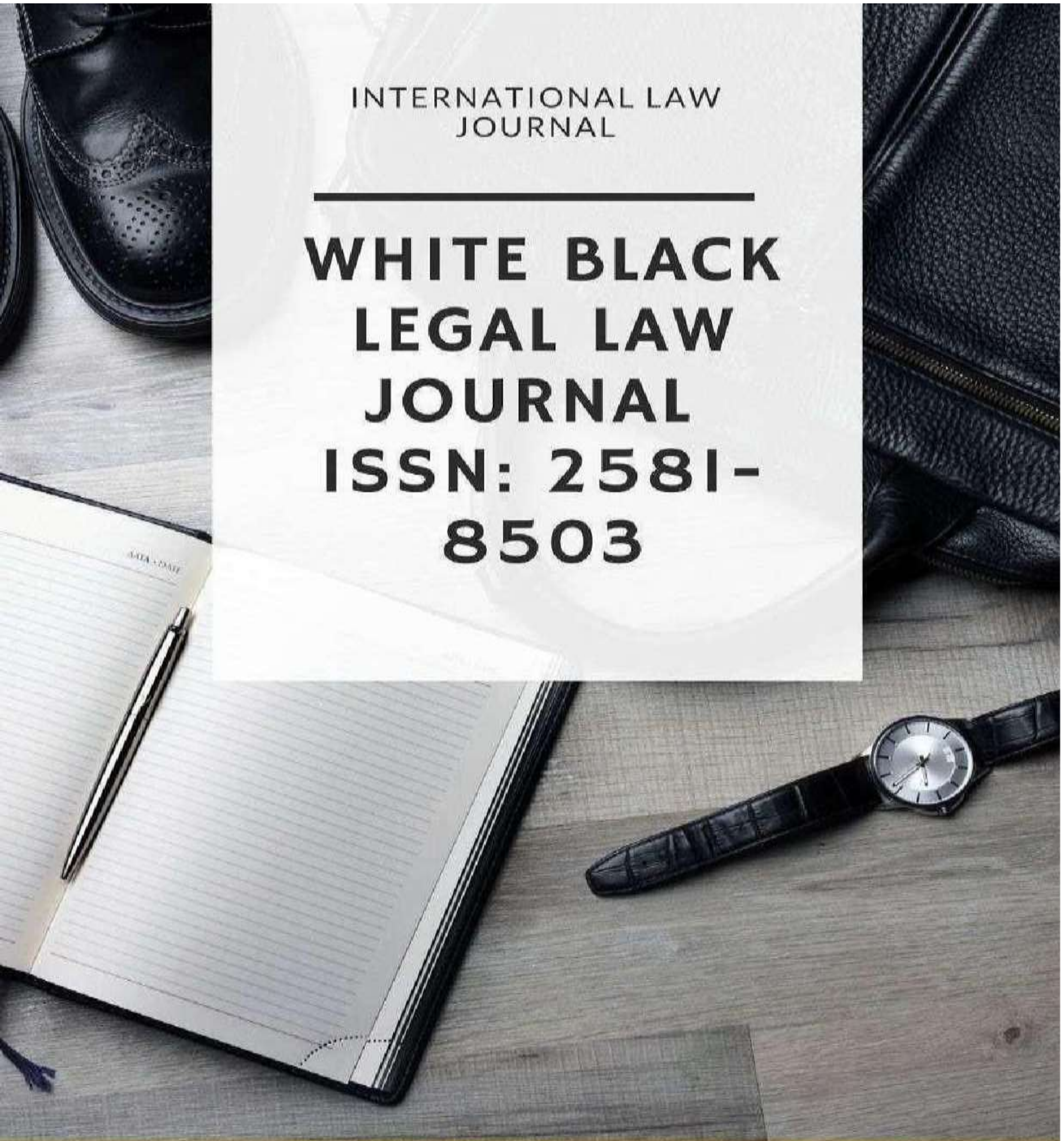

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

INTREPRETING ECOMMERCE AND RESTAURANTS WITH GST

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ABSTRACT:

In addition to causing economic distortion, tax-free e-commerce will reduce the tax base of the federal government and the states. The primary focus of this study is how the GST has affected Indian eateries and food service enterprises. This will provide us insights into how the GST will function in this industry and assist us in comprehending its benefits and drawbacks. The necessary framework will be set up to collect taxes on e-commerce without running the danger of double taxation or non-taxation. to comprehend the idea of e-commerce and its operators. To evaluate restaurant services' online food delivery applications to determine the pre- and post-GST taxes burden.

