



Impact of the GST on construction & Real-Estate Sector

- CA Ravi Kumar Somani

Construction sector overview

- Transactions are broken into three parts –
 - ✓ the value of goods and materials - VAT is charged by the local government
 - ✓ value of services - Service Tax is levied by the centre and
 - ✓ value of land - Registration charges is levied by the state
- High litigation on indirect taxes in past – both central and state laws
- Largely unorganised sector - non-compliances prevalent;
- Undergoing substantial reforms (RERA + GST);
- Constitutes around 9% of the country's total GDP. Growth of this sector has a direct nexus with the national growth;

Comparison of Tax Rates - Developers

Income Sources	Present Taxes	GST
Construction/ works contract service before OC (assuming VAT under composition)	ST - 4.5% VAT - 1%	12%
Construction/ works contract service after OC	Nil	Nil
Works contract service of residential / commercial complexes excluding the value of land – Original Works	ST - 6% VAT - 1%	12%
Additional works - works contract (completion and finishing)	10.5% - ST 5% - VAT	18%
Additional works - other than works contract (Not being an immovable property)	10.5% - ST 5% - VAT	case to case basis
Renting of the immovable property	ST – 15%	18%
Renting of immovable property – residential purposes	Nil	Nil

Comparison of Tax Rates - Developers

Income Sources	Present Taxes	GST
Sale of the land	N/A	N/A
Flat cancellation charges	ST - 15%	18%
Maintenance income	ST - 15%	18%
East Facing/ High Rise/ Vaastu Premium charges	ST - 15% / 4.5%	18%
Extra Car Parking space	ST - 15% / 4.5%	18%
Other incomes – amenities, Ground Rent etc.	ST - 15%	18%
Sales commission income	ST - 15%	18%

GST on Developers

- Section 2(119) of CGST Act defines term 'works contract' to mean a contract for:

building	construction	fabrication	completion	erection	installation	fitting out
improvement	modification	repair	maintenance	renovation	alteration	commissioning

of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in execution of such contract

- Works contract is deemed to be service [Schedule II(6)(a)]

GST on Developers

- Term “**first occupancy**” is not defined/ explained
 - ✓ Does this mean occupancy certificate is conclusive evidence of completion?
 - ✓ Whether it covers possession given by Builder/ Developer before getting completion certificate/ occupancy certificate from any authority?

Q1 Whether Additional works done by builder will be treated as works contract?

Ans: Taxability of Additional works to be determined on case to case basis. If contract is purely service contract or resulting into movable property then it does not amount to works contract. If it results in immovable property then amounts to works contract.

GST on Developers

Q2. If Developer constructs commercial complex and gives them on lease, whether credit is eligible?

Ans: Credit may not be eligible as output service is not a works contract service. Blockage of credits in case of Construction-cum-lease contracts.

Q3 Whether Area / flats sharing arrangement with land owner commonly known as Joint Development arrangements is taxable?

Ans: Supply includes all barter and exchanges. Flats allotted to land owner will be a taxable supply liable to GST where consideration is received in kind form of development potentials.

GST on Developers

Q4 Whether Revenue share arrangement between Developer and Land owner commonly known as Joint Venture will be taxable?

Ans: GST to be fully applicable in the hands of developer, if the obligation of selling flats to end customers is undertaken by developer. Developer needs to collect and pay GST.

Q5. Whether Preferential location charges, Car parking charges, amenities charged etc. amounts to separate supply or a composite supply or as mixed supply?

Ans: Generally, it should amount to composite supply and covered under the ambit of works contract service. However, terms of agreement entered with customer and the method in which transaction executed holds importance to determine if it falls as a separate supply.

GST on Developers

Q6. Whether free supplies given along with sale of flat such as Car etc for a single price amounts to Mixed supply?

Ans: Providing of free gifts such as Car etc. may make a transaction as a Mixed supply and implication of higher tax incidence cannot be ruled out. Schemes have to be properly designed.

Q7. Whether additional works undertaken by developers amounts to composite or mixed or individual supply?

Ans: Generally, it should amount to composite supply if covered and agreed upon during the initial agreements itself. However, if supplementary agreement entered for the same then terms of agreement entered with customer and the method in which transaction executed holds importance to determine if it falls as a separate supply.

