

SC to take up 17 petitions filed by tour operators on April 29

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On April 29, the Supreme Court is expected to take up 17 petitions filed by various tour operators and State Haj organisers on differential Goods & Service Tax (GST) levied on Haj pilgrims.

The tour operators are challenging the levy of GST on Hajjis who avail themselves of services offered by registered private tour operators on the grounds that no tax law can be applicable on extra territorial activities per Article 245 of the Constitution. They also argued that the levy is discriminatory as it exempts certain hajjis who undertake the pilgrimage through the Haj Committee of India.

A GST levy of 5 per cent (with input tax credit) is applicable on air travel by pilgrims who utilise the services of non-scheduled/charter op-

erations for religious pilgrimage facilitated by the Centre under bilateral arrangements. However, if the services of a specified organisation in respect of a religious pilgrimage is facilitated by the External Affairs Ministry under bilateral arrangement, the rate would be nil.

Smita Singh, Partner, Singh & Associates said under GST, the services offered by Haj Committee is exempt but where private operators perform services related to Haj travel, the same is subject to GST at the rate of 5 per cent since they are not covered under the definition of specified organisation as defined in the exemption notification.

In fact, a proposal for GST exemption to all or reduction in rates came up for discussion during the 31st GST Council meeting held on December 22, 2018. Before the meeting,

the Fitment Committee (committee of GST officers of the Centre and States that vets various proposals on rates before giving their recommendations to the Council) discussed a proposal to exempt GST on the services provided by the private tour operators to religious pilgrimages.

Rate lowered

However, the panel did not agree and recommended that it was taxable under service tax also. "Request for a new exemption, may not be accepted. No exemption on such grounds would be desirable as many such requests may come in future," it said. Accordingly, the Council decided to lower the

rate to 5 per cent from 18 per cent rather than exemption.

According to Singh, it is important to note that although both suppliers are providing similar services, since the exemption has been given qua the supplier and not on the supply itself, this contradictory position has emerged.

Due to this anomaly, an important issue of dispute that emerges in this situation is that GST law seeks to levy tax on supplies provided and consumed outside India.

"Supplies relating to Haj are performed outside and even the recipient is outside India when the supplies are

performed. Thus, it would not be wrong to state that such levy seeks to have extraterritorial operation which can be challenged as *ultra vires* the Article 245 of the Constitution. So, the levy of GST on Hajjis seeks to go beyond the principle under which the GST law has been framed," she said.

Rajat Mohan, Senior Partner with AMRG feels if these petitions are accepted, it will lead to complete anarchy. Every person whose out services are exempt like hospital, education and religious entities would claim similar exemption on inward supplies. "This will make the system unmanageable and India will be back to the system of sales tax. It will be impossible to have a common code for all the sectors in economy with a such business ecosystem," he said.

