

Case Study on Overlapping

Mr. Avinash Saraf had entered into a Comprehensive AMC with M/s. Cool Well System. The period of AMC is FY 2015-16. The AMC Charges is Rs. 10,000 plus vat and service tax as applicable. M/s. Cool Well System has raised the following invoice:

Particulars	Amount (Rs.)	Amount (Rs.)
AMC		10,000
Taxes: 1. MVAT @ 12.5% (on 60% of AMC i.e., Rs. 6,000)	750	
2. Service Tax @ 14% (on 70% of AMC i.e., Rs. 7,000)	980	1,730
TOTAL		11,730

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Case Study on Overlapping

Particulars	Percentage of Contract Value	Amount (Rs.)
Total amount taxed under VAT Total amount taxed under Service Tax	60% 70%	6,000 7,000
Total amount subjected to Tax	130%	13,000
Contract Value	100%	10,000
Overlapping (Double Taxation)	30%	3,000

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Works Contract – Background

- State of Madras Vs M/s. Gannon Dunkerley & Co (Madras) Ltd 9 STC 353
- 46th Constitutional Amendment.
 - Possible for the State to levy sales tax on works contracts.

Works Contract – Background

- Works Contract is a contract for execution of work involving both Material and Labour.
- Example of Sale vs. Works Contract

Sales	Works Contract
Purchasing a Car	Repairs of a Car
Purchasing clothes	Stitching clothes
Buying Air Conditioner	Comprehensive AMC of Air Conditioner
Buying a book	Printing of stationery
Buying a tyre	Re-treading of tyre
Buying of Cement, Steel	Purchase of Under Construction Flat

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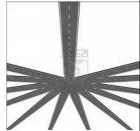
Works Contract - Introduction

- Divisible or Indivisible Contract
 - Contracts can be divisible or indivisible.
 - Where the value of material can be identified separately it is a divisible contract, e.g. Sales and after sale service contract.
 - When contract awarded for a lump sum amount its an indivisible contract. E.g. turnkey contract.

Works Contract – Provision under MVAT Act

- Sales include the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract including, an agreement for carrying out for cash, deferred payment or other valuable consideration,
 - the building
 - Construction
 - Manufacture
 - Processing
 - Fabrication
 - Erection
 - installation

- fitting out
- Improvement
- Modification
- repair or commissioning of any movable or immovable
 - property. Section 2(24)



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Works Contract - Taxable Event and Value on which Tax is leviable

- In case of execution of works contract transfer of property in goods takes place not before or after but during the course of the execution.
- The tax is payable on the value of the goods so transferred during the execution of the works contract.



Works Contract - Methods for Computation of Tax Liability

Rule 58

Actual deduction Method.

Rule 58

Lump sum deduction Method.

Comptn. Method

Construction Work Contracts - 5%

Other **WCT 8%**

Contractor and Sub Contractor have JOINT & SEVERAL LIABILITY.

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Works Contract – Taxable Turnover with Actual Deduction Method

with Actual Deduction Method				
Total contract value	XXX			
Less: Specified deductions as follows:				
Labour and service charges	XXX			
Amounts paid for sub-contracted work	XXX			
Planning, designing and architects charges	XXX			
Cost of hiring equipment, etc.	XXX			
Cost of consumables	XXX			
Establishment cost (related to labour and services)	XXX			
Other Expenses relatable to labour and services	XXX			
Profit on labour and services	XXX			
Balance Taxable Turnover liable to VAT @ 0%, 5% or	XXX			
12.5%,				
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Works Contract – Determination of Taxable Turnover with Lumpsum deduction Method

S. No.	Type of Works contract	% of Deduction
1	Installation of plant and machinery	15
2	Installation of air conditioners and air coolers	10
3	Installation of elevators (lifts) and escalators	15
4	Fixing of marble slabs, polished granite stones and tiles (other than mosaic tiles)	25
5	Civil works like construction of buildings, bridges, roads, etc.	30
6	Construction of railway coaches on under carriages supplied by Railways	30
7	Ship and boat building including construction of barges, ferries, tugs, trawlers and dragger	20
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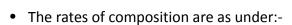
Works Contract – Determination of Taxable Turnover with Lumpsum deduction Method