GST on Developers

Q8 Whether 1/3rd deduction on account of value of land if assessed under works contract service?

Ans: Provision for deduction on account of value of land is made available only in case of Construction of complex service. Classification disputes may prevail in GST regime also.

- 1/3rd deduction on account of value of land.. Whether proportionate credit reversal required..??
- Actual land value being higher than 1/3rd ..??

GST on Developers

- JDA entered in old tax regime and possession of flats given in GST regime.. Tax treatment..?
- Whether builder is entitled to issue credit note u/s 34 and claim the tax adjustment? Provision speaks of deficiency of service and not “non-provision of service”
- Reversal of ITC in respect of Sale of land & sales post first occupancy or OC – mechanism for reversal.. Interest payable for every time reversal required;

GST on Developers

- Developers paying service tax on receipt basis need to change the practice - High tax liability as on transition;
- No linkage between continuous supply provisions and Time of supply.. Section 31(5) not linked to Time of Supply - Issues??
- Time-limit of 30 days for raising invoice in case of continuous supply of services..??
- Treatment in case of arrangements where loan received with the option to buy flats/ units at a later date – whether loan to be treated as advance..? Circular No. 151/ 2012;

GST on Developers

- Value to include taxes, duties, cesses etc. levied under any other laws other than GST laws – Whether Stamp duty to be included or shelter of Pure agent can be taken..?;
- Maintenance income collected until society is formed and commensurate expenses incurred – whether GST payable or shelter of Pure agent available..??

GST on Rentals of Property

- Increase in rate of Tax from 15% to 18%;
- Renting of residential dwelling continued to be exempted;
- Distinction between long term accommodation services for corporates and Renting contracts.. Terms of the agreement;
- Rental Deposits to be treated as consideration when applied towards the rental dues;
- Pure agent deduction in respect of reimbursement from tenants:
 - ✓ Municipal taxes;
 - ✓ Water;
 - ✓ Electricity charges

GST on Rentals of Property

Q9 Place of supply in case of rental income/ sales commission income – whether registration to be mandatorily taken in each state or IGST billing shall be sufficient..?

Ans: Central law uses the 'From the place' and state laws use the term 'In the state' for the purpose of registration. Legal provisions entail registration requirement. Practical aspect has to be looked into.

Q10. Whether developer can continue to take the deduction of Property Taxes for property given on Rent?

Ans: Property Tax deduction is not continued, therefore such deduction is not available in GST.

GST on Land Owners

- Land owner liable to collect and pay GST on its portion of flats sold to end customers under JDA arrangement;
- Barter liable for GST – JDA in the hands of landowners..?

Q11 Whether Revenue share arrangement between Developer and Land owner commonly known as Joint Venture will be taxable?

Ans: If GST fully paid on all the flats sold to end customers by developer, then mere apportion of profit may not be again taxable to GST in the hands of land owner. Share of revenue - not liable to service tax [recent decision of Mumbai Tribunal in case of **Mormugao Port Trust 2016 - TIOL - 2843 - CESTAT - MUM**]

GST on Land Owners

Q12. Whether transfer of development rights by land owners taxable to GST?

Ans: TDRs being a benefit arising from the land, thus the same shall be considered as a benefit arising out of an immovable property as defined under Section 3(26) of General Clause Act, 1987, therefore the same is neither taxable under the Service Tax Law nor taxable under VAT regime.

Now, as per entry no. 5 of the Schedule –III to the CGST, 2017, only sale of land and building is neither supply of goods nor supply of services.

Thus if under GST regime rights in land and/or building is be regarded as land and/or building then it will not be treated as supply liable to GST. If not, then development potential, etc will be exposed to GST liability.

