

Blocked Credit on Immovable Property for Hospitality Industry - Time to Rethink?

Date: December 30,2020



**Rajat Mohan,
Senior Partner,
AMRG &
Associates**



**Priyanka
Sachdeva, Partner**

Introduction:

Prior to the pandemic, due to an increase in the disposable income with the people of India, the hospitality industry was witnessing a healthy growth and had become a major contributor to the Indian economy. Restaurants & Hotels became an imperative part of daily lifestyle. With an ever increasing emphasis on tourism in India, demand for hotels and restaurants had also increased.

One often goes to a hotel to see the dazzling infrastructure and enjoy the dining experience. Thus, a major expenditure for the hospitality industry is the cost of infrastructure and regular capital repairs and maintenance to maintain the infrastructure. The hotels and restaurants have to spend heavily to beautify their interiors in order to attract various visitors and consumers. However, the restrictions under GST on ITC of immovable property is a big hurdle to this industry as one of the major expense being of such nature only.

In this article, we will elaborate the need for ITC on spends on infrastructure by the Hotel and Restaurant industry.

Input tax credit basically is a mechanism through which output tax liability is reduced to the extent of taxes paid while procuring inputs and inputs services. Thus, it's foremost purpose is to reduce the cascading effect. However, the restriction imposed on goods or services procured for immovable property especially in case of hospitality industry breaks this chain and defeats the envisioned drive.

The definition of supply under GST includes rental of property, made or agreed to be made for a consideration in the course and furtherance of business. Thus, GST is leviable on hotel accommodation and restaurant services.

Further, the GST provision entitles every registered person to take Input Tax Credit on any supply of goods or services to him that are used or intended to be used in the course and furtherance of the business subject to certain conditions and restrictions stated therein.

The conditions for availing ITC as enlisted under GST are the following:

1. Possession of Tax Invoice or debit note or any other tax paying document as prescribed.
2. Receipt of the goods or services or both
3. Payment of tax charged to the government
4. Furnishing of return under Section 39
5. Payment of the entire invoice amount (along with the applicable taxes) to the supplier within 180 days from the invoice date.

Thus, the basic condition for availing any ITC is usage or intention of usage in the course or furtherance of business subject to certain conditions. However, there is blockage of ITC on work contract services for construction of immovable property, except when such works contract services are used for further supply of work contract services or are used for construction of immovable plant or machinery. For Instance, Mr X

constructs an office building for its headquarters. ITC will not be available on the same. However, if he constructs a blast furnace to manufacture steel, ITC will be available on the same.

ITC is also blocked on the goods or services used for construction of an immovable property, even when the immovable property is used in the course or furtherance of business. The term construction includes reconstruction, capital repairs, renovation, additions and capital alterations to the immovable property.

However, GST is chargeable on the hotel accommodation services and restaurant services.

Thus, even though there is a tax on the outward supply, the input tax benefit has been denied on one of major inward supplies.

To illustrate: Mr A, an owner of a hotel, has made significant additions in his hotel. Such additions enhanced the capacity of the hotel. Thus, as per Accounting Rules, these expenses should be capitalized. Due to restrictions under GST, ITC will not be available on the same even though the GST is payable on rental for accommodation services. Hence, the hospitality industry is required to pay GST on rental income arising out of the investment on which GST is already paid, leading to huge revenue leakage for this Industry.

Ideally, if all the conditions for availment of ITC are satisfied, ITC should have been eligible for the goods or services used in the course or furtherance of business. The main Section which deals with input tax credit allows the credit subject to certain conditions and restrictions. However, restriction cannot tantamount to prohibition. Thus, prohibition of ITC on certain expenses even if they are used in the course or furtherance of business is unjustifiable and ultra- vires the Act. And, further it is in contradiction to Article 14 of the Indian Constitution which advocates for equal protection of law for all the citizens. For instance, For a garment dealer, the key success factor is the color, quality, etc. of the garments. The dealer can easily avail ITC on the garments purchased in order to discharge its tax liability. Whereas, for hoteliers, key success factor is the infrastructure which is let out temporarily. However, ITC of tax paid on construction of hotels cannot be availed.

The recent judgment of the Orissa High Court in case of Safari Retreats Pvt Ltd allowing to avail the input tax credit on inputs and input services used for construction of a shopping mall against the rental income receivable from tenants of such constructed shopping mall is a welcome step and shall be examined and considered by the tax authorities and the exchequer. Further, it was also held in the case of Oberoi Mall Ltd vs CESTAT (Mumbai), that without the use of inputs such as cement and other services for construction of mall, the mall could not have been constructed and renting of immovable property would not have been possible. Hence, CENVAT Credit on input services of construction should be allowed. Hence, taking aid of all such cases, ITC on construction of hotel and restaurant property must be available since without the use of input and input services for construction, the hotel would have not been constructed and the renting of the hotel would have not been possible.

One key aspect of GST, is to eliminate cascading effect of taxes. It was introduced to solve the double taxation dilemma and to introduce a system whereby only value addition at each stage is taxed. With the introduction of GST, benefit was intended to be provided to the ultimate consumers in the form of reduced prices. If ITC is not allowed on immovable property to the hoteliers, the tariff value will not be reduced and benefit in the form of reduced tariff cannot be provided to the consumers. This would be in contravention to the intention for which GST was introduced.

Due to safety hazards and lockdowns under Covid-19, this sector has been one of the most severely hit sectors in India in 2020. Blocking of ITC on capital repairs and immovable property is further enhancing the problems faced by this industry. Thereby, for the revival of the industry and the overall economic growth, the need of the hour is to rethink the said restriction imposed and bring out some major transformations.