S. No.	Type of Works contract	% of Deduction
8	Fixing of sanitary fittings for plumbing, drainage and the like	15
9	Painting and polishing	20
10	Construction of bodies of motor vehicles and construction of trucks	20
11	Laying of pipes	20
12	Tyre re-treading	40
13	Dyeing and printing of textiles	40
14	Annual Maintenance contracts	40
15	Any other works contract	25
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Works Contract – VAT Liability under Composition Scheme

Composition

- Section 42(3) provides for a composition scheme simplifying the method of computation of vat liability.
- The composition amount is payable on the total contract value without allowing any deduction whatsoever except the amount payable towards a subcontractor who is a registered dealer.



- On Notified construction contract: 5%
- Other than Notified construction contracts: 8%

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Chronological Developments - Builders and Developers (Works Contract)

Upto 19th June, 2006:

No VAT levied on Builders/Developers DDQ in case of M/s Rehab Housing Pvt. Ltd. (dt 28th June 2004)

"The Commissioner of Sales Tax, Maharashtra has held that the transaction is composite one i.e. providing land with constructed tenements and hence it is not covered by Sales Tax Provision Including Works Contract Act."

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Chronological Developments - Builders and Developers (Works Contract)

- Position from 20th June, 2006:
 - VAT levied as per the K. Raheja's Development Corporation (141 STC 298)
 - Facts of the case:
 - There were two agreements with separate consideration for sale of land and other for the cost of construction
 - Peculiar definition under Karnataka Sales Tax Act
 - Government of Maharashtra amended the definition of Sale.

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Chronological Developments - Builders and Developers (Works Contract)

• Trade Circular No. 23T of 2006 dt. 11th Sep., 2006:

The Commissioner of Sales Tax Maharashtra clarified the following:

"The Supreme Court judgment in **Raheja Builder's case** (141 STC 298) will now be **directly applicable** to proceedings under Maharashtra Value Added Tax Act, 2002.

Some queries have been received regarding the scope of the amendment and applicability of the judgment and of the present amendment. A separate trade circular is being issued regarding the import of this amendment and of the judgment."

Chronological Developments - Builders and Developers (Works Contract)

- Trade Circular No. 12T of 2007 dt.07thFebruary, 2007:
 - Circular issued after 5 months.
 - Transfer of property on or after 20th June 2006 governed by amended definition.
 - Tripartite arrangements would also get covered by the scope of this amendment.
 - DDQ of Rehab Housing Pvt. Ltd will have no applicability.
 - Supreme Court Observation as reproduced in the Circular:

"if the <u>agreement is entered into after the flat</u> or unit <u>is</u> already <u>constructed</u>, then there would be <u>no works contract</u>, **but** so long as agreement is entered into <u>before the construction</u> is <u>complete</u>, it would be a Works Contract."

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Chronological Developments - Builders and Developers (Works Contract)

- Bombay HC granted interim relief to members of MCHI
- **1% Composition Scheme** notification dt. 09th July, 2010. The salient features of which are:
 - Applicable for agreements <u>registered on or after 01st April</u> 2010.
 - VAT payable @ 1% of the <u>aggregate amount</u> specified in the agreement or Stamp Duty Value whichever is higher.
 - E payment is mandatory.

