like furniture, air-conditioner, refrigerators etc., but do not include any discount offered on the published charges for such unit. The relevance of 'declared tariff' is in determining the liability to pay service tax as far as short term accommodation is concerned. However, the actual tax will be liable to be paid on the amount charged i.e. declared tariff minus any discount offered. Thus if the declared tariff is Rs 1000/-, but actual room rent charged is Rs 700/-, tax will be required to be paid @ 5% on Rs 700/-. It also declared that it is possible to levy separate tariff for the same accommodation in respect of a class of customers which can be recognized as a distinct class on an intelligible criterion.

However, it is not applicable for a single or few corporate entities. Service Tax will be charged on the total value of declared tariff (food + beverages). But where the bill is separately raised for food or beverages, and the amount is charged in the bill, such amount is not considered as part of declared tariff. Luxury tax imposed by States excluded for the purpose of determining either the declared tariff or the actual room rent. Regarding off-season prices it declared that as per the tourist season, the liability to pay Service Tax shall be only on the declared tariff for the accommodation where the published/printed tariff is above Rupees 1000/-. However, the revision in tariff should be made uniformly applicable to all customers and declared when such change takes place. Notification No. 3-2013-ST substituted the entry 19 of the Mega exemption notification No. 25-2012-ST dealing with the service tax on the serving of food or beverages by a restaurant, eating joint or a mess. Substituted entry has widened the scope and ambit of service tax. New entry provided that restaurant/ hotels/ eating joint/ mess etc. serving the food or beverages and having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, would be leviable to service tax. Revenue further issued the Circular No. 173-8-2013-ST, regarding the doubts and question raised as to the scope and applicability of Notification No. 3-2013-ST. It says that if there is more than one restaurant in a complex, which

are clearly demarcated and separately named but food is sourced from a common kitchen, only the service provided in the specified restaurant is liable to service tax and service provided in a non air-conditioned or non centrally air- heated restaurant will not be liable to service tax.

In such cases, service provided in the non air-conditioned / non-centrally air-heated restaurant will be treated as exempted service and credit entitlement will be as per the Cenvat Credit Rules. Service provided by a specified restaurant in other areas like swimming pool or an open area attached to the restaurant, would also be levied for service tax. Revenue further declared that, if goods are sold on MRP basis (fixed under the Legal Metrology Act) they have to be excluded from total amount for the determination of value of service portion. We are not liable to pay service tax on packaged items like bottle of water or packet of chips we purchases from the restaurant. The above discussion clear all the doubts as to which institutions are liable to pay service tax and also the quantum of levy.

These changes brought into the Finance Act 1994, which brought food supplied by the restaurant/ hotels into the Service Tax regime brought new controversy as it made sale of food leviable to service tax and Article 366(29A) (f), which authorises the State Government to levy sales tax on the sale of food and beverages by whatever mode it made. These two acts levy two different taxes on the same entity, one by State in form of sales tax and other by central government in form of service tax give rise to new controversy which needed judicial interpretation. Question arises, namely:-

1. Whether or not the Service tax can be imposed upon, the serving of food or beverage including alcoholic beverages which represents only sale of goods which transaction squarely falls under Entry 54 of List II (State List) of the 7th schedule to the Constitution of India, by parliament under Section 65 (105) (zzzzv) of finance Act 1994?

2. Whether or not the transaction need to be split up in service and sale part (40% as service and rest 60% as sales part) or service tax would be levied on whole transaction amount in addition to the sales tax charged on whole transaction amount by the concerned State?

