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From Marketplace to Fulfilment Centre: Testing the Limits of 'Pure Agency' under Rule 33 of the CGST Rules

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ABSTRACT

Rule 33 of the CGST Rules, 2017 excludes from the value of supply those costs that a supplier incurs as a 'pure agent' of the recipient, subject to three conjunctive conditions and a defined set of elements. This paper tests how that framework applies to e-commerce platforms, whose operations increasingly extend from mere transaction facilitation to full fulfilment. After setting out the statutory scheme and surveying advance rulings that have interpreted pure agency in varied contexts, the paper examines two recent CBIC circulars, on electricity-charge reimbursements and on TCS liability among multiple e-commerce operators, and dissects the marketplace and fulfilment models against the Rule 33 criteria of authorisation, no title to goods, no personal use, and actual cost recovery. It concludes that a strict marketplace intermediary may qualify as a pure agent, while platforms controlling inventory or charging marked-up fulfilment fees generally fall outside the concept, and it argues for clearer regulatory guidance to reduce compliance uncertainty and litigation.

Keywords: pure agent, Rule 33, CGST Rules 2017, GST, e-commerce, marketplace model, fulfilment services, value of supply, advance ruling, reimbursement

I. BACKGROUND

The rapid growth of the e-commerce industry has transformed the way businesses operate, reshaping global supply chains and consumer behaviour. Platforms like Amazon, Flipkart, and other digital marketplaces have become central to the buying and selling of goods, acting as intermediaries between independent sellers and consumers. This shift has brought with it a host of legal and regulatory challenges, particularly concerning the application of tax laws to these platforms. One such challenge is the application of “pure agency” principles under the Central Goods and Services Tax [“CGST”] Rules, 2017.

Rule 33 of the CGST Rules introduces the concept of pure agency, where an intermediary, referred to as a “pure agent”, acts on behalf of another party and only recovers actual expenses

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without adding any markup or taking title to the goods involved. In such cases, the pure agent is excluded from the value of supply, meaning that the costs passed through are not subject to GST. However, the application of this concept to e-commerce platforms is far from straightforward. These platforms offer a variety of services, ranging from merely facilitating transactions to providing end-to-end fulfilment solutions, which complicates their potential classification as pure agents.

The e-commerce marketplace model, in which platforms act as intermediaries without taking ownership of the goods, presents a clearer case for meeting the criteria of a pure agent. However, many e-commerce platforms have evolved beyond this simple intermediary role. With the rise of fulfilment centres and other logistics services, platforms often take possession of goods, handle storage and shipping, and even engage in promotional activities. These added layers of involvement challenge the traditional boundaries of pure agency under GST law.

This research paper seeks to explore the applicability of the pure agency concept to e-commerce platforms, dissecting the operational models of these businesses to understand how they align or conflict with the legal requirements of Rule 33. By analysing the marketplace and fulfilment models, this paper aims to clarify the conditions under which e-commerce platforms may be classified as pure agents. Furthermore, it highlights the ambiguities and complexities that arise from the evolving nature of e-commerce and underscores the need for clearer regulatory guidance.

In doing so, this research delves into the critical issues that have emerged at the intersection between e-commerce and GST compliance. By providing a thorough analysis of the principles governing pure agency and how they interact with the operational realities of e-commerce platforms, this paper offers valuable insights for legal practitioners, policymakers, and businesses navigating the murky waters of tax obligations in the digital marketplace.

II. PURE AGENCY RULE: SCOPE AND USE

A. Statutory Scheme

Rule 33 of the Central Goods and Services Tax Rules, 2017 [“CGST Rules”] outlines the statutory framework for the concept of ‘pure agency’ in the context of Goods and Services Tax in India.¹ Under this rule, the cost or expenditure incurred by a supplier who acts as a ‘pure agent’ is excluded from the calculation of the value of supply.²

The following conditions have to be met for a supplier to qualify as a pure agent:

¹ Central Goods and Services Tax Rules, 2017, r. 33 (India).