Comparison of Tax Rates - Contractors

Income Sources	Present Taxes	GST
Original works under works contract service (VAT under composition scheme)	6% - ST 5% - VAT	18%
Original works under works contract service (Regular scheme under VAT)	6% - ST 13.5% - VAT	18%
Completion & finishing works under works contract service (VAT under composition scheme)	10.5% - ST 8% - VAT	18%
Completion & finishing works under works contract service (Regular scheme under VAT)	10.5% - ST 13.5% - VAT	18%
Any works Contract – original works or otherwise	Payment of VAT and Service Tax based on actual bifurcation method	18%

**Scope of works contract in GST is confined to immovable property contracts only.*

GST on Contractors

- Practice of not paying taxes on material / mobilization advances could lead to disputes;
- Tax on retention money needs to be paid immediately on issue of each invoice and not in the end;
- Free supplies issued by the recipient – Diesel, explosives, cement, steel or usage of crane, electricity etc. free of cost - whether to be included in the transaction value..
 - ✓ M/s. Bhayana Builders (P) Ltd. & Ors. vs. CST, Delhi & Ors [2013(23) S.T.R 49 (Tri-LB)]
 - ✓ M/s Inox Air Products ltd Vs Commissioner Of Central Excise, Nagpur [2015-TIOL-515-CESTAT-MUM].

Exemption to Contractors

- Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the **Beneficiary-led individual house construction / enhancement under the Housing for All (Urban) Mission/ (PMAY);**
- Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to **a single residential unit otherwise than as a part of a residential complex;**

Exemptions discontinued

Construction of	VAT rate	Service Tax
Civil structure or other original works for the Government, local authority or governmental authority - canal, dams or other irrigational works - Pipeline, conduit or plant for Water supply, water treatment, sewerage treatment or disposal	Composition scheme: 5%* Normal scheme: 70% of (6% / 13.5%)* - ITC Credit subject to State VAT Laws	Contracts entered prior to 01.03.2015 are exempt till 31.03.2020 Contracts entered on or after 01.03.2015 are taxable w.e.f. 01.04.2015 : 6% (40% of 15%) - Subject to Cenvat credit of input services and capital goods
Port and Airport	Same as above	Same as above

Exemptions discontinued

Construction of:	VAT rate	Service tax
<ul style="list-style-type: none"> • Railways • Roads • Bridge • Tunnel • Transport Terminal 	Same as above	Exempt
Monorail and metro	Same as above	<p>Contracts entered prior to 01.03.2016 are exempt</p> <p>Contracts entered on or after 01.03.2016 are taxable</p> <p>- Subject to Cenvat credit of input services and capital goods</p>
<p>➤ Exemption to sub-contractors if main contractor exempted;</p> <p>➤ Rate of tax for sub-contractors where main contractor is providing works contract service to Government</p>		

Impact of GST on Expenses

- Credit to be reversed if payment not made within 180 days;
- Refund not eligible for overflow of credits;
- Industry would face high challenge in dealing with the unorganised/ non-compliant vendors;
- Higher tax outflow - currently procured from inter-state – cement/ steel paying only 2% CST/ increase in tax rate on services.

Transitional Credits

- Credits lying as closing balance in VAT and Service Tax Returns can be transferred to electronic credit ledger in GST;
- Balance credit in respect of Capital goods can be availed by submitting details in Form TRAN 1;
- ITC on stock pertaining to last one year can be availed – To the extent of unsold portion;
- What about stocks beyond one year – Delhi HC Interim relief;

Transitional Impact

Q13 Semi constructed building, structure etc. shall be treated as Semi finished goods for availing credit or not?

Ans: It may be treated as Goods held in stock since already paying VAT treating it as Goods. Immovable property comes to existence only once fully completed. However, if billed and charged present taxes to the extent of work completed then credits may not be available.

- Scheme also available for builders/ contractors presently covered under composition scheme in VAT;
- CST paid in respect of goods lying in stock cannot be carried forward as credit;

Ongoing contracts – Taxability [section 142(10) of CGST Act]

- Contract entered prior to appointed day:
 - Goods or services or both supplied pursuant to such contract **after appointed day**
 - Such supply shall be liable to tax under CGST / SGST Act

Supply made before appointed day

Section 142(11)(a) of
CGST Act / SGST Act



No CGST / SGST payable



On Supply of **goods** made
before appointed date



When VAT was **leviable** on such
supply under State VAT law

Section 142(11)(b) of CGST Act
/ SGST Act



No CGST / SGST payable



On Supply of **Services** made
before appointed date



When Service tax was **leviable**
on such supply under Finance
Act 1994

VAT fully paid on registration of flat before appointed date

Section	Provision
142(11)(c)	<p>Where VAT and Service Tax has been paid on any supply under both State VAT Act and Finance Act, 1994:</p> <ul style="list-style-type: none">• Tax shall be payable under CGST / SGST Act to the extent supplies made after appointed day• Taxable person will be entitled to credit of VAT or service tax paid under existing law to the extent supplies made after appointed day• Such credit to be calculated in such manner as may be prescribed

Procedural Aspects

Q 14 A builder / developer having projects in different states, what will be right course of action for registration?