The uncertainty surrounding the food service's taxability brought about by the GST method has now impacted the ECOM operator. Meal delivery by ECOM operators now accounts for a sizable amount of the food industry's revenue. Given the increase in the number of outlets that do not adhere to tax laws, the department decided it was reasonable to shift the tax burden to the ECOM operators. This article presents a comprehensive analysis of Intrepreting Ecommerce and restaurants with GST. It also aims to identify the most effective approaches to enhance the current issues and differences between Ecommerce operators with restaurants in GST.

Keywords: Ecommerce operator’s, GST mechanism, pre GST era, post GST era.

INTRODUCTION:

With this remarkable rise, The second-largest e-commerce market is now India. In recent years, e-commerce in India has been able to catch the attention and consciousness of the general public like never before.6. Three new internet users are added to India every second. In the next ten years, e-commerce businesses might generate 12 million new jobs. By 2020, the Indian e-commerce market is predicted to surpass $100 billion. E-commerce companies are rapidly advancing their technology in order to take advantage of this possibility. In India, e-commerce currently accounts for less than 2% of total consumption, compared to 14% in China. The Chinese internet behemoth Alibaba's Taobao village programme is another example that India might learn from. By 2015, there were 780 of these communities, up from 20 in 2013. These digital communities span more than two million active online stores across 17 Chinese regions. In India, 640 lac villages are home to over 800 million people.

India's shopping and trading habits have evolved in the past several years. Rapid technological adoption and internet connectivity via broadband, 3G, 4G, etc., have contributed significantly to the e-commerce industry's extraordinary expansion and expanded online customer base. The scale of India's e-commerce industry increased fourfold in 2009 as a result of this digital revolution. At a cumulative annual growth rate (CAGR) of above 35%, the industry is expanding. Numerous tax problems have arisen as a result of the e-commerce industry's exponential growth. Due of their creative business strategies, e-commerce companies are currently experiencing lawsuits in addition to their typical problems, which include growing competition, quickly evolving technology, declining margins, etc. The E-Commerce Marvel The biggest taxi firm in the world, Uber, doesn't own any cars. The most well-known media company in the world, Facebook, doesn't produce any content. The most valuable retailer, Alibaba, doesn't have any stock. Additionally, the biggest lodging company in the world, Airbnb, has no real estate holdings. [By Havas Media Senior Vice President of Strategy and Innovation, Tom Goodwin] Study Paper on GST-Related E-Commerce Taxation Thousands of small and medium businesses in India are made possible by the business models of major companies in the e-commerce sector.

In addition to giving thousands of young people in the nation's cities, semi-urban areas, and rural areas jobs, the e-commerce business model helps the government's major policy goals, "Make in India" and "Digital India." Additionally, the e-commerce industry is positively and significantly impacting a number of other industries, including commercial vehicles, twowheelers, internet and mobile phone services, cash processing and management services, etc. (xi) By December 2016, India's e-commerce market is predicted to have nearly doubled to Rs. 2,11,005 crore, and during the following five years, it will surpass $100 billion, contributing significantly to the country's GDP. SME's generate 17% of the nation's GDP and 40% of its overall exports, and e-commerce offers a safe and economical way for them to expand. (xiii) Additionally, e-commerce offers and facilitates the idea of promoting cashless transactions, which will significantly aid the government's long-term goal of reducing black money.

ADVANTAGES OF ECOMMERCE:

The benefits of online commerce Sell Globally: With little financial outlay, businesses may use e-commerce to reach both domestic and foreign consumers. Around the world, a company can simply find additional clients, the best suppliers, and compatible business partners. 24/7 customer service: Customers can make purchases or enquire about any of the offered goods or services at any time, from any location. Lowers costs: By digitising paper-based information, e-commerce assists organisations in lowering the costs associated with creating, processing, distributing, retrieving, and managing it. Aids in Government Service Delivery: E-commerce enables the government to provide public services, such as health care, education, and social services, more effectively and at a lower cost.

Shortens the product distribution chain: By facilitating direct communication with the end user, e-commerce shortens and sometimes even completely eliminates the product distribution chain. Thus, an analysis of GST-based e-commerce taxation Establishing a direct channel of communication between the manufacturer or service provider and the final consumer enables them to offer products and services that are customised to the target market's particular preferences. Benefits for customers:

E-commerce applications provide customers more options and quicker product delivery. The user has additional options, allowing them to compare and select the more cost-effective and superior option. Customers have the ability to publish product reviews so that you may see what other people are buying or read what other customers have to say before buying.

