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A Study on Taxation of E-Commerce in India

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ABSTRACT

There is an urgent need for new IT security solutions/models in the aftermath of e-business and worries regarding its impact on tax collection. E-commerce is a method of doing business or creating a contractual relationship between customers and sellers without any of them having to meet physically. Business has undergone a revolution due to this new method of doing business, which is quickly taking over as the standard method for doing business around the world. The taxing authorities all around the world have been challenged by this. Our attention is focused on the problems with online transaction taxation. This study will first discuss the tremendous surge in E-commerce activity in India before discussing the global initiative for E-Commerce taxation. Then, in relation to E-Commerce Transactions, we will examine the existing laws in India, in particular, the Income Tax & VAT Act and the Goods and Service Tax.

Keywords: *E-commerce, Tax, GST, India.*

I. INTRODUCTION

Electronic business or electronic commerce refers to any business transaction conducted online. Corporate executives, both in India and outside, have recently begun moving their operations online, and customers are increasingly turning to these e-commerce websites for their needs. The success of current e-commerce powerhouses like Facebook.com, Flipkart.com, Amazon.in, and many other sites that are expanding quickly is the cause of this. The annual business income report produced by these e-commerce websites is unquestionably the reason why business owners today are moving towards their operations online. Even though there isn't a standard meaning for the term, it's often used to refer to a way of doing business that uses an electronic rather than a physical medium. It includes the full delivery process, ease of payment, control of the supply chain, and management of services.