Ans: Register in a state where it has head / corporate office and treat sale in projects of other states as interstate supply; or

Register as normal supplier in each state where it has a project; or

Project undertaken for a short period of 3 to 6 months – casual dealer registration can be obtained.

- Project wise registration - if different entity for each project;
- Accounting/ compliance at project sites will be challenging - Increased coordination and communication between HO & project sites.

Anti-Profiteering

- Press Release on anti-profiteering dated 15.06.2017 states as under:
- The CBEC and States have received several complaints that **the people who have booked flats and made part payment are being asked to make entire payment before 1st July 2017 or to face higher tax incidence for payment made after 1st July 2017.**
- Under GST, full input credit would be available for offsetting the headline rate of 12%. As a result, the input taxes embedded in the flat will not (& should not) form a part of the cost of the flat. **The input credits should take care of the headline rate of tax;**
- **The builders are expected to pass on the benefits of lower tax burden under the GST regime to the buyers of property by way of reduced prices/ installments.**

Hiregange & Associates

Chartered Accountants

Implication of GST on Hotel & Hospitality Sector



Hotel & Hospitality Sector - Revenue Streams

Hotel & Hospitality Sector

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graph TD; A[Hotel & Hospitality Sector] --> B[Food & Beverages]; A --> C[Accommodation]; A --> D[Banquets]; B --> B1[➤ Dine-in Restaurants]; B --> B2[➤ Take-Away 's]; B --> B3[➤ Outdoor Catering]; B --> B4[➤ Trading of packed food items]; C --> C1[➤ Room Renting]; C --> C2[➤ Laundry]; C --> C3[➤ Rent -a- Cab]; C --> C4[➤ Other Misc. Services]; D --> D1[➤ Renting of hall]; D --> D2[➤ Bundled service of renting of hall along with food]; D --> D3[➤ Renting of Equipments]; D --> D4[➤ Decoration etc.]
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Food & Beverages

- **Dine-in Restaurants**
- **Take-Away 's**
- **Outdoor Catering**
- **Trading of packed food items**

Accommodation

- **Room Renting**
- **Laundry**
- **Rent -a- Cab**
- **Other Misc. Services**

Banquets

- **Renting of hall**
- **Bundled service of renting of hall along with food**
- **Renting of Equipments**
- **Decoration etc.**

Comparison of Rates Earlier Law v/s GST

Restaurant Service

S.No	Tax	Earlier Rate	GST Rate		
1	Service tax (15% * 40%)	6%	-	-	-
2	VAT - Composition	8%	-	-	-
3	VAT - Normal	13.5%			
4	GST-Composition	-	5%		
6	GST – Restaurants having room tariff of Rs.7,500/- and above	-	-	-	18%
7	GST – Other Restaurants (No ITC)		5%	-	-
	Total	14% / 19.5%	5%	12%	18%/ 28%

Comparison of Rates Earlier Law v/s GST

Outdoor Catering

Sr.No	Tax	Earlier Rate	GST Rate
1	Service tax (15% * 60%)	10.5%	-
2	VAT – Normal	13.5%	-
3	VAT – Composition	6%	
4	GST	-	18%
	Total	17%/ 24%	18%
	<u>Decrease Under GST</u>	5% / 6%	

Food & Beverages – Key aspects

- ❖ Reduced rate is a mandatory requirement and not an option;
- ❖ Criteria of AC/ Non-AC or availability of liquor license are not relevant;
- ❖ Multiple tax rates possible for same restaurant of same entity but located in different locations;
- ❖ Restaurant with accommodation having declared tariff of Rs.7,500 or more - both located in different premises
- ❖ Even one unit of accommodation crossing this limit is sufficient for denial of option;
- ❖ Option of reduced rate available for take aways, canteens, mess, eating joints etc.