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Chronological Developments - Builders and Developers (Works Contract)

- Tax Liability arise in the **period** in which agreement is registered
- Not eligible to claim set off
- No use of C Form w.r.t. property transferred
- Cannot issue Form 409 to Sub Contractor
- Once opted cannot change the method
- Cannot issue **Tax Invoice**

Chronological Developments - Builders and Developers (Works Contract)

April 2012:

Bombay High Court's decision in MCHI's case (51 VST 168)

- Decided against the Builders/ Developers.
 - o Amendment to **definition** of Sales is **NOT unconstitutional.**
 - o Notification dt 09th July 2010 is upheld.
- As per MOFA, the purchaser gets certain rights like non change of plan without consent of buyer, non-creation of mortgage or charge without consent of buyer etc.
- There is transfer of property in goods and hence liable to works contract.

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Chronological Developments - Builders and Developers (Works Contract)

- Trade Circular No. **14T of 2012** dt.6th August, 2012:
 - Pay tax w.e.f. 20th June 2006
 - Apply for registration by 16th August 2012
 - Apply for administrative relief by 31st August 2012 (after payment of taxes and filing returns)
 - If compliance made JC will SHALL pass order granting Administrative Relief within 2 days
 - Audit Report for all the period upto FY 2011-12 filed by 30th November 2012 (later on extended upto 15th January 2013)
 - Total 16 FAQ's
- New FAQ's uploaded on the website of the Maharashtra Sales Tax Department on 26th August 2012:
 - Total 44 FAQ's

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Chronological Developments - Builders and Developers (Works Contract)

- Trade Circular No. 17T of 2012 dt. 25th September, 2012:
 - Issued to give effect to the Interim order of the Supreme Court.
 - Obtain Registration by 15th October 2012.
 - Files Return and pays tax by 31st October 2012.
 - Apply for administrative relief by 31st October 2012.
- Trade Circular No. **18T of 2012** dt. 26th September, 2012:
 - Year wise Annexure to be e-mailed on builderscell@gmail.com e-mail id.

Supreme Court Judgment Larsen & Toubro Ltd & Anr. Vs. State of Karnataka & Anr. [(65 VST 1 (2013)]

- Developer having the right of lien is irrelevant.
- When a completed building is sold, there is no work contract.
- Unless there is a contract for construction, the goods used in the construction cannot be deemed to have been sold.
- Works contract <u>from the stage</u> the developer <u>enters into a contract</u> with the flat purchaser.
- The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can ONLY be made chargeable to tax.

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Supreme Court Judgment Larsen & Toubro Ltd & Anr. Vs. State of Karnataka & Anr. [(65 VST 1 (2013)]

- Upheld the levy of VAT on sale of under-construction flats.
- Building Contracts are **species** of Works Contract.
- Dominant Nature Test has no application.
- The Maharashtra Government has to bring clarity in rule 58(1A) and subject to this, validity of Rule 58(1A) is sustained.

Amendment to Rule 58 – Deduction for work done till the date of entering into a Contract

• New Rule 58(1B)(a) inserted to determine the Value of goods involved in Works Contract

Sr. No.	Stage during which the developer <u>enters into a</u> <u>contract</u> with the Purchaser	Amount to be determined as value of goods involved in works contract
А	Before issue of the Commencement Certificate	100.00 %
В	From the Commencement Certificate to the completion of plinth level	95.00 %
С	After the Completion of plinth level to the completion of 100% RCC Framework	85.00 %
D	After the Completion of 100% of RCC framework to the Occupancy Certificate	55.00 %
E	After the Occupancy Certificate	0.00 %
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Summary of methods to discharge Tax Liability for Works Contract – Builders and Developers wef 20th June 2006

Different Methods to discharge VAT Liability	Computation of VAT Liability
Rule 58 Actual deduction Method	Sales Price after claiming deduction for Land [Rule 58(1A)] + Deduction for Works
Rule 58 Lumpsum deduction Method	Contractor [Rule 58(1)] + Deduction for work done till the date of entering into a contract [Rule 58(1B)(a)]
Composition Scheme	5%
Composition Scheme (for agreements registered on or after 01st April 2010)	

Summary – Set off Position under different methods for Works Contract (including Builders and Developers)