² *Id.*

- **Authorisation:** The supplier must act as a pure agent when making payments to third parties, which should be done with prior authorisation from the recipient.³
- **Separate indication in invoice:** The payment made by the pure agent on behalf of the recipient must be separately indicated in the invoice issued by the pure agent.⁴
- **Additional supplies:** The supplies procured by the pure agent from third parties must be in addition to the services provided by them on their own account.⁵

The “and” connecting the three requirements indicates that these requirements are conjunctive in nature.⁶

B. Elements of Pure Agency

The elements of a ‘pure agent’ are provided in the explanation to Rule 33 of the CGST Rules.⁷

This is a person who:

- Enters into a contract with the recipient of the supply to serve as their pure agent, incurring expenses on their behalf while providing goods or services.⁸
- Does not intend to, nor actually, retain ownership of the goods or services obtained or supplied in their role as a pure agent for the recipient.⁹
- Does not utilise the goods or services procured as a pure agent for personal benefit.¹⁰
- Only receives reimbursement for the actual expenses incurred to procure such goods or services, along with the payment for their own supply.¹¹

Again, these requirements are conjunctive in nature, that is, all of them must be satisfied.

III. ANALYSIS OF CASE LAWS

The analysis of case laws related to the concept of pure agency under GST reveals varied interpretations. In *Badresh Kumar Ramesh Chandra Dave*, the applicant provided manpower supply services and issued two separate invoices: one for the reimbursement of salaries paid to labourers and another for consultancy fees.¹² The issue was whether the applicant acted as a pure agent of the recipient. Similarly, in *DRS Marine Services Private Limited*, the applicant

³ *Id.* r. 33(i).

⁴ *Id.* r. 33(ii).

⁵ *Id.* r. 33(iii).

⁶ *Id.* r. 33.

⁷ *Id.* r. 33, Explanation.

⁸ *Id.* r. 33, Explanation (a).

⁹ *Id.* r. 33, Explanation (b).

¹⁰ *Id.* r. 33, Explanation (c).

¹¹ *Id.* r. 33, Explanation (d).

¹² *In re Badresh Kumar Ramesh Chandra Dave*, Advance Ruling No. GUJ/GAAR/R/96/2020 (Guj. Auth. for Advance Ruling).

recruited shipping personnel for foreign ship owners and disbursed salaries to the crew on the principal's request.¹³ The authority held that this arrangement constituted a pure agency service, thus exempting the amounts involved from GST.

In contrast, the case of *Ion Trading India Pvt. Ltd.* involved leasing office premises and managing parking expenses, with the appellant recovering part of these expenses from employees.¹⁴ Although the authority decided that this scenario met the criteria for a pure agency under Rule 33, there was contention over the lack of a separate invoice, suggesting the decision might be flawed.¹⁵ In *Jewel Classic Hotel Private Limited*, the applicant arranged additional services like flower decoration and DJ services for customers through third-party vendors and recovered the exact amount from the customer.¹⁶ However, the authority ruled that this did not qualify as a pure agency, emphasising that it was the applicant's liability to provide these services.¹⁷

In *Karnataka State Warehousing Corporation*, the applicant provided warehousing services for agricultural produce and arranged handling and transportation services for contractors.¹⁸ The revenue argued that these costs should be included in the value of warehousing services.¹⁹ Here, the authority concluded that the applicant was functioning as a pure agent, and the cost was not to be added to the supply's value.²⁰ In *Premier Vigilance and Security*, the case addressed whether toll taxes paid by taxi service customers should be included in the value of supply.²¹ The authority held that this did not qualify as a pure agency under Rule 33, meaning toll taxes were part of the supply's value.²² In *Arivu Educational Consultant Pvt. Ltd.*, the applicant collected school fees from students and paid the school on their behalf.²³ The question was whether this school fee should be added to the coaching fees.²⁴ The authority held this arrangement to be a pure agency since the coaching institute paid the school fees via a separate invoice.²⁵

¹³ *DRS Marine Services Pvt. Ltd.*, GST-ARA-34/2018-19/B-99 (Mah. Auth. for Advance Ruling).

¹⁴ *Ion Trading India Pvt. Ltd.*, UP_AAAR_11/2019 (U.P. App. Auth. for Advance Ruling).