E-COMMERCE-CHALLENGES:

High cash-on-delivery (COD): In India, COD is the most popular payment method, although it is costly, hazardous, and time-consuming. Payment gateways are expensive and have a failure rate: When a transaction fails, the majority of customers don't try again, which is a loss for e-commerce businesses that use Indian payment gateways. Internet access: The foundation of e-commerce is the internet. However, very few people in India have access to the internet. As a result, e-commerce is still far from the average person. In India, internet connection costs are also relatively high. Reachability: Poor road infrastructure makes thousands of Indian towns inaccessible. Many people lack easy access, which causes e-commerce businesses to lose a significant percentage of their potential clients.

Inadequate supply chain and logistics: Thousands of Indian communities are difficult to reach. The logistical infrastructure of metropolitan areas and other large urban centres is quite strong. On-time delivery is a big problem. It takes a long time and involves a lot of research and development. High cost of customer acquisition: Because e-commerce companies have such promising futures, some investors are willing to pay absurdly high prices to get market share in the current market. Return of merchandise: Customer retention is greatly aided by prompt returns and exchanges as well as effective follow-ups. Customer returns are a major issue since it is costly for businesses to handle reverse logistics and it is not profitable for sellers.

Low degree of digital literacy: One of the biggest issues facing Indian e-commerce at the moment is digital illiteracy. The majority of India is rural and does not follow the expanding digital trend.

Important-tax-related-issues:

(a) Since taxes are so difficult due to the internet's global reach, double taxation would be inevitable.
(b) Requiring operators to collect tax at the source would put a heavy burden on them, which would probably affect all shops.
(c) Since the supplier is completely absent from the customer's jurisdiction, determining which state or nation has tax jurisdiction over money derived from electronic transactions is likewise a significant enforcement concern.
(d) Hosting businesses need to have a "permanent establishment" in order to tax the revenue made on the websites hosted on their web servers. Taxes may be lost as a result of the government's inability to monitor any website and database transfers to other nations.

E-COMMERCE-INTERPRETAION-FOR-RESTAURANTS:

Key Definitions [Part 2] (a) Electronic commerce definition [Section 2(44)] Electronic commerce, according to Section 2(44), is the supply of goods or services, or both, including digital items over an electronic or digital network.

(a) Section 2(45) defines an electronic commerce operator. Any individual who owns, runs, or oversees a digital or electronic facility or platform for electronic commerce is considered an electronic commerce operator, according to Section 2(45).

BENEFITS OF GST FOR FOOD SERVICE COMPANIES AND RESTAURANTS:

1. Administrative Ease: By enacting a single nation, one tax policy, the GST regime can be made more uniform worldwide. The GST will be the only fee that hotels must declare after other taxes and cesses are removed. This brings up more opportunities to streamline the tax process and advises reducing the number of steps in the process.
2. Reducing food bill taxes by around 9.5% will greatly boost restaurant business.
3. Small restaurant operators will benefit from a minimum block of 5–12% tax or no tax, depending on the annual turnover.
4. The new GST model can help reduce corruption, increase government revenue, and lower restaurant company pricing.
5. Time savings and improved quality: Transactions are processed more quickly when numerous entries in the accounts book under the names of different taxes are removed.

Establishing reservations for rooms at each stage will also help customers receive items more quickly and fresher.

The cost of technology: Even though the government has proposed the measure and established a deployment date, there is a lot of uncertainty surrounding its implementation. It is necessary to establish systems that provide clear guidelines for how accounts must be forced to be maintained and return-filed. The authorities should ideally take note of the confusion created by the introduction of the service tax in order to guarantee the seamless implementation of the GST.

Why Medium-sized restaurants in these posh and low-cost hotels will be needlessly pushed into the 28th tax slab since the tax band for both types of hotels is simply too big.

- Potential for Cost Increase: In order to save a lot of money, the majority of small firms in India have traditionally chosen to pay taxes and file returns themselves rather than hiring tax professionals. However, as it can be an entirely new system, they would require expert help to become GST compliant. Professionals will profit from this, but small firms should pay the higher cost of hiring experts. Additionally, as employees must receive adequate training on GST compliance, businesses will see a rise in overhead costs.