These questions requiring the judicial interpretation first came before the single bench of the Kerala HC, which held that levy of service tax by Central Government, is against as Article 366 empower the State Government to impose the sales tax on the supply of the service as part of the service of goods either being food and held the sub clause (zzzzv) to clause 105

of Section 65, unconstitutional reliance was placed upon Supreme Court ruling in K. Damodarasamy Naidu.[10] This was further reaffirmed by the division bench of Kerala HC on appeal. But, the Bombay HC has rejected this view of the Kerala HC, which held the levy of the Service Tax in addition to the levy of the sales tax und sub clause (zzzzv) to clause 105 of Section 65, constitutionally valid. Bombay HC to reach this conclusion relied upon the English concept of restaurant service, where, as per hotels Proprietors Act, 1956, restaurant service was considered as service.

Reliance was additionally placed upon Mandapam-keeper case[11], wherein SC held that the services rendered by caterers along with the supply of food would predominantly be considered as services and would be liable to service tax. On second question as to the splitting of the bill, both the HC's have taken the similar view and held that the bill would always remain composite one and neither Central nor the State taxing authorities can split it up for levy of tax. This view has already been taken by the Supreme Court of India in its judgment in K. Damodarasamy Naidu[12] wherein it was observed that the tax is on the supply of food or drink and it is not of relevance that the supply is by way of a service or as part of a service. In our view, therefore, the price that the customer pays for the supply of food in a restaurant cannot be split up and in case of the State of Punjab v/s M/s Associated Hotels of India Limited,[13] wherein it held that the State's power does not extend to splitting of transactions in two parts, one of service and other of sale of foodstuff with a view to bring the later under the purview of the sales tax.

Table below depicts the three cases on the constitutional validity of the levy of the service tax along with the date of their decision and observations:

Table: 5

S. No.	Case Name	Observation
1.	Kerala classified Hotels and restaurants association vs. UOI.[14] [July 3. 2013]	➢ HC observed that Article 366 empower the State Governments to impose tax on the supply, whether it is by way of or as a part of any service of goods either being food or any other article for human consumption or any drink either intoxicating or not intoxicating whether such supply or service is for cash, deferred payment or other valuable consideration.

[10] Supra 6
[11] Supra 7
[12] Supra 6, 10
[13] Supra 1, 3
[14] 2013-TIOL-533-HC-KERALA-ST

		➢ The words "and such transfer delivery or supply of goods" is deemed to be a sale of those goods by the person making the transfer. Therefore the incidence of tax is on the supply of any goods by way of or as part of any service. When food is supplied or alcoholic beverages are supplied as part of any service, such transfer is deemed to be a sale. Therefore, the constitution permits sale of goods during service as taxable, necessarily Entry 54 has to be read giving the meaning of sale of goods as Stated in the Constitution. ➢ Regarding the imposition of service tax in respect of hotel, inn, guest house, club or camp site etc., HC observed that sub Clause (zzzzw) would contravene the Entry 62 of List II. As expression "luxuries" in Entry 62 of List II has been held by the Constitution Bench judgment of the Supreme Court in Godfrey Philips India Ltd. (Supra), wherein it is held that luxuries is an activity of enjoyment or indulgence which is costly or which is generally recognised as being beyond the necessary requirements of an average member of the society. ➢ And therefore It is declared that sub Clauses (zzzzv) and (zzzzw) to Clause 105 of Section 65 of the Finance Act 1994 as amended by the Finance Act 2011 is beyond the legislative competence of the Parliament as the sub Clauses are covered by Entry 54 and Entry 62 respectively of List II of the Seventh Schedule. ➢ Single Judge Bench of Kerala HC placed its Reliance upon the SC Constitution Bench's judgment in K. Damodarasamy Naidu.
2.	Indian Hotels and Restaurant association vs. UOI.[15] [April 8. 2014]	➢ Parliament competent to impose Service Tax on Restaurants and hotels and hence, Single Judge Kerala HC order is rejected. ➢ Parliament cannot be said to have transgressed into leave alone encroached upon the power of the State Legislature to impose a tax on sale or purchase of goods vide Entry 54 of List II. The taxing power of the Parliament and traceable to Article 248 of the Constitution of India r/w Entry 97 of List I of the Seventh Schedule enables it to impose a service tax. To enable it to so impose, the term "taxable service" has been defined. The definition of the term "taxable service" makes the nature of the tax clear and precise. Therefore, Parliament does not lack competence to impose a service tax. Furthermore, Parliament has not encroached upon the taxing powers of the State Legislature vide Entry 54 of the State List (List II). ➢ HC placed its Reliance upon Mandapam-keeper case (supra), and observed that the concept of catering admittedly includes the concept of rendering service. The

