Impact of GST on Electronic Commerce

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Introduction

Electronic commerce in general parlance is defined as 'commercial transactions conducted electronically'. As simple as it may seem in this definition, electronic commerce began traditionally as online retail in the stock-and-sell model, but has now transformed the entire way of doing business and in a better and more profitable manner when compared to the traditional business.

Success of companies like Flipkart, Myntra, Paytm, Amazon, MakeMyTrip and eBay has fascinated all from traditional businessman to the new comers as start-ups and not to forget even governments. The online solutions, as they should better be called, have evolved new models of supply of goods and services. They have made the entire world a smaller place without compromising on the quality of their products. We have compiled some of those models in this paper and shall examine the impact of Goods and Services Tax ("GST") on such business models.

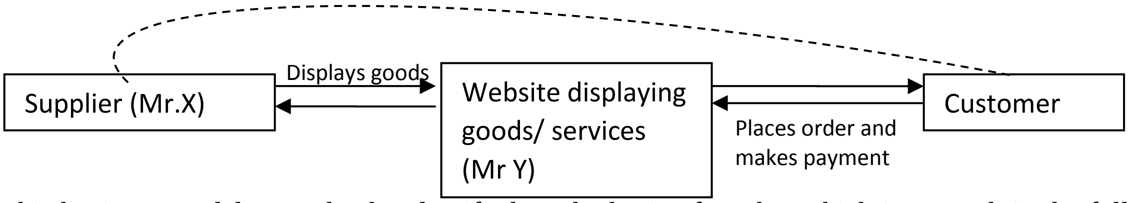
1. Sale of Goods – Online shop – The traditional model

The traditional or first model (also known as the 'stock-and-sell model') of online sale of goods was very simple. There was an inventory of goods / services which is displayed to the customer and customer can scan through the choices. Customer then picks the desired goods/ services in his virtual cart and makes payment for such purchases. The purchased goods/ services is then delivered to the customer by various modes like courier, hand delivery, option to pick from stores of the supplier etc. The model can be better explained in the following manner:

In this model, the platform is owned by the supplier, and the inventory of goods offered is also owned/controlled by him. Thus, the model is basically an extension of the brick and mortar businesses and requires investment in physical inventory. Here, the working capital need is higher for maintaining the inventory.

2. Sale of Goods – Marketplace – The aggregator

The next model is well known today and is most popular amongst both buyers and sellers, is called the marketplace. Where the platform is owned by one person, but the goods are sold on such platform by other sellers, it becomes the marketplace model. The person owning the site or platform displays the products of other persons. Buyers visit the site where they can find their requisite goods. The payment is made to the site owner while the delivery of goods is directly provided by the seller to the buyer. The site owner makes the payment of the goods to the seller after deducting his margin or commission. Thus, in this model, the requirement of working capital is considerably low and risk of slow-moving inventory also does not exist on part of the site owner. The model can be better explained in the following manner:



This business models can also be classified on the basis of market which is catered, in the following manner:

Category of Buyers → Category of Sellers ↓	Business	Consumer
Business	B2B eg. Alibaba	B2C eg. Flipkart, Amazon
Consumer	C2B eg. Cars24	C2C eg. Ebay, OLX

3. <u>Electronic commerce in case of services</u>

In case of services, the domain of electronic commerce has expanded at much faster pace than goods. Various models of supply of services through electronic commerce are as follows:

3.1. <u>Traditional model:</u> In this model, the supplier showcases his services over a website and the buyer approaches him for such services. In this case, website is a mere informational platform. This model has enhanced with times and sometimes, the owner is able to even provide his services through the website for eg. distant education like MeritNation, simplylearn etc

3.2. <u>Software as a Service ("SAAS"):</u> In this particular case, the desired services are offered to the customer though a website whereby software performs the requisite function. For eg., Office 360 etc.

3.3. <u>Aggregator model:</u> In this model the website owner does not possess or run his own data but aggregates the data from other websites onto his website. For eg., Trivago etc. It is a website that collects items / content of similar nature and displays them or links them to their original website / content provider.

3.4. <u>Online information and database access or retrieval websites:</u> These websites are basically hosting huge data base which is of interest to selected users and such websites make available the data to users on payment basis. For example, Shaadi.com, taxmann.com etc.

3.5. <u>Aggregator Marketplace model:</u> This is a combination of two models where the site-owner not only displays the information of third party associated for a common interest, it also allows users to choose from its own website the services of such third parties, for example, UrbanClap, Uber, Ola etc.

Apart from the above service providers, there are also other support functions of electronic commerce which co-exist in the electronic commerce ecosystem like payment gateways, e-wallets, internet services providers etc.

4. <u>Present tax regime</u>

The present indirect tax structure in India is complicated and contains many taxes levied by both Central as well respective State governments. Indian commerce has been fragmented owing to differences in state VAT laws, and one of the industries that has been worst hit by the same is electronic commerce.