Methods opted for discharging VAT liability	Reduction of Set off		
Rule 58 Actual deduction Method	Reduction of Set off Nil (Full Set off is available) Nil (Full Set off is available) 36% of Set off on goods transferred 4% of purchase price of goods transferred No Set off is available		
Rule 58 Lumpsum deduction Method	Nil (Full Set off is available)		
Composition Scheme 8%			
Composition Scheme 5%			
Composition Scheme 1%	No Set off is available		

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Works Contract – VAT TDS

- **Applicable if limit is crossed** (Rs.5 lakhs / Rs.10 lakhs as the case may be)
- Rate of deduction of VAT TDS is as follows:
 - 2%, if contractor is registered and
 - 5%, if contractor is unregistered.
- TDS on
 Purchase of
 FLAT from
 Builders
- VAT TDS cannot exceed the amount of Tax Payable
- No VAT TDS in respect of payments made to Sub Contractor

Works Contract – VAT TDS

Case Study

A Builder has entered into development agreement with Land owners and by virtue of the same, the builder will construct building and will hand over 35% of the Saleable Construction area in lieu of land. The balance saleable area will be sold by the Builder. The Builder is also required to construct Rehab Building for the existing tenants who have occupied the land.

To execute the Project Builder has entered into Construction Works Contract with M/s. Build well Corporation for construction of the rehab and saleable building.

M/s. Build well Corporation has informed the builder that as Builder is a Works Contract, he becomes sub contractor and accordingly Builder is not required to deduct VAT TDS on amounts paid / payable to him.

Builder seeks your guidance.

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Entry Tax Provisions

- Payable by an "importer" on the entry of specified goods into a local area for sale, consumption or use therein.
- Importer means a person who imports any goods into a local area for consumption, use or sale.
- Entry tax is not leviable if the importer of goods is registered under the MVAT Act AND if such goods have been brought into the State for the purpose of:
 - resale in the state, or
 - sale in the course of inter-State trade or commerce, or
 - export out of the territory of India.

Entry Tax Provisions

- **Set-off** of Entry tax paid is admissible under MVAT Rule.
- Whether Works Contractor including Builder and Developer is liable to pay Entry Tax?
- As per Circular 6T of 2015 it is clarified that

"For instance, a developer opting for the (1%) composition scheme notification, dated 9th July 2010, issued u/s 42(3A) would not be eligible to claim set off (of Entry Tax Paid) being barred by the condition (3) of the said notification."

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Overlapping in Works Contract

		MVAT		MVAT Service Tax		MVAT Service Tax		Takal Tarrabla
S. No.	Type of Works contract	% of Deduction	% of Taxable Value	% of Abatement	% of Taxable Services	Total Taxable Value and Service		
1	Installation of plant and machinery	15	85	60	40	125		
2	Installation of air conditioners and air coolers	10	90	60	40	130		
3	Installation of elevators (lifts) and escalators	15	85	60	40	125		
4	Fixing of marble slabs, polished granite stones and tiles (other than mosaic tiles)	25	75	30	70	145		
5	Civil works like construction of							
,	a. Buildings	30	70	60	40	110		
	b. bridges, roads, etc.	30	70	N.A.	N.A.	70		

Overlapping in Works Contract

		MV	MVAT Service Tax		Тах	Total	
S. No.	Type of Works contract	% of Deduction	% of Taxable Value	% of Abatement	% of Taxable Services	Taxable Value and Service	
6	Construction of railway coaches on under carriages supplied by Railways	30	70	N.A.	N.A.	70	
7	Ship and boat building including construction of barges, ferries, tugs, trawlers and dragger	20	80	N.A.	N.A.	80	
8	Fixing of sanitary fittings for plumbing, drainage and the like	15	85	30	70	155	
9	Painting and polishing	20	80	30	70	150	
10	Construction of bodies of motor vehicles and construction of trucks	20	80	N.A.	N.A.	80	