[15] 2014-TIOL-498-HC-MUM-ST

		fact that tax on the sale of the goods involved in the said service can be levied does not mean that a service tax cannot be levied on the service aspect of catering.
3.	UOI vs. Kerala Bar and Hotels association.[16] [Oct. 21. 2014]	➢ By virtue of the provision in Article 366 (29A) of the Constitution, even the service part involved in the supply of food and other articles of human consumption, is deemed as a sale to enable the States to impose tax on the same. ➢ It further, on levy of service tax in addition to sales tax viewed that since the whole of the consideration received by a restaurant owner for supply of food and other articles of the human consumption, including the service part of the transaction, is exigible to tax by the State by virtue of the constitutional definition, it is not open to the Union to characterise the same transaction as a service for imposition and levy of service tax. Therefore, rejected the view taken by the Bombay High Court. ➢ It further rejected the Writ Appeal and upheld its own previous the decision taken by single bench.

Conclusion

Adam Smith in his book 'The Wealth of Nations' wrote that there are four important canons of taxation namely: - equity, certainty, convenience, and economy which are the corner stone's of any good levy of tax and all the modern democratic nations does follow them. These cannons are also inscribed in spirit in our Constitution as well and a levy should follow all these parameters before being levied. The founding fathers of our nation also believe that food is part of basic necessity and kept it out of taxing entity basket. But, with economic prosperity changes were made in the Article 366 of the Constitution of India which brought sale of food and items by certain specified restaurants (depicting Luxury) under the ambit of sales/ VAT Tax. Finance (amendment) Act 2011, in addition to the sales tax levied the Service tax on the sale of food by restaurants.

As regards the cascading effect, Bombay HC reasoned that, measure of taxation cannot affect the nature of taxation and sales tax and service tax are different in nature. Although, the Kerala HC deferred from this view which held that Article 366 categorically empowers the State government to levy tax on supply of food, even if the service was rendered in order or along with the supply of food, as it is subject matter of State List and therefore only State Government can enact on the subject. Today, except in territorial Jurisdiction of Kerala HC, all the restaurants have to charge the Service tax and have to pay on the sale/ supply of

[16] 2014-TIOL-1913-HC-KERALA-ST

food it made to its patrons. Therefore, this question requires the clarification of the Hon'ble Supreme Court of India to end the controversy.

"Because of the judgment, the real and persistent challenge faced by tax payers with regard to double taxation under indirect tax laws of a particular transaction to both the goods and the service tax is once against brought to fore."

The interpretation of the Kerala HC is more correct as double taxing of the same subject-matter is against the spirit of the good law, which is even avoided under direct tax and Double Tax Avoidance Agreements (DTAA) is an example of that, as levy needed to be based upon the four principles of taxation given by Adam smith. Either the bill is split up or the single tax be levied. Regarding, levy of single tax the excepted view of the Bombay HC that in English law the concept of restaurant originated from the historical concept of inn, which has the obligation to entertain its customers, which included the serving of the food and was considered as service as per the 'hotels Proprietors Act,1956' and therefore in India also the restaurant service is considered as service instead of sale of food, should be accepted only if there would be no levy of sales tax, which clearly needed the constitutional amendment as it required the deletion of the Article 366 (29A) (f). Till then, in my opinion, the view of the Kerala HC holds correct. And up till the time issue is not resolved by SC, patrons of the restaurants are required to pay service tax in addition to the VAT on entire bill amount.

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