Food & Beverages – Key aspects

- ❖ Complimentary breakfast with accommodation - composite supply - reduced rate not available;
- ❖ Banquet serving food with Hall rent - Reduced rate not available;
- ❖ Outdoor catering service – Reduced rate not available. Meaning of the term 'Outdoor Catering'..??
- ❖ Supplies under 5% category amounts to 'exempt supply' and would entail proportionate credit reversal - **Not issues under exemption notification and No rule making power to prescribe 'exempt supplies in rules.**
- ❖ Change in the rate of tax - 2 out of 3 rule to be applied for transitional cases.

Food & Beverages – Key aspects

- ❖ Various food/ drinks supplied in restaurant - whether to be taxable at rate applicable for each or categorise under separate rate as applicable for restaurants service. It is taxable at a blanket rate of 12% /18%.

Q1 Any flavoured waters in aerated form supplied with food – whether to charge 28% plus cess on such aerated waters?

Ans: No, can get covered in the category of restaurant service;

- ❖ Anti-Profiteering Impact on Restaurants.

Food & Beverages – Key aspects

- ❖ Rate of tax for tips/ service charges etc. received to be included in transaction value - amounts to composite supply;
- ❖ Liquor not brought under GST - State VAT / excise duty continues. Hence if lump sum billing done by restaurants including liquor, then Liquor portion to be separately taxed.

Q2 Whether GST to be levied on 'self supplies' Consumption by staff?

Ans: Yes, Employees fall within ambit of related person – consideration not the criteria – Open market value to be adopted;

Food & Beverages – Key Aspects

Q3 Disposal of waste food by restaurants whether ITC to be reversed?

Ans: No, Credit reversal of disposal is only in case of gifts and free samples.

Q4 Coupons/ passes issued by customer in lieu of cash also becomes consideration?

Yes, consideration includes cash, deferred payment and other valuable consideration.

Q5 Discount voucher of the same restaurant used by the customer, whether deduction of discounts available?

Yes, the same must be clearly shown on the face of the bill.

Food & Beverages – Key Aspects

Q6 Pre-booking coupons, whether GST to be levied by restaurants?

Ans: Yes, if arrangement is in the nature of commission. Or else, GST invoice to be issued by the online portal.

Q7 Outdoor caterer supplying services in other state. Does he need to register in such state or IGST billing shall suffice?

Ans: No need to register, can issue IGST bill. However, provisions relating to registration not clear.

- ❖ **Cover charges collected for lounge + Pub + food + Drinks (all bundled together) - what shall be the category of service?**
- ❖ **Restaurants having rate card (Menu card) inclusive of taxes, need to factor the taxation accordingly.**

Composition Scheme for Restaurants

- ❖ Composition scheme for restaurant service provider not beneficial as taxes cannot be collected;

Q8 Whether restaurant service provider supplying through e-commerce operator can opt for composition?

Ans: Yes, Such restriction is placed only for supply of goods through E-commerce operator and the same is not applicable for supply of services.

Eg: Supplying food through Swiggy, can still opt for composition scheme

- ❖ Composition scheme cannot be opted in case of manufacturer of Ice cream and other edible ice whether or not containing cocoa

Comparison of Rates Earlier Law v/s GST

Accommodation Services

Sr.No	Tax	Earlier Rate	GST Rate
1	Service tax (15% * 60%)	9%	
2	Luxury Tax – Hotel charges exceeding Rs. 1000 Per Day	Nil	
3	Luxury Tax – Hotel charges exceeding Rs. 1000 but less than or equal to Rs.1500 Per Day	4%	
4	Luxury Tax – Hotel charges Exceeding Rs.1500 Per Day	10%	
5	GST – If Tariff below Rs. 1000 Per Day		Nil
6	GST – if tariff Rs.1000 and above but less than Rs.2500	-	12%
7	GST – if tariff Rs.2500 and above but less than Rs.7,500	-	18%
8	GST – If Room Tariff Rs.7,500 and above		28%

Accommodation – Other Miscellaneous Services

Sr. No	Nature of Income	Type of Supply	Rate of Tax (%)
1	Laundry	Separate	Rate as applicable for washing and cleaning services – 18%
2	Wifi – Complimentary with room or chargeable extra	Separate	rate as applicable to service of internet supply -18%
3	Pick and Drop- Chargeable extra or Complimentary	Separate	Rate as applicable to the service of passenger transport – 5% or 18% as the case may be
4	Breakfast – Complimentary	Composite	Rate as applicable for principal supply viz., accommodation
5	Complimentary Kit – Free Supplies	Composite	
6	Extra Person Charges	Composite	