- Asian Market Competition: India is currently becoming a major player in the global hotel and tourism industries. India is becoming a very popular travel destination in Asian markets because of its better services, more options and chances, and affordable prices. India's GST rates must compete with those of its Asian competitors in order to achieve equal status, however as you can see below, there appears to be a significant disparity:
    1. Singapore: 7%
    2. Malaysia: 6%
    3. 11% is China.
    4. Japan: 8%

The large disparity is demeaning to our service providers and gives the competition an unfair edge. This alone is enough to make a potential traveller reconsider their plans. The right application of policies, which fixes all problems, is the answer rather than their execution. In order to prevent further annoyances for the hotel business, certain issues, including the exclusion of alcoholic beverages from the GST preview, need to be promptly fixed.

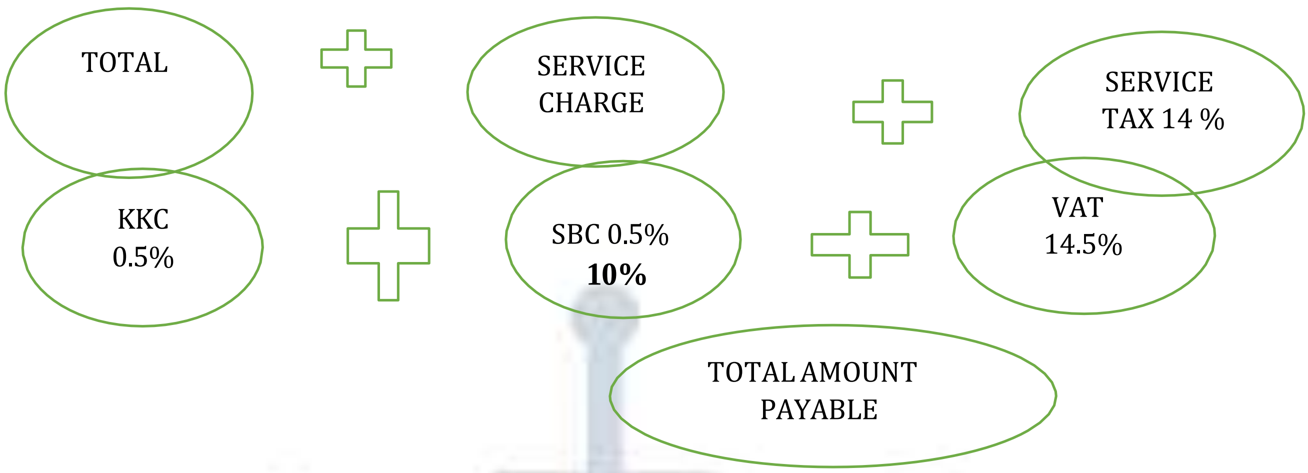
INDIA'S PRE-GST ERA MECHANISM:

The Pre-GST Mechanism for Restaurants and Food Service Businesses Before the GST was introduced, the Value Added Tax (VAT) system was applied in all economic sectors. Value added tax, or VAT, is levied on sold-out items in an upgraded form when value is added to an item before it sells out to you. VAT must be paid at numerous stages of the production, distribution, and sale of products and services. Prepackaged goods like meals and drinkable wine in bottles are not subject to VAT in restaurants. However, it does apply to food and drinks prepared in restaurant kitchens. Different VAT rates apply in different states, and even within states, the rates change based on the kind of commodity.

It could be anywhere between 5 to 20.

1. A restaurant's cooked food and snacks are subject to 5% VAT.
2. Cold drinks are subject to 20% VAT and other non-food goods to 14% VAT.
3. Additionally, 1% entry tax is due on incidental and staple products used in the production of cooked food.
4. Under the LEAT Act, outdoor caterers are also required to pay 10% luxury tax on the sale price. This tax must be properly filed under the MPVAT Act, with hospitals and educational institutions being excluded.
5. The sale of alcoholic beverages to customers is subject to a 5% tax under the MP VAT Act. The total for us is 14.5% after deducting the 0.5% Swachh India cess and the 14% service tax. This would bring the overall service tax to 15% when combined with the 0.5% Krishi Kalyan Cess that went into effect on June 1, 2016. The 400th of the bill value, which is considered the quality service expense, should ideally be the only time service tax is necessary. This is in contrast to the remaining 60 minutes, which are the mainstay of the client's desired food and beverages.