Overlapping in Works Contract

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		MV	AT .	Servic	е Тах	Total Taxable
S. No.	Type of Works contract	% of Deduction	% of Taxable Value	% of Abatement	% of Taxable Services	Value and Service
11	Laying of pipes	20	80	60	40	120
12	Tyre Re-treading	40	60	N.A.	N.A.	60
13	Dyeing and printing of textiles	40	60	N.A.	N.A.	60
14	Comprehensive AMC A. Movable Goods B. Immovable Goods	40 40	60 60	30 30	70 70	130 130
15	Any other works contract	25	75			

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VAT on Service Tax

- DDQ of M/s Sujata Painters DDQ No. 11-2007/Adm 3/16/B-1 dt.20th January 2012
 - Commissioner of Sales Tax Maharashtra has held that Service tax paid or payable on the transaction forms the part of sales price and hence is liable to MVAT.
- Maharashtra Sales Tax Tribunal M/s. Nikhil Comforts SA No. 30 of 2010 decided on 31st March 2012
 - There is no compulsion to opt for composition scheme. In Composition
 Scheme only deduction provided is amount payable towards sub-contract involving goods to registered sub contractor. VAT is payable on
 Service Tax.
- Maharashtra Sales Tax Tribunal M/s. Sujata Painters VAT Appeal No.18 of 2013, judgment dated 09th March 2015
 - Service tax cannot form the part of sale price u/s. 2(25) of the MVAT Act in a transaction wherein the sale price is determined under Rule 58.

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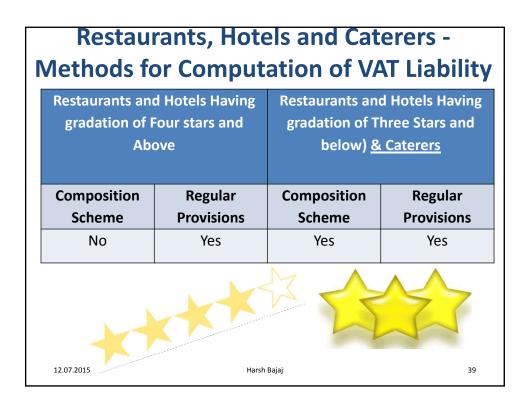
VAT on Service Tax

- Amendment made to the Definition of Purchase Price and Sales Price
 - 'Purchase Price' shall not include the amount of service tax levied or leviable under the Finance Act, 1994 and collected separately by the seller". [Explanation IA to Section 2(20)]
 - 'Sale Price' shall not include the amount of service tax levied or leviable under the Finance Act, 1994 and collected separately from the purchaser". [Explanation
 - IA to Section 2(25)]
- Trade Circular 6T of 2015:

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- 'Service Tax' SHALL NOT BE included in the definition of 'Sales Price' and 'Purchase Price', i.e., VAT shall not be applicable on 'Service Tax' PROVIDED the following conditions are satisfied:
 - o Service Tax is separately mentioned and
 - o Rule 58 is followed to discharge VAT liability.

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Restaurants, Hotels and Caterers – Composition Scheme

- Eligible Turnover: Aggregate of food and nonalcoholic drinks:
 - —served for consumption at or in immediate vicinity.
 - —served by way of counter sale.
 - —served for consumption at any place.
- Rate of VAT:
 - -Registered Dealer: 5% of turnover of sales
 - -Un-registered Dealer: 10% of turnover of sales

Restaurants, Hotels and Caterers – Composition Scheme

• Conditions:

- Not eligible for Set off on corresponding goods sold and its packing material
- Cannot collect tax separately
- Cannot issue Tax Invoice



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Restaurants, Hotels and Caterers – Regular Provisions

Description of Goods	Schedule Entry	Schedule Rate	Notified Special Scheme
Food	E-1	12.5%	Composition Scheme
Aerated and Carbonated non-alcoholic beverage	D-13	20%	Composition Scheme
Liquor	D-1, 2 and 3	50%	Special Scheme
Wine	D – 3A	40%	Special Scheme

Restaurants, Hotels and Caterers – Liquor Notification

- Restaurants and Hotels having gradation of 4 star or above:
 - Liquor purchased from Registered dealer within the State:
 20% of Sales Price.
 - Liquor purchased from Un Registered dealer within the State: Not covered.
 - Liquor brought or imported into the State: 20% of Sales Price PLUS MRP*25/125.
- Restaurants and Hotels having gradation of 3 star or below: SAME AS ABOVE EXCEPT INSTEAD OF 20% RATE IS 5%.

