

E-commerce- Shades of GST

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While India is eagerly waiting for passage of the Constitution (122nd Amendment) Bill, 2014 in the upcoming monsoon session of Parliament scheduled to commence from 18 July, 2016, the Indian Finance Ministry after the meeting of Empowered Committee on June 14th 2016 published the Model GST law in public domain with the intention of receiving inputs from the stake holders.

Before giving any inputs on the Model GST law it is vital for the trade to understand the nuances of the Model GST law which might have an impact on their businesses.

In the present article, I would touch upon the current issues faced by the Electronic Commerce (E-Commerce) industry alongwith the relevant aspects of the Model GST Law which are likely to impact their business operations.

As we understand, an E-commerce system comprises of three major elements namely, the E-Commerce Operator which provides the electronic platform for facilitating the supplies of goods/services, the vendors/suppliers who supply their goods/services through the electronic platform and the end- consumer who buys the goods/services through the electronic platform. With increasing online transactions in today's era, E-commerce operators have started attracting the attention of the indirect tax authorities.

Current Issues - Who is liable and for what?

Till date the primary area of dispute in this industry has been as to who is liable to pay taxes on the supplies being made through electronic platform and for what are they liable.

E-Commerce operators principally operate under three models viz., inventory model, market-place model and aggregator model. Out of three models above, market place model of E-Commerce industry has been most recently under controversies and disputes raised by tax authorities. In market place model, suppliers list their goods/services on the electronic platform for sale through it. Though invoicing, transportation, etc., are undertaken by the suppliers themselves, E-Commerce Operator facilitates them by providing the electronic platform to display their products and assists them by collecting the payment on their behalf from the end-consumers. In some cases E-commerce Operator also extends its services of storage and delivery of goods to the suppliers and charges them for providing such services.

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As far as levability of service tax is concerned, the service tax law is amply clear in respect of the platform services and storage and transportation services provided by the E-commerce Operators to the suppliers and such services have not been subject of tax disputes.

It is the taxability of supplies made by the suppliers through the E-Commerce Operators that have ever since been under the dispute by the various State tax authorities. With rapid increase in the transaction through E-Commerce Operators for the sake of administrative convenience, the tax authorities of various States started approaching the E-Commerce Operators for undertaking the compliances under the State VAT laws. To illustrate, States like Delhi and Kerala require E-Commerce Operators to provide the information relating to the suppliers selling through their platform. Delhi VAT laws have even gone to an extent of imposing penal provisions on the E-Commerce Operators by treating them as dealers in case of non-provision of information about the suppliers as required by them. In some other cases, the tax authorities have been seeking to fasten the tax liability on the E-Commerce Operators by treating them as agent of the suppliers. Further while States like Bihar, Orissa, Assam have been treating the transporters as “dealer” for paying Entry Tax, Gujarat has fastened the liability of paying entry tax on the E-Commerce Operator itself.

The above legal hassles faced by the E-Commerce Operators are posing various challenges for them to carry out their business operations smoothly and efficiently.

What GST promises for E-Commerce industry?

The upcoming GST law aims to remove the current difficulties faced by this industry and contribute towards the ease of doing business in India. We shall now glance through the provisions of Model GST Law which directly affect the E-Commerce Industry.

Impact on E-Commerce Operator

The Model GST Law framed in respect of E-Commerce Operators specifically makes all the suppliers of goods and/or services (other than branded services) using the E-Commerce platform liable to take registration under the GST regime without any threshold [**Para 5(viii) of Schedule III of Model GST law**]. Bringing such suppliers within the realms of GST law will resolve the disputes relating to treatment of E-Commerce Operators as agent of these suppliers for payment of taxes. This is expected to provide relief to the E-Commerce Operators.

Nevertheless in order to avoid revenue leakage and for assured revenue collection on these supplies, the proposed GST law also imposes a responsibility on the E-Commerce Operators to collect an amount from the sales proceeds collected by it from the end-

consumers and deposit the same to the Government. Additionally they will also be required to file a statement giving the details of tax collected and supplies made by the suppliers through their platform. As a result, every E-Commerce Operator will be required to take registration under the GST regime without any threshold ***[Para 5(ix) of Schedule III of Model GST law]***.

The above requirements imposed on the E-Commerce Operators would again bring them back to the situation from where various issues relating to taking registration, payment of tax collected at source and filing the statements by the E-Commerce Operators will crop up. One of the most critical issue that might arise will be the place where the registration has to be taken by the E-Commerce Operator. Whether such place will be the location of E-Commerce Operator or place where the suppliers are located or where the supplies are made? This would be an important area of concern as the payment of tax collected at source by the E-Commerce Operator has to be passed on as credit to the supplier for whom such tax has been collected and deposited.

So one can see that where on one hand the new law aims to contribute towards ease of doing business by removing the various compliance difficulties currently faced by the E-commerce Operators, on the other hand similar compliances are proposed to be imposed on them once again in the form of collecting tax at source and information of the suppliers.

After evaluating the impact of GST on E-Commerce Operators, we shall take a look at the impact of this new law vis-à-vis the suppliers of goods/services dealing through E-Commerce platform.

Impact on suppliers of goods/services

E-Commerce platform supports various small suppliers who due to dearth of resources and funds are not able to reach the market at large. If we evaluate, while giving relief to the E-Commerce Operators from the payment of taxes on supplies made by a third party, the Model GST law had knowingly or unknowingly targeted the small scale suppliers supplying goods/services through E-Commerce Operators by making them liable to take the registration under the new GST law without any threshold limit. In simple words, once these suppliers take the registration, they would become the taxable persons under the GST and will become liable to pay GST even on their first sale. Is it a mistake or a deliberate step taken under the new law for expanding the tax base?

It appears that the aim of the Model GST law was only to keep track of all the suppliers operating through E-commerce platform by making them register under the Model GST law and to resolve the current controversies relating to fastening of various liabilities on E-

Commerce Operators by treating them agents, etc. However the Model GST law does not grant any small scale exemption to such small scale suppliers who may deserve some benefit. This certainly may not be the intention.

Another issue that suppliers should be concerned with relates to collection of tax at source by the E-Commerce Operator and passing of its credit to their accounts. As the E-commerce Operator is required to collect tax on the sales proceeds of the supplies made through its platform and deposit the same to the Government as tax on behalf of the supplier, there can be situations where the tax collected is greater than the tax payable. This would result in overflow of credit in the hands of suppliers. In such situations, the suppliers will be left with no option other than claiming refund which will again be a tedious task for such small players.

Take away

As the Model GST Law has been made available in public domain for taking inputs from the trade, this is the appropriate time for the members of the trade and industry to take up their respective issues before the appropriate forum and get clarity on the provisions of the new law so as to avoid any future complications.