Differences in state laws has resulted not only in multiple rate structures, but also struggle in compliance due to requirement of way bills and a number of forms at the State borders. There also has been overlapping in the definition of goods and services leading to double taxation at times, especially in the case of digital downloads such as books, music or software. To top it, certain state governments have also introduced entry tax on sale of goods into their territory through electronic commerce websites, leading to an additional levy of tax. In terms of movement of goods, Border checks and levies like entry tax have made logistics a costly affair and time consuming affair.

Both the electronic commerce and its taxation was in evolving stage even under the current regime, and its structures were in invention and transformation stage and thus, as of date no concrete model can be attributed. The status of present levies has been summarised in brief as under:

- Excise: Generally it is understood that there is no levy of excise in the field of electronic commerce as no one can engage in virtual production of goods. Even the activities of packing and re-packing undertaken by the electronic commerce platforms for the purpose of logistics were ruled as not amounting to manufacture by the Authority for Advance Rulings in Ruling AAR/CE/04/2012. However, tagging could amount to manufacture in certain cases as per the Advance Ruling in case of same assessee in Ruling No. AAR/CE/06/2016. Further repacking, relabelling to enable to make it for retail sales may also amounts to manufacture with regard certain products like healthcare, consumer goods etc. if it is mentioned so in the notes to central excise tariff or in Schedule.
- Service Tax: Sale of goods is not subject to service tax. However, the commission or any other charges for permitting use of electronic platform, operator's trade name etc. retained by electronic commerce platforms is chargeable to service tax. Further, the services of aggregators have been specifically included in the ambit of service tax and they have been made liable under reverse charge.
- VAT/Sales Tax: It is applicable on sale. In case of inter-state sale, CST is charged. Form C is not required in most of the cases as the customers are unregistered dealers and therefore, the highest rate of tax is applicable. In case of intra-state sale, VAT is applicable.

5. Treatment of electronic commerce transaction under the Model GST Law

In the model GST law, the term 'electronic commerce operator' has been defined to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. The definition of electronic commerce is widely worded to provide that 'electronic commerce' means supply of goods and/or services including digital products over digital or electronic network.

5.1. Levy

At the outset, no threshold exemption has been provided to the electronic commerce operator. Thus, any person who is an electronic commerce operator or is supplying through an electronic commerce operator (except persons supplying notified services u/s 8(4)) shall be required to levy GST from his first rupee of supply.

In case of stock-and-sell model, GST would be levied on the entire value of goods and shall be paid by the owner of the goods and also the website. However, in case of marketplace, GST would be applicable on both transaction viz., between seller and buyer and between seller and marketplace. While the seller would discharge GST on the entire value of goods supplied by him subject to TCS u/s 56, if applicable, the site owner shall discharge GST only on the commission earned by him.

In case of service models, GST shall be applicable on the value of supplies made through such websites. In traditional model, the site owner being service providers himself, needs to comply with the levy and discharge of GST. In case of aggregators, though the levy is on the supplier of services to customers, the liability to pay such tax has been casted upon the aggregator in certain cases vide section 8(4). Only in the case of C2C transactions, a plea can be taken that no GST is leviable as such supplies are not made in the course or furtherance of business.

5.2. Liability to pay

As per the current understanding, GST would be paid under normal charge. However, a special provision for collection of tax at source has been made applicable in the case of electronic commerce operators. It has been provided that Central government shall notify categories of services on which tax shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the person liable for paying the tax in relation to the supply of such services

Further, every electronic commerce operator (not being an agent) shall be liable to collect an amount calculated at the rate of 1% of the net value of taxable supplies made through it where the consideration along with appropriate GST with respect to such supplies is to be collected by the operator. The liability to pay in this respect would lie with the electronic commerce operator.

5.3. Reports/returns

Apart from the monthly and annual returns, electronic commerce operators will be required to file monthly TCS returns viz., a statement, electronically, containing the details of outward supplies of goods or services effected through it, including the supplies of goods or services returned through it, and the amount collected under during a month, in such form and manner as may be prescribed, within ten days after the end of such month.

6. Conclusion

Compliances are expected to multiply under GST for an electronic commerce operator. Apart from Monthly returns for inward supplies, outward supplies etc., an additional liability in terms of filing statement of supplies made through it has been casted on such operators. Apart from above there is also requirement for registration in each of the states they operate. The concept of centralised registration shall no longer be a saviour and thus, such firms would be required to register themselves in each of the state where they have their presence.

Thus, Electronic commerce firms shall require a lot of change at the planning and implementation level. All in all, GST is expected to be a mixed bag for electronic commerce, with the benefits outweighing the concerns. However, the real picture shall be clear only after it is implemented.

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