Accommodation – Other Miscellaneous Services

Sr. No	Nature of Income	Type of Supply	Rate of Tax (%)
7	In Room Dining (food + beverages) - excluding liquor	Single	Taxable under the category of Restaurant service – 5% or 12% 18% as the case may be
8	Damage Charges	Separate	Taxable at the rate of tax applicable to the service of tolerating an act – 18%
9	Snacks Mini Bar	Separate	Taxable at individual rate as applicable to the respective product
10	Parking Charges at airport	Separate	Taxable at the rate as applicable for supporting services for road transport – 5% or 18% as the case may be
11	Booking Cancellation	Separate	Taxable at the rate of tax applicable to the service of tolerating an act – 18%

Accommodation – Other Miscellaneous Services

Sr. No	Nature of Income	Type of Supply	Rate of Tax (%)
12	STD/ISD	Composite	Taxable at the rate as applicable for telecommunication services – 18
13	Early Check-in/ Late Check-out	Composite	Taxable at the rate as applicable for principal supply viz., accommodation
14	Dinner / Lunch - Chargeable extra	Separate	To be charged at the rate of tax applicable to restaurant services

Accommodation – Key Aspects

Q9 In case where room tariff is Rs.7,000/- per room per day and extra person charges are Rs.600 then what shall be the rate of GST?

Ans: 28% as the Room Rent crosses Rs.7,500/-. The term 'Declared Tariff' includes amenities (extra cot for a person is an amenity).

Q10 Special Tariffs given to corporates with terms and conditions for minimum bookings. Can rate of GST as per special tariff be considered?

Ans. Yes, if such special tariff is also declared in the tariff card. However, the view may be disputed.

- ❖ Declared tariff needs to be considered only for rate and not for valuation of Tax. For ex: Room with tariff of Rs.2,600 with discount of Rs.200 will be taxable @ 18% on Rs.2,400 and not on Rs.2,600/-.

Accommodation – Key Aspects

Q11 Accommodation booked through yatra.com, who shall be liable to pay GST - Hotel or Yatra.com?

Ans: Hotel will be liable to pay GST. Yatra.com will raise a invoice for its commission charges on Hotel. However, yatra.com shall charge GST when thr transaction is not undertaken merely as an agent. – **Paul Merchants – Delhi HC**

- ❖ Huge expenses incurred on construction/ renovation/ repairs of Hotel - Credit of works contract not admissible if capitalised.

Comparison of Rates Earlier Law v/s GST

Banquet Services

Sl. No	Tax	Earlier Rate	GST Rate
1	Service tax (on full value) (15% * 70%)	10.5%	-
2	VAT (on food element)	13.5%	-
3	GST	-	18%
	Total	24%	18%
	Decrease Under GST	5% / 6%	

Comparison of Rates Earlier Law v/s GST

Banquet - Other Services

Sl No	Nature of Income	Type of Supply	Rate of Tax (%)
1	Decoration	Separate	Taxable at the rate as applicable for decoration - 18%
2	Renting of Equipment / speakers/ mic etc.	Separate	Taxable at the rate as applicable for renting of equipment – 18
2	Booking Cancellation	Separate	Taxable at the rate of tax applicable to the service of tolerating an act – 18

Banquets

- ❖ Food & beverages taxable at 18% when supplied with Banquet hall - Tax arbitration possible (Renting of hall + Supply of Food).

Q12 Is it mandatory for banquet provider to opt for bundling or can he break renting and food separately and bill accordingly?

Ans: Separate billing is possible provided same is clearly separated when dealt with customer and in the tariffs.

Q13 Can a service receiver of banquet services claim credit if renting element and treat only food element as ineligible?

Yes, if the same is separately disclosed on the invoice.

Banquets

- ❖ Deduction can be claimed for electricity and diesel reimbursements as the same is outside the ambit of GST - service provider needs to separately bifurcate the same.

Hiregange & Associates

Chartered Accountants

THANK YOU

- ravikumar@hiregange.com

