



Service Charge in Restaurants

What's allowed and what's unethical

This often happens in restaurants. Each time you dine out, the bill that is given to you is generally 25 per cent to 30 per cent more than the amount you had noticed on the menu. That's because the bill you end up paying has several elements – including service tax, service charge, and value-added tax – that increase the amount to be paid. Although these multiple additional charges may have bothered most of you, due to your unawareness of applicable supplementary charges or fear of spoiling the dine-out experience, you rarely question the restaurant.

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There have been a few instances wherein consumers raised their voice against restaurants and hotels for charging more for the items as compared to the maximum retail price (MRP) printed on them – some even moved civil and consumer courts. However, the confusion over the hospitality industry's authority to levy service charge and

service tax persists. People rarely understand why they have to pay premium prices at places such as restaurants, hotels, airports, and cinema halls. The following content on the apex court's judgements, arguments before the jury, as well as clarifications by the government will give you a better idea about your rights and you will know when to raise the flag.



Verdict

So, can a hotel or a restaurant charge for a bottle of drinking water more than the MRP marked on the container? Yes, as per the judgement pronounced by the Delhi High Court stating that hotels and restaurants may charge more because they also provide ambience and services to their customers. This was in 2007 in the matter of Federation of Hotels and Restaurants Association of India and others versus Union of India. (The same judgement was upheld in 2009 in Delhi Gymkhana Club versus Union of India.)

Case 1

The question raised in 2007 in the case of Federation of Hotels and Restaurants Association of India versus Union of India was 'whether it is permissible for a hotel to charge their customers any price above the maximum retail price mentioned on the mineral water bottle'. The court held in clear terms that "charging price for mineral water in excess of the MRP printed on the packaging, in the provision of service to the customers, does not violate any of the provisions of the standards of weights and measurement act as it does not constitute a sale or transfer of the commodity to them." Stating that billing by hotelier/restaurant for service and goods was one and indivisible, the court ruled that a customer, when entering a hotel or a restaurant, was there not

simply to make a purchase of a commodity. Their direct purpose of going there was more than this – it was as much about enjoying the ambience.

Case 2

In 2009, the same issue came up before the Delhi High Court in the case of Delhi Gymkhana Club Ltd versus Union of India. Here the objection was raised on the club charging more than the price printed on a soft drink bottle. It was held by the court that food items and beverages, packaged or in any other form, for consumption in the comfortable atmosphere of the club was not to be treated as sale to members. The price at which they are to be provided is clearly mentioned on the menu.





Points to Note

The observations made by the courts in their various judgements make it clear that:

1. Eatables consumed in a comfortable atmosphere, enjoying the ambience and experiencing other facilities in a hotel, a restaurant, or a club, cannot be separated for billing for their price, services and other taxes levied by the government. The bill includes the charges for all the services that one enjoys at such places.
2. A restaurant provides many services in addition to the supply of food. It provides furniture and furnishings, linen, crockery and cutlery, and in the eating places of today they provide experience through ambience, music and sometimes dance floor, etc. Hence, at a hotel/restaurant/club, customers are charged for all this apart from the beverage or the food that they order.

What about Home Deliveries?

So, when a customer gets the restaurant food delivered at home and is not being served in the hotel/restaurant, should they be charged the same way? Can a restaurant levy service tax or service charges for merely delivering the packed food?

The office of deputy commissioner, central excise and service tax department, received a query in

2015 from a restaurant in Chandigarh on this issue as its customer had resisted giving service tax on home delivery. The reply from the department said: "Food items given under free home delivery system is a sale of food and no service is provided, may it be serving food, ambience of enjoying air cooling, live entertainment, personalised hospitality, etc. Hence, no service tax is to be imposed on such transaction."

The department also clarified that:

- While enjoying all air cooling and central heating facility available in the restaurant/hotel, service tax cannot be charged on food beyond the rate of 5.6 per cent of the food bill.

Tax can only be imposed on 40 per cent of the total food bill and not on the total bill.



Service Charge Is Not Mandatory

In 2014, the finance ministry had clarified that the 'service charges' that some restaurants levied on customers did not come to the government coffers.

"Some restaurants/hotels/eateries besides charging for the food and beverages are also charging 'service charges' in their bills. The proceeds of the 'service charges' are retained by the restaurants/hotels/eateries,' the finance ministry had said in a note.

Some consumers have a 'misapprehension' that these 'service charges' are being collected by the restaurant on behalf of the government as tax, which however is not the case.



Must-Know Facts about Taxes You Pay

Service tax: It is the tax levied by the government on services rendered by restaurants. Service tax is the same in all states. The service tax rate at present is 14.5 per cent (inclusive of Swachh Bharat cess). The restaurant must be air-conditioned for the service tax. Also, customers must know that they cannot be taxed on the full bill, but only on 40 per cent of the bill as directed. Whenever you see service tax on the total bill exceeding about five per cent, you can question it.

VAT (value-added tax): VAT is state-specific. The rates can be as low as five per cent and as high as 20 per cent depending upon the state. Moreover, you must know that VAT for food items and drinks (beverages) are different. Many hotels, restaurants and night clubs charge a flat rate on the total bill. In such cases, it is good to ask for separate bills for food and drinks. This should clearly show the different VAT for both the items.



Service Charge Is Illegal in Chandigarh

On March 9 this year, the deputy commissioner of Chandigarh announced that service charge was illegal. He stated: 'There will be no service charge on food bills that hotels and restaurants are levying on consumers as it is not backed by any statute.'

This is the second time the UT administration has passed such an order. In a communication on 31 October 2014, the excise and taxation department had instructed all hotels/restaurants not to charge any service charge from customers, failing which necessary legal action would be taken against them.

The Chandigarh Consumer Forum had then started imposing fine on restaurants found violating the order.

	4	580.00
MARGARITA	1	145.00
IDA MIX	1	75.00
TER MIX	1	75.00
OJITO	1	145.00
	1	100.00

Sub Total :		6,770.00
Service Charge 10% :		676.00
Vat 12.5% :		801.00
Vat 20% :		208.00
Service Tax :		368.00

Total :		8,823.00

