



State Consumer Helpline Knowledge Resource Management Portal
(SCHKRMP)
(A National Nodal Agency)

Ref. No. IIPA/SCHKRMP/Restaurant/2017
Dt. 30/06/2017

Sub: Unfair trade practices by Fast Food outlets- Charging of service tax on food items for home delivery

Dear *Shri Sastry,*

The Portal has earlier drawn attention on unethical business practices by Restaurants and Hotels on charging of service charge compulsorily. While Department of Consumer Affairs had intervened in the matter and issued directives of making service charge as optional, it has now come to the notice that many fast food restaurants like Domino's Pizza, KFC, McDonald, Pizza Hut are also adapting to unethical business practices by charging service tax on home delivery of food items. All these Restaurants are offering both type of services like dining- in and the home delivery. The rate of service tax as applicable to dining-in is 14% on 40% of the food value i.e 5.6% of the invoice amount. The value of unethical business practices could be imagined from the fact that Domino's Pizza has got a business turnover of more that Rs. 2,400 crores per annum. Even if we assume that 50% of the business is from home delivery services, the service tax amount could be around Rs. 70 crore per year.

As per Service Tax Act, the service tax is to be charged by the restaurants having air-conditioning and/or serving liquor. In case the items are ordered for home delivery or it is take-away or pick-up, no service tax is chargeable. The service tax was earlier being charged even by a famous restaurant namely Haldi Ram Marketing Pvt. Ltd. The matter was taken up by the Project Manager (SCHKRMP). The restaurants stopped charging service tax on pick up/take away orders. However, the justification of charging service tax on take-away orders was somewhat surprising. The restaurant stated in a verbal discussion that since the take away items are to be packed in a special packing which is also burdening a cost on them. They could not justify as to how the packing cost could be compensated by charging service tax. Packing cost if charged would be retained with the restaurant and the service tax charges goes to the Tax Department.

Recently a case of Domino's Pizza has been noticed wherein the Restaurants charged service tax on the items to be delivered at home. However, the bill was lost before the complaint could have been raised. As part of the analysis of the Portal, a mystery shopping was done on the website of Domino's pizza and the invoice was generated and it was found that the restaurant is charging service tax on home delivery orders. A copy of such invoice is attached. The social media was used to sensitize the issue and to see the reaction of the Domino's Pizza. The response of the Domino's Pizza was looking to be as if they are avoiding the topic. The issue was further analyzed w.r.t the other prominent outlets like KFC, McDonalds and Pizza Hut and it has been observed that even these outlets are also adapting to the same practices. A copy of the invoice from each of these outlets is attached for ready reference. In fact some of the outlets are charging the taxes by combining as VAT + Service Tax. Whereas the VAT is a subject matter of the State Government, Service Tax is the matter of Central Government and hence charging under a combined head is not understandable.

As part of our earlier advocacy on the subject, we could obtain a copy of the document issued by Office of the Deputy Commissioner (Central Excise & Service Tax Division), Chandigarh addressed to Apex Restaurants Pvt. Ltd. Clarifying on the point related to service tax for pick-up/take home or home deliver orders. The document ref. No. **C. No. ST-20/STD/Misc./Sevottam/62/12** dated: **13-08-2015** is attached for ready reference. The relevant portion of the said clarification is quoted below:

".....as to whether Service Tax is payable on food sold by way of Pick-up or Home Deliveries has been sought.

It is clarified that in case of the transaction involving Pick -up or the Home Deliveries of the food sold by the Restaurant, the dominant nature of the transaction is that of sale and not service as the food is not served at the Restaurant and further no other element of service which is offered at the Restaurants, be it ambience, live entertainment, if any, air conditioning, or personalized hospitality is offered. The Service Tax can be levied if there's an element of 'Service' involved which would typically the case where food is served in restaurant.

The above transaction is not liable to Service Tax being sale in nature, only if, no amount is charged for such free delivery of food."

While the service tax is being charged despite not being chargeable, the possibility could not be ruled out on the evasion of such taxes. In fact the clarification as was given by Haldi Ram was leading towards the possibility of evasion.

In view of above, it is requested that Department of Consumer Affairs may take appropriate action including advise to Trade Tax Department / CBDT for auditing of their



transactions. Meanwhile, Department of Consumer Affairs may like to consider advising the consumers through "jago grahak jago" advertisement campaign.

With regards

Yours sincerely

Suresh Misra

(Prof. Suresh Misra)
Project Director



Shri P.V. Ramasastry (IPS)
Joint Secreatry (CA)
Department of Consumer Affairs,
Krishi Bhawan,
New Delhi- 110 001