¹⁵ *Id.*

¹⁶ *Jewel Classic Hotels Pvt. Ltd.*, HAR/HAAR/2019-20/23 (Har. Auth. for Advance Ruling).

¹⁷ *Id.*

¹⁸ *Karnataka State Warehousing Corp.*, Advance Ruling No. KAR ADRG 14/2021 (Kar. Auth. for Advance Ruling).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Premier Vigilance & Sec. Pvt. Ltd.*, 20/WBAAR/2018-19 (W.B. Auth. for Advance Ruling).

²² *Id.*

²³ *Arivu Educ. Consultants Pvt. Ltd.*, KAR/AAR/116/2019-20 (Kar. Auth. for Advance Ruling).

²⁴ *Id.*

²⁵ *Id.*

Another important case is that of *In re Udayan Cinema (P.) Ltd.*²⁶ In this case, Udayan Cinema, an Indian film production company, planned to shoot a film in Brazil and sought to appoint CDI Virtual Films Inc [“CDIVF”], a foreign entity, as a line producer.²⁷ They requested an advance ruling on whether payments to CDIVF would attract Integrated Goods and Services Tax under the reverse charge mechanism, and whether reimbursements to CDIVF on an actual cost basis would also be subject to IGST.²⁸ Under the proposed contract, CDIVF was to facilitate production services, hire local actors, and manage insurance in Brazil. CDIVF would retain production rights as security until the final payment.²⁹

The AAR ruled against Udayan Cinema on both points. It held that CDIVF was not just facilitating services but was directly involved in film production, supplying these services on its own account rather than as an intermediary.³⁰ Regarding the pure agent claim, the AAR found that the contract did not clearly establish CDIVF as a pure agent, as the contract indicated that expenses were a charge on CDIVF, and CDIVF was to hold production rights as security.³¹ Thus, the AAR concluded that reimbursements made to CDIVF could not be deducted from the value of supply for GST purposes.³²

Moreover, in *Sree Subha Sales*, the applicant entered into an agreement with Karnataka Power Transmission Corporation Limited [“KPTCL”] to potentially act as a pure agent for incurring costs like tree cut and crop compensation paid to farmers during the course of the project.³³ The applicant raised reimbursement bills for these compensations after the payments to the farmers were processed.³⁴ A ‘Special Conditions of Contract’ document was referenced as part of the agreement, but it was not signed.³⁵ However, the applicant asserted that this document, though unsigned, was binding as it was included in the e-procurement process during the tender.³⁶

The authority considered whether the applicant qualified as a pure agent under Rule 33 of the CGST Rules, 2017.³⁷ It noted that the ‘Special Conditions of Contract’ did not mention land compensation, implying that the applicant could only be considered a pure agent for tree cut

²⁶ *In re Udayan Cinema Pvt. Ltd.*, [2019] 103 taxmann.com 219 (AAR-W.B.).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *In re Sree Subha Sales*, KAR ADRG 39/2022 (Kar. Auth. for Advance Ruling).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

and crop compensation.³⁸ Since the document specified these compensations but not land compensation, the applicant met the criteria of a pure agent only for the reimbursement of tree cut and crop compensation.³⁹ However, the applicant was not deemed a pure agent for land compensation due to the absence of a specific contractual agreement to incur such expenditure on behalf of KPTCL.⁴⁰ If the ‘Special Conditions of Contract’ is found not to be part of the main agreement, this ruling would not apply.

IV. RECENT DEVELOPMENT

The Central Board of Indirect Taxes and Customs [“CBIC”] recently issued Circular No. 206/18/2023-GST (dated 31 October 2023) to clarify the applicability of GST on various services, including the reimbursement of electricity charges by real estate companies, malls, and airport operators from their tenants or occupants.⁴¹ A key focus of the circular is the treatment of these reimbursements, particularly when electricity is bundled with services like renting property or maintaining premises.

