

Travel Industry and GST – a never ending quandary



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A travel agent can earn income from multifarious avenue. It more than often offers a gamut of services which interalia includes the following, viz.:

- Commission from Airlines
- Service Charges received from passengers
- Ticket Cancellations
- Sale Tour Packages, both inbound and outbound
- Travel Related Services like Visa, Passport etc.
- Hotel Bookings
- Car Rental Services, Travel Insurance
- Railway Reservations
- Cruise Reservations

This article attempts to highlight a few pressing issues which need the immediate attention of the authorities.

Air Ticket & Commission from Airlines Companies

While booking an airline ticket, an air travel agent may earn two incomes, viz.:

- a) Service charges from passengers
- b) Commission / incentive from airlines

It may be noted that as per Rule 32(3) of the CGST Rules, the value of the supply of services **in relation to** booking of tickets for travel by air provided by an air travel agent **shall** be deemed to be an amount calculated at the rate of five percent of the basic fare in the case of domestic bookings, and at the rate of ten per cent of the basic fare in the case of international bookings of passage for travel by air.

It is significant to note the usage of the terms 'in relation to' and 'shall' in the above rule. The use of the term 'in relation to' implies that all incomes in relation to the booking of tickets is covered within the ambit of the said rule. Further the usage of the term 'shall' mandates

the valuation of supply in relation to bookings of tickets as per Rule 32(3) of the said Rules.

The rule further explains that for the purposes of this sub-rule, the expression basic fare means that part of the air fare on which commission is normally paid to the air travel agent by the airlines.

Hence a reading of the above Rule implies that the air travel agent will need to resort to the above valuation in relation to booking of tickets. However, the multi dollar question that arises is whether this valuation takes care of both the incomes that a travel agent may earn in relation to booking a ticket? The answer to this will definitely not be in the affirmative. The Rules do not address this concern.

In the opinion of the writer, the following options may be resorted to by the travel agent:

Option 1

- a) Pay GST @ 18% on the service charge earned from the passenger, and
- b) Pay GST @ 18% on the commission earned from the airlines

This may however be litigative because of the usage of the term 'shall' as pointed above.

Option 2

- a) Pay GST @ 18% on 5% of basic fare, i.e. 0.9% of basic fare (in case of domestic ticket), 10% of basic fare, i.e. 1.8% of basic fare (in case of international ticket), and
- b) Pay GST @ 18% on the service charge earned from the passenger

Option 3

Pay GST @ 18% on the full value (ticket price plus service charge).

This option may again be litigative considering the travel agent will take full credit of the GST charged by the airlines.

Concept of Pure Agent

The concept of Pure Agent has been well defined under Rule 33 of the CGST Rules. The said Rule provides for exclusion of costs from the value of supply subject to a few specific conditions which are enumerated as under, viz.:

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Further the Rule defines a Pure Agent as under:

- (a) 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;
- (b) 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;
- (c) does not use for his own interest such goods or services so procured; and
- (d) 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.

More than often, travel agents book hotels, cruises etc for their clients. They receive the entire amount from the passengers and thereafter disburse the amounts to the vendors.

The income earned from these reservations may be of the following nature, viz.:

- a) Service charges earned from passengers
- b) Commission earned from vendors

The question that arises here is when making such reservations, can the travel agent act in capacity of a pure agent of its clients. In other words, can the travel agent discharge the GST on the service charge and commissions alone?

One of the many conditions that one needs to satisfy to be a Pure Agent is that the agent 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. In cases of reservations made by travel agents, this often becomes a very difficult condition to fulfil.

Car Rental Services

Reference the recent Notification no. 2/2019-CT(R) dated 30/09/2019 amending Notification no. 13/2017-CT(R) dated 28/06/2019, quite a stir has been created in the industry.

Sl.	Category of Supplier	Supplier of Service	Recipient of Service
15	Services provided by way of renting of a motor vehicle provided to a body corporate	Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business	Any body corporate located in the taxable territory.

The wording of the category of suppliers, who are excluded from the applicability of reverse charge mechanism is bit confusing. It may be noted when the supplier of Service is a body corporate and such body corporate has opted to pay 5 % GST by availing ITC of only the GST paid on same line of business, then reverse charge would not apply and in all other cases reverse charge would apply.

To tabulate, following table may be referred:

Status of supplier (person giving cab on rent)	Status of recipient (customer)	Whether RCM is applicable	Rate of GST	Remark
Body Corporate - Not availing any ITC	Body Corporate	Yes	5%	
Body Corporate - Not availing any ITC	Non Body Corporate	No	5%	
Other than body corporate	Body Corporate	Yes	5%	

It may be observed that 12% GST rate with full ITC has also been prescribed in Notification 11/2017, where all ITC can be availed, including the GST paid on purchase of vehicles, repair and maintenance of vehicles, etc. This rate has now been rendered redundant in view of reverse charge mechanism. The service providers no more have an option to avail all ITC and pay 12%. What will happen to all those, who have availed all ITC and paying 12% GST so far, where reverse charge has become applicable now? As per Section 18 (5) of the CGST Act, 2017 the balance of any such credit shall lapse. Further, the above provisions also lead to an anomaly where services provided by small players (other than body corporates) would become costlier.

