

**GOVERNMENT OF WEST BENGAL
DIRECTORATE OF COMMERCIAL TAXES
14, BELIAGHATA ROAD, KOLKATA-700015**

TRADE CIRCULAR No. 01/2022

(Corresponding Central Circular No. 167/23/2021-GST)

DATED: 31.01.2022

Subject: GST on service supplied by restaurants through e-commerce operators.

The GST Council in its 45th meeting held on 17th September, 2021 recommended to notify 'Restaurant Service' under section 9(5) of the WBGST Act, 2017. Accordingly, the tax on supplies of restaurant service supplied through e-commerce operators shall be paid by the e-commerce operator. In this regard notification No. 39-F.T dated 10.01.2022 has been issued with effect from 01.01.2022.

2. Certain representations have been received requesting for clarification regarding modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO). Clarifications are as follows:

Sl. No.	Issue	Clarification
1.	Would ECOs have to still collect TCS in compliance with section 52 of the WBGST Act, 2017?	<p>As 'restaurant service' has been notified under section 9(5) of the WBGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5).</p> <p>On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of WBGST Act, 2017 in the same manner at present.</p>
2.	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?	<p>As ECOs are already registered in accordance with rule 8 (in Form GST-REG 01) of the WBGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the WBGST Act, 2017.</p>

3.	Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?	Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.
4.	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the WBGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.
5.	Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?	No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).
6.	Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?	<p>ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act.</p> <p>It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO).</p>
7.	Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?	No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.
8.	Would supply of goods or services other than 'restaurant service' through ECOs be	ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account.

	taxed at 5% without ITC?	<p>On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies.</p> <p>Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.</p>
9.	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	<p>Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers [and ECOs being liable only to collect tax at source (TCS) on such supplies], it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.</p>
10.	Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?	<p>The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.</p>
11.	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc. in the GST return.	<p>A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR-3B.</p> <p>The ECO may, on services notified under section 9(5) of the WBGST Act, 2017, including on restaurant service provided through ECO, continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being.</p> <p>Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose.</p> <p>Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.</p>

3. Difficulty, if any, in the implementation of the above circular may please be brought to the notice of the Commissioner.

Sd/-
(Khalid Aizaz Anwar)
Commissioner, State Tax,
West Bengal

Memo. -06 CT/PRO
3C/PRO/2022

Date: 31.01.2022

Copy forwarded to the Additional CST/ISD for information and for uploading it on the official website of the Directorate for information of all concerned.

Sd/-
(Nabanita Pal)
Additional CST & PRO