The circular explains that when electricity is supplied along with renting or maintenance services, it forms part of a “composite supply”.⁴² In such cases, the main supply (renting or maintenance) dictates the GST rate, and the electricity component is considered ancillary, even if billed separately.⁴³

However, when real estate owners, Resident Welfare Associations [“RWAs”], or developers pass on electricity charges to occupants at the exact amount billed to them by State Electricity Boards or DISCOMs, they are deemed to be acting as “pure agents”.⁴⁴ In this context, a pure agent is a party that incurs expenses on behalf of others and does not retain any benefit from those transactions.⁴⁵ As a result, these reimbursements are excluded from the value of supply and are not subject to GST. This aligns with Rule 33 of the CGST Rules, which outlines the criteria for pure agents.

While this clarification may seem straightforward, the circular raises several issues. Notably, Rule 33 specifies conditions that must be met for a party to qualify as a pure agent, but the circular appears to “deem” RWAs and other suppliers as pure agents even when these conditions

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Circular No. 206/18/2023-GST, Cent. Bd. of Indirect Taxes & Customs (Oct. 31, 2023), <https://cbic-gst.gov.in/pdf/clarifications-regarding-applicability-GST-certain-services.pdf>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

might not be fully satisfied. This raises questions about the legitimacy and scope of such deeming provisions.

Additionally, the term “actual basis” is left somewhat ambiguous. The circular covers situations where electricity is billed based on sub-meters but does not address cases where common area electricity charges are distributed among occupants on a pro-rata basis. It is unclear whether these scenarios also qualify as reimbursements made on an “actual basis”, and whether the pure agent status applies.

In conclusion, the circular’s attempt to clarify the tax treatment of electricity charge reimbursements by treating suppliers as pure agents has introduced more questions than answers. Taxpayers will need to carefully review their contracts and billing practices to determine whether they qualify as pure agents or if their services are part of a composite supply. The lack of clear guidance could lead to disputes not only regarding electricity reimbursements but other types of expense recoveries as well.

V. APPLICATION OF ‘PURE AGENCY’ RULE TO E-COMMERCE

The concept of “pure agency” under Rule 33 of the CGST Rules, 2017, provides a critical framework for determining the tax treatment of certain transactions, especially in the context of e-commerce. This principle is particularly relevant for e-commerce platforms, which function as intermediaries between buyers and sellers. However, the question of whether these platforms can be classified as pure agents under GST law requires a detailed analysis of their operational models. This section explores the application of pure agency principles to e-commerce platforms, analysing their roles, responsibilities, and activities to assess whether they meet the conditions set out in Rule 33.

A. Marketplace Model

Under the marketplace model, platforms such as Amazon, Flipkart, and others primarily act as facilitators, enabling transactions between independent sellers and buyers. They do not own or sell the goods directly but merely provide a platform where third-party sellers can list their products and consumers can purchase them. The classification of these platforms as pure agents depends on how closely they adhere to the conditions of pure agency.

- **Contractual relationship:** In this model, the e-commerce platform often enters into specific contracts with sellers to allow the listing and sale of goods. This contractual arrangement could position the platform as an agent of the seller, facilitating transactions on the seller’s behalf. To qualify as a pure agent, it must be clear that the platform is acting

in the interest of the seller and does not have a principal-agent relationship that deviates from this.

- **No title to goods:** One of the most critical elements for qualifying as a pure agent is the absence of ownership over the goods. Platforms operating under the marketplace model typically do not take ownership of the products being sold, thereby meeting this requirement. The sellers retain title over their goods, and the platform merely facilitates the transaction without becoming involved in the actual sale.
- **No personal use of goods:** To be considered a pure agent, the platform must not use the goods for any purpose other than fulfilling the contract on behalf of the seller. Since e-commerce platforms under the marketplace model do not use or consume the goods themselves, this condition is typically satisfied.
- **Actual cost recovery:** Another essential requirement under Rule 33 is that the agent only recovers actual costs incurred. In the case of e-commerce platforms, this would mean that the platform charges sellers fees based purely on the services it provides (for example, listing fees or transaction fees), without marking up these costs. If the platform's fees are commensurate with the services rendered, they could qualify as a pure agent. However, if the platform charges additional or inflated fees, such as high commission rates beyond the cost of services, it would not meet the pure agent criteria under GST law.

