

VAT on Duty Meal Supply to Hotel Staffs : An Overview and an Analysis

Duty meal supply is neither self consumption nor personal/ domestic consumption, it is expenses related to business where the company can take credit of input tax on purchase of meal supply stuffs and duty meal supply cost is obviously a type of prerequisite expenses for sale services of hotel industry.



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The Income tax officer has issued a notice to Hotel Private Limited after VAT audit for payment of VAT amount with 100 percent penalty and interest with assuming purchase value/cost as sale value for the duty meal supply to the hotel staffs regularly as per in their appointment terms and condition.

Example:

VAT Calculation and Assessment					
Particulars	Mangsir	Poush	Magh	Fagun	Total
No. Of Employees(Monthly)	50	52	49	53	204
Monthly Duty Meal Expenses	1,25,000.00	1,12,500.00	1,02,655.00	1,16,253.00	4,56,408.00
VAT @13%	16,250.00	14,625.00	13,345.15	15,112.89	59,333.04
Penalty	16,250.00	14,625.00	13,345.15	15,112.89	59,333.04
Grand Total Tax Assessment	32,500.00	29,250.00	26,690.30	30,225.78	1,18,666.08
Input Tax on VATABLE Purchase only	7,441.00	2,299.00	4,903.00	5,247.00	19,890.00

The tax officer has issued the notice for the payment of RS.1,18,666 against purchase cost or duty meal supply expenses of Rs.4,56,408. The company has claimed the expenses in the heads of staffs duty meals and claimed input tax credit of Rs.19,890 in the second trimester VAT returns.

Whether the assessment made by tax officer against Hotel Private Limited is correct?

Currently there are many cases pending with Director General (DG) Internal Revenue Department (IRD) for administrative review, Revenue Tribunal either for disallowance of input tax credit by tax officers or tax assessment of 100 percent of purchase costs/expenses as sale

value and 100 percent penalty thereof;

Sub-Section 1 of Section 14 of Value Added Tax Act, 2052 states that Registered Person supplying any goods or services, requires to issue an invoice to the acquirer, except as prescribed.

Rule 19 of Value Added Tax Regulation, 2053 prescribes that a person who carries out transactions of used goods of a value exceeding of Rs.10,000 for the purposed of Section 14(1) of the Act, need not to issue tax invoice in such case where the selling price is less than the buying price of the goods.

It is evident from above provision that the registered person if supply of any goods and services, has to issue tax invoice to the acquirer/recipient of goods and services. The provision states that even if there is no sale and purchase but supply of goods and services to any person shall be required to issue tax invoice to the acquirer/recipient which means there is not necessarily always be a buyer or seller.

The VAT Directives 2069 issued by IRD has defined self supply means if a registered person has consumed of goods and services for its own commercial purpose which were purchased or produced basically intended for sale. In this case Sub - Section 14(1) comes into play which has put the restriction for conducting transactions without issuing invoices hence, invoicing has to be done in self supply too.

The registered person when consumed the goods and services commercially which were intended for sale has not produced any financial impact as the VAT amount which need to be deposited due to issue of an invoice get set off through input tax credit as per Section 17 of the VAT Act 2052. But if the same has been consumed for its domestic and personal purposes then the input tax credit shall be disallowed.

Example: Siya Sarawagi is engaged in the business of trading in plywwod and is registered in VAT for making furniture for its own commercial purposes, it has used 1000 sq.ft. of plywood. Since Siya Sarawagi has used the plywood for its own commercial purposes, it has to collect VAT by issuing the tax invoice and input tax credit can also be availed as per Section 17 of the Act.

But would it be used the same for its domestic or personal purposes, input tax credit would have been disallowed. Source: VAT directives, 2069 IRD

Now the question is whether the supply of duty meal to the hotel staffs regularly as per the contract between employee and employer comes under the definition of self supply or not?

The circular issued as on 2056/12/03 which as follows:

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The above circular which has clearly mentioned that the duty meal supply to hotel staffs is not to be treated as self consumption hence, the input tax credit shall not be allowed on the purchase made for supply of staffs duty meal.

The above circular which has been issued as on 2056/12/03 but the directives issued as on 2069/02/30 which definitely supersedes to the extent of not conflicting the provision of earlier Directives or Circulars. Here the Directives says that if the expenses are for commercial purpose then it shall be considered as self consumption and input tax credit shall be allowed of purchased made for commercial use.

Now the question is whether the duty meal supply to the hotel staffs is to be treated as commercial use or personal/ doemstic use?

We can not say the duty meal supply which are as per the contract between employees and employer as per Labour Act, 2048 too can not be treated as business expenses. Its standard practice that the expenses which are incurred for conducting of business and for generating the revenue of the business are to be treated as business expenses but not in any case to be treated as personal/domestic expenses.

We may further analyse through case study based on the decision of Revenue Tribunal in Narayani Hotel Private Limited.

Decision Number: 119 Year: 2063 :Revenue Tribunal Kathmandu:

The hotel has provided duty meal supply to hotel staffs as per Labour Act, 2048 and employment terms and condition. The hotel has claimed input tax credit but the tax officer disallowed expenses and input tax credit thereon. The Revenue Tribunal has given the decision in favour of the assessee i.e. Narayani Hotel Private Limited citing that if the taxpayer has supplied staffs duty meal as per appointment terms and condition and Labour Act, 2048 which is totally related to business expenditures

and there is no evidence that the input tax credit claimed by taxpayer shall not be allowed to the taxpayer. The input tax credit shall be allowed as per proportionate expenditures related to staffs duty meals.

Conclusion: First, we can draw the inference that the stuff purchased for the duty meal supply is not intended for sale purpose to the customers/guests of hotel but only for running of the hotel which is usually in hotel industry. Secondly, there are many corporate house and company which runs cafeteria and canteen for duty meal supply to its staffs as house keeping/staffs welfare expenses. Third, would it be a case where staffs avails same foods and facility as guest and have meal sitting in hotel through separate order like guest? definitely not in above mentioned case, otherwise the hotel would have to be issued VAT invoice to collect the same and supposed to be a self supply. Fourth, duty meal supply is neither self consumption nor personal/domestic consumption, it is expenses related to business where the company can take credit of input tax on purchase of meal supply stuffs and duty meal supply cost is obviously a type of prerequisite expenses for sale services of hotel industry.

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