This implies service tax;



• VAT This tax is applied to the food component of your bill, and it is applied to the services that the restaurant offers. [The government had already separated the food and service portions and assessed taxes appropriately to prevent needless problems.]

• The eateries, not the government, are the ones that impose this fee. IT'S NOT A TAX. Since it is a source of revenue for the hotels, it should not be confused with service tax. Service tax is only a tax that is collected from you and sent to the government; it is not an income.

INDIA'S-POST-GST-ERA:

The product is separated into five categories under this new tax regime: 5%, 12%, 18%, and 28%. Before GST enrolment, dining at a restaurant was considerably easier. After getting our food there, we usually pay the bill and head out. We were required to pay three additional fees back then: value added tax (VAT), service tax, and the service charge. However, the absence of GST data has allowed restaurant proprietors the opportunity to defraud any patrons by charging them more. Here are some things that customers should know in order to lead on the smarter front. Initially, the fee received as a service charge is not considered a tax. The restaurants implement the service charge independently; it is not mandated by the government.

However, customers are free to decline payment if they so desire. The decision of whether or not to pay the fee is entirely up to the customer. If a restaurant charges a customer a service fee, it could be sued in a consumer court. In terms of taxes, you have to pay both service tax and value-added tax. The GST has taken the place of both of these taxes. When dining at a restaurant without air conditioning, a 12% tax is required. Six percent state GST plus six percent central GST make up this 12%. Prices for local delivery services are the same. Six percent state GST plus six percent central GST make up this 12%. Prices for local delivery services are the same. takeout without ITC. Regardless of whether alcohol is served or not, you must pay 18% of the tax if you are in an AC restaurant. independent restaurants with 5% takeaway without ITC.

CHANGES TO RESTAURANTS' AND FOOD SERVICES' MARKETING STRATEGIES:

GST has also affected the popular "buy one, get one free" sales. Many food service and prepared product companies give away freebies in an effort to boost sales. However, most bargains have been gradually eliminated since July 1st, when the GST entered into effect. These days, companies should consider entirely new strategies like discounts and product freebies. Food service giants like Pizza Hut by Yum restaurants and Jubilant Food Works, the company that owns the Domino's pizza chain, have also stopped using buy one, get one free specials in their advertising lists and are continuing to use their discount schemes (August 01, 2017).

The idea may also apply to the pharmaceutical industry since tax experts believe that a business that offers something for free should be liable for paying GST on it. Every time a free item is sold, GST is required to be paid on the transactional value realised. This implies that companies would want to stay away from preset price reductions and promotions to prevent confusion regarding GST taxes on freebies and input credit ambiguity. Restaurants and small suppliers are shunning online delivery start-ups as a result of these new tax laws. When using their platform, businesses must try to deduct tax collected at supply (TCS) after paying suppliers or restaurants in compliance with GST legislation.

This may discourage smaller eateries with lower sales from adapting online. Vendors will get their payments following a 2% TCS (1% for both Central GST and State GST), which will interrupt the working capital supply. Restaurants will be able to submit an input tax credit claim and receive a reimbursement from TCS under GST. However, the eateries' operational capital is still frozen while the return is being processed.

Online food service companies' aggregator models work well for smaller eateries, providers, and companies. TCS would also hit onboarding strategies for an increasing number of restaurants. Companies that fall below the GST edge limit would be forced to register with the GST network in order to take advantage of e-commerce services. Restaurants that use online delivery also remove the composition theme and enable GST filling. Restaurants with annual sales under Rs 75 lakh are allowed to use a simplified GST composition theme and are not required to complete separate invoices.

CONCLUSIONS AND SUGGESTIONS:

1. A restaurant must be correctly and consistently categorised under the same heading as either good or service. To maintain uniformity, the department should adhere to this when issuing notifications, and the judiciary should do the same when rendering decisions.
2. The restaurant should be permitted to claim ITC with regard to the eligibility to claim ITC for the supply made by the e-commerce operators who purchase food from the restaurant and serve it to the clients.
3. Additionally, as the supply is referred to as an outward supply, e-commerce operators should be permitted to *pay the tax burden in cash in addition to receiving credit for the supply delivered.

Restaurant services now benefit more under the GST regime because there were previously separate charges for indirect taxation and for calculating tax liability. Because tax rates differed before ECOMMERCE OPERATOR, it was challenging to calculate the amount of tax owed. But now the rates are neutral and easy to figure out. The regulatory burden is increased by the requirement that e-commerce operators provide invoices and document restaurant services obtained through them in returns.

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