B. Fulfilment Services

The role of e-commerce platforms becomes more complex when they provide additional services beyond merely facilitating transactions, such as fulfilment services. Some platforms offer end-to-end solutions, including storing, packing, and shipping goods on behalf of sellers. These services introduce a new dimension to the platform's involvement in the transaction and may disqualify it from being considered a pure agent.

- **Title to goods:** Platforms that offer fulfilment services often take physical possession of goods for storage and shipment. While they may not legally own the goods, the fact that they control the inventory at any stage of the supply chain could conflict with the pure agency model. Even temporary possession for fulfilment purposes could be interpreted as ownership, which disqualifies them from being a pure agent.
- **Use of goods:** In fulfilment models, e-commerce platforms may engage in activities such as inventory management, promotional handling, or managing returns. These activities involve the use of the goods in ways that go beyond simply facilitating the transaction. For example, if a platform uses a portion of the inventory for promotional

giveaways or handles goods for returns and resale, it no longer acts merely as a facilitator, which would disqualify it from pure agent status.

- **Cost recovery beyond actuals:** Fulfilment services typically involve significant logistics, storage, and operational costs. If the platform charges sellers fees that exceed the actual cost of providing these services, such as incorporating a profit margin for handling, storage, or shipping, it would not meet the “actual cost recovery” criterion. Platforms that mark up their fees for fulfilment services are operating beyond the scope of a pure agent and are instead engaging in taxable transactions.

C. Analysis of the Pure Agent Framework in E-Commerce

The application of pure agency principles to e-commerce platforms reveals a nuanced and often ambiguous landscape. Platforms operating under a strict marketplace model, where they act solely as intermediaries without taking ownership or charging inflated fees, may be classified as pure agents under Rule 33 of the CGST Rules. Their role is primarily to facilitate transactions, and if their charges reflect the actual costs incurred, they fulfil the conditions for pure agency.

However, platforms that offer fulfilment services or any other involvement beyond the marketplace function face challenges in being classified as pure agents. The additional handling of goods, involvement in logistics, and the potential for charging fees that include profit margins complicate their status. Under these circumstances, the platform assumes a more active role in the supply chain, which moves it away from the pure agent definition and into a taxable transaction model.

The recent CBIC Circular No. 194/06/2023-GST introduces significant complexities regarding the classification of e-commerce platforms as pure agents under GST law, particularly in the context of their operational models. This circular clarifies the Tax Collected at Source [“TCS”] liability for transactions involving multiple e-commerce operators [“ECOs”] and outlines the responsibilities of each operator in various scenarios.

The circular aims to delineate responsibilities among ECOs when multiple platforms are involved in a single transaction. However, it raises critical questions about how these clarifications impact the classification of e-commerce platforms as pure agents under Rule 33 of the CGST Rules. E-commerce platforms that operate primarily as facilitators may find their status as pure agents challenged when they engage in transactions involving multiple ECOs. The circular does not provide clear guidance on how these complexities affect their ability to meet the criteria for pure agency, particularly regarding ownership and control over goods.

The circular specifies which ECO is responsible for TCS collection based on its role in a transaction. This differentiation could complicate the assessment of whether an e-commerce platform is acting purely as an agent or if its involvement constitutes a taxable supply, especially when it charges fees that may not align with the actual costs incurred. The circular's implications for fee structures charged by ECOs could lead to disputes over whether these fees are merely reimbursements or if they include profit margins that would disqualify them from being classified as pure agents. This ambiguity may lead to litigation as businesses seek clarity on compliance.

The lack of explicit guidelines within the circular regarding how to apply pure agency principles in multi-ECO scenarios could lead to increased compliance burdens and potential litigation, as businesses may interpret their obligations differently based on the circular's provisions. CBIC Circular No. 194/06/2023-GST introduces significant legal uncertainties regarding the classification of e-commerce platforms as pure agents under GST law. As e-commerce continues to evolve, there is a pressing need for further clarification from regulatory authorities to ensure that these platforms can navigate their tax obligations effectively while maintaining compliance with GST regulations.

