

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, FEROZEPUR**

C.C. No.477 of 2020

Date of Institution: 11.12.2020

Date of Decision:30.10.2023

Gurtej Singh aged 28 years son of Sukhdev Singh, resident of House No.33, Ward No.13, Behind Central Gurudwara, Gobind Nagri, Ferozepur City, Tehsil and District Ferozepur Mobile No.9023599977.

..... Complainant

Versus

Hotel International, Delhi Gate Road, Near Balmiki Chowk, Ferozepur through its Proprietor/authorized signatory.

..... Opposite party

Complaint under Section 35 of the
Consumer Protection Act.

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PRESENT :

For the complainant : Sh Navdeep Soi advocate

For the opposite party : Sh B.S.Gill Advocate

QUORUM

Smt. Kiranjit Kaur Arora, President.

Smt. Suman Khanna Member,

ORDER**KIRANJIT KAUR ARORA PRESIDENT:-**

Complainant has approached this Commission seeking directions to the opposite party to refund the extra service charge amount with interest, to pay Rs.80,000/- as compensation for mental agony, pain and harassment with interest and Rs.11000/- as litigation expenses.

2. Brief facts made out from the complaint are that the opposite party deals in business of hotel in the area of Ferozepur City where the complainant alongwith his friend visited for having meals on 24.11.2020 . It has been pleaded that they ordered for eatable items alongwith one bottle of mineral water and one bottle of cold drink, weighing 500 ml and the opposite party charged a sum of Rs.424/- which includes G.S.T.@5% amounting to Rs.19/-. Further it has been pleaded that the opposite party has wrongly and illegally charged service tax on the bottle of mineral water as well as cold drink. The print rate of bottle of mineral water was Rs.20/- and bottle of cold drink was Rs.30/-, whereas, the opposite party has charged Rs.25/- for the bottle of mineral water and Rs.40/- for the bottle of cold drink from the complainant on the pretext of additional service tax. It has also been pleaded that the complainant enquired about the criteria regarding charging of extra service tax on the above said bottles, but the opposite party refused to explain

the said criteria. The act and conduct of the opposite party regarding receiving of excess amount than the actual rate, amounts to deficiency in service and unfair trade practice on the part of the opposite party, hence this complaint.

3. Upon notice, the opposite party has appeared and filed its written reply to the complaint raising certain preliminary objections inter alia that the present complaint is false and frivolous one; that no illegal service tax was charged from the complainant; that the complainant had not bought the cold drink measuring 500 ML instead the cold drink was of 600 ML; that the complainant had swapped his card twice for the payment and had not objected to any service tax at that time and that the restaurant and hotels provide the customer with additional services like Ambience, cutlery etc. and as such they can charge the service tax legally as provided by laid down law. On merits, it has been admitted that a printed bill was provided to the complainant having total of Rs.424/- The opposite party has rightly been charged service tax on the mineral water bottled and cold drink. It has been further pleaded that a direct purpose of the customer is clearly to enjoy the Ambience available therein. When sale of food and drinks take place in hotels and restaurant then there is one indivisible contract of service coupled with sale of foods and drinks. Other allegations of the complaint have been denied.

4. The learned counsel for the complainant has tendered into evidence

Ex.C-1 to Ex.C-6 and closed evidence on behalf of the complainant. On the other hand, the learned counsel for the opposite party has tendered into evidence Ex.Op/1 and closed evidence on behalf of the opposite party.

5. We have carefully examined all the documents/evidence produced on record for its contained statutory merit and have also judiciously considered and perused the arguments duly put forth by the learned counsels for the parties.