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Restaurants, Hotels and Caterers –Wine Notification

- Restaurants and Hotels having gradation of 4 star or above:
 - Wine purchased from Registered dealer within the State: 20% of Sales Price.
 - Wine purchased from Un Registered dealer within the State: Not covered.
 - Wine brought or imported into the State: 20% of Sales Price PLUS MRP*20/120.
- Restaurants and Hotels having gradation of 3 star or below: SAME AS ABOVE EXCEPT INSTEAD OF 20% RATE IS 5%.

Type of Dealer	Nature of Purchase	Food	Aerated and Carbonated non- alcoholic beverage	Liquor	Wine
Restaurants and Hotels Having gradation of Four Stars and above	Purchases from Registered Dealer in Maharashtra	12.50%	20.00%	20%	20%
	Purchases from Unregistered Dealer in Maharashtra	12.50%	20.00%	50%	40%
	Purchases from outside Maharashtra	12.50%	20.00%	20% + MRP * 25 / 125	20% + MRP * 20 / 120
Restaurants and Hotels Having gradation of Three Stars and below	Purchases from Registered Dealer in Maharashtra	* 12.50%	* 20.00%	5%	5%
	Purchases from Unregistered Dealer in Maharashtra	* 12.50%	* 20.00%	50%	40%
	Purchases from outside Maharashtra	* 12.50%	* 20.00%	5% + MRP * 25 / 125	5% + MRP * 20 / 120
Caterers	All Purchases	* 12.50%	* 20.00%	50%	40%

* 5% (10% for URD Dealer) under Composition Scheme, however no set off available of corresponding goods sold and its packing material.

Earlier the rate was 8% instead of 5%.

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Rule 54 – Non admissibility of Set off on Liquor and Wine

- No set off available on purchase of Liquor covered by Schedule Entry D - 1, 2 and 3 as well as on purchase of Wine covered by Schedule Entry D -3A, except when:
 - Sold in the course of Inter State trade or commerce
 - Sold in the course of **Export**
 - Branch Transferred outside the state
 - Sold from Customs bond to foreign going ships and aircrafts.

Overlapping in Restaurants, Hotels & Caterers

		MVAT		Service Tax		
Sr. No	Type of contract	% of Deduction	% of Taxable Value	% of Abate ment	% of Taxable Services	Total Taxable Value
1	Restaurant	0	100	60	40	140
2	Hotels	0	100	60	40	140
3	Caterers	0	100	40	60	160

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Residential Hotel Charging Composite Sum (Rule 59)

Composite Charges inclusive of Lodging, Boarding and	Taxable Turnover of Sales as a %age of Composite Charges
Breakfast	5%
Lunch	10%
Dinner	15%
Breakfast and Lunch	15%
Breakfast and Dinner	20%
Lunch and Dinner	25%
Breakfast, Lunch and Dinner	30 %

•There is a proviso for reduction of the sale price.

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Goods & Service Tax

- Proposed to be introduced w.e.f. 1st April, 2016
- Taxes to be subsumed within GST
- ✓ Central Excise duty
- ✓ Additional duties of excise ✓ Entertainment Tax
- ✓ CVD & SAD
- ✓ Service Tax
- ✓ State VAT / Sales Tax
- ✓ CST

- ✓ Purchase Tax
- ✓ Luxury Tax
- ✓ Entry Tax
- √ Taxes on lottery, betting & gambling

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CA Harsh Bajaj (9821044319)