D. Legal Implications and the Need for Clarity

As e-commerce continues to evolve, the classification of platforms under GST law becomes increasingly important for ensuring compliance and managing tax liabilities. The divergence between platforms that operate purely as marketplaces and those that provide additional services like fulfilment presents a significant challenge for both regulators and businesses. The existing GST framework, while comprehensive, may require further clarification to address the unique roles played by e-commerce platforms in today's digital economy.

Further legal clarification on how the principles of pure agency apply in specific scenarios, such as the treatment of marketplace fees or fulfilment services, would help in reducing litigation and ensuring that platforms are correctly classified for tax purposes. Additionally, platforms must evaluate their operations and pricing models carefully to ensure that they meet the conditions of Rule 33 where applicable, and they must structure their contracts and service offerings in a way that aligns with the tax regulations.

In conclusion, while e-commerce platforms may, in certain circumstances, qualify as pure agents under Rule 33, their ability to do so depends on their operational model and adherence to the criteria set out under the CGST Rules. The increasing complexity of e-commerce services, particularly with the rise of fulfilment centres, challenges the traditional application of pure

agency principles and necessitates a more tailored approach to regulation in the digital marketplace.

VI. CONCLUDING REMARKS

The concept of “pure agency” under Rule 33 of the CGST Rules, 2017, offers a critical framework for determining the tax treatment of intermediaries in various sectors. However, its application in the e-commerce industry has proven to be far from straightforward. E-commerce platforms, which have transformed the marketplace by facilitating transactions between buyers and sellers, occupy a complex position that challenges traditional interpretations of agency under GST law.

Through this research, we have explored how the principles of pure agency interact with the diverse operational models employed by e-commerce platforms, particularly marketplace models and fulfilment services. The marketplace model, in which platforms act solely as intermediaries without taking ownership of goods, can, under certain conditions, align with the criteria of pure agency. These platforms may qualify as pure agents when their contractual relationships with sellers, lack of ownership over goods, and fee structures based on actual cost recovery meet the requirements of Rule 33. However, even within this seemingly straightforward model, complexities arise when platforms charge additional fees or assume more active roles in the supply chain, thereby disqualifying them from pure agent status.

Fulfilment services present even greater challenges to the application of pure agency principles. Platforms that engage in inventory management, storage, packaging, and logistics services create a more involved role in the transaction process. This involvement typically disqualifies them from being considered pure agents due to their control over goods and potential for profit beyond actual cost recovery. As such, fulfilment centres introduce a new layer of complexity in determining the GST treatment of e-commerce platforms.

The lack of clear guidelines from tax authorities on how to apply pure agency principles to e-commerce platforms further complicates the issue. While the CGST Rules offer a broad definition of pure agency, the unique and evolving nature of the e-commerce industry requires more tailored guidance. The existing framework, while robust for traditional forms of agency, is not always equipped to handle the nuanced roles e-commerce platforms play in modern transactions.

This lack of clarity has significant implications for both compliance and litigation. E-commerce platforms must carefully structure their contracts and operations to align with the CGST Rules, but the ambiguity surrounding pure agency in this context leaves room for misinterpretation

and dispute. In particular, the distinction between platforms acting as intermediaries versus those providing additional services like fulfilment must be clearly delineated to avoid unnecessary legal challenges.

Moving forward, there is a pressing need for regulators to provide more specific guidance on the application of Rule 33 to e-commerce platforms. This guidance should address not only the traditional marketplace model but also the growing prevalence of fulfilment and other value-added services that complicate the pure agent classification. Without such clarification, e-commerce platforms will continue to face uncertainty in their tax obligations, which could hinder their ability to operate efficiently and compliantly within the GST framework.

In conclusion, navigating the murky waters of pure agency in the e-commerce industry requires a nuanced understanding of both the legal framework and the operational realities of modern platforms. While certain e-commerce platforms may qualify as pure agents under Rule 33, the increasing complexity of services offered by these platforms often disqualifies them from this classification. As the e-commerce landscape continues to evolve, it is imperative that both businesses and regulators work towards creating a clearer, more precise understanding of how pure agency principles apply in this dynamic sector. This will not only facilitate better compliance but also support the growth and development of the digital marketplace in India's tax ecosystem.