6. From the overall circumstances as enumerated in respective pleadings of the parties, it reveals that on 24.11.2020 the complainant along with his friend visited the restaurant of opposite party for having meals. They ordered for eatable items along with one bottle of mineral water and one bottle of cold drink. The opposite party issued a bill and charged a sum of Rs.424/- which includes [G.S.T.@5%](#) which has been placed on record as Ex.C-3 . The grievance of the complainant is that the opposite party has wrongly and illegally charged GST on MRP of the bottles of mineral water as well as cold drink. The print rate of bottle of mineral water was Rs.20/- and bottle of cold drink was Rs.30/-, whereas, the opposite party has charged Rs.25/- for the bottle of mineral water and Rs.40/- for the bottle of cold drink from the complainant on the pretext of additional service tax. When the complainant enquired regarding charging extra service tax on the above said bottles from the opposite party, he refused to explain the same.

7. The learned counsel for complainant argued that the opposite party has wrongly and illegally charged GST on MRP of the bottles of mineral water as well as cold drink whereas the MRP of both bottles are inclusive of all taxes. The act and conduct of the opposite party, amounts to deficiency in service and unfair trade practice on the part of the opposite party.

8. The learned counsel for the opposite party argued that the complainant had bought the cold drink of 600 ML instead of 500 ML and he had swapped his card twice for the payment and had not objected to any service tax at that time. The learned counsel for the opposite party has further vehemently contended that the restaurant and hotels provide the customer with additional services like Ambience, cutlery etc. and as such they can charge the service tax legally .The counsel for the opposite party has relied on the judgment of the Hon'ble Supreme Court, in a case titled as 'Federation of Hotel and Restaurant Association of India Vs. Union of India, cited in 2018 (1) RCR (Civil) 513. So the opposite party has rightly been charged service tax on the mineral water bottles and cold drink.

9. It is the admitted case of the opposite party that a printed bill of Rs.424/- was provided to the complainant. The complainant has claimed that the opposite party has charged GST on the MRP of water bottle of Rs.25/-and on cold drink bottle 600 ml of Rs.40/-, whereas the MRP of both bottles are inclusive of all

taxes. Copy of the bill is Ex.C-3. However the complainant mentioned the quantity of cold drink bottle is of 500 ml but the Ex.C-3 clearly shows that the quantity of the same as 600 ml. But the question is, can a service provider charge GST on MRP of bottle which is already inclusive all taxes.

10. The Commission observed that as per the above judgment of the Hon'ble Supreme Court, in a case titled as Federation of Hotel and Restaurant Association of India Vs. Union of India, cited in 2018 (1) RCR (Civil) 513, the restaurant can mention any price above MRP in their menu card. The complainant has not challenged the price mentioned in the menu card. So, the above judgment does not apply in this case. The Opposite party cannot charge GST above MRP as GST always inclusive in MRP. But there is nothing on record brought by opposite party to prove that OP had charged according to MRP fixed in Menu Card in this regard. Moreover the opposite party did not serve the water and cold drink in a glass to the complainant, meaning thereby the complainant gets the mineral water and cold drink bottles only. Neither any documentary evidence nor any witness is brought by the opposite party before the Commission to rebut the evidence of the complainant. So, with these observations, we are of the opinion that the case of the complainant in regard to getting more GST on MRP is established, which amounts to deficiency in service on the part of opposite party.

11. Therefore, as a sequel of the above said facts circumstances and discussion, the Commission is of considered opinion that the opposite party charged extra as GST of Rs.03.25/- on Rs.65/-(Rs.25/-+Rs.40/-) .So, the present complaint is partly allowed with the direction to the opposite party to pay Rs.03.25/- along with interest @ 6% P.A. from filling of the present complaint till its realization. The opposite party is further directed to pay Rs.3000/- as compensation for mental agony, harassment and litigation expenses to the complainant, within 45 days from the date of receipt of copy of this order.

12. The complaint could not be decided within the stipulated period due to heavy pendency of Court Cases. Copy of the order be communicated to the parties free of charges. After compliance, file be consigned to record room.

Announced
30.10.2023

(Suman Khanna)
Member

(Kiranjit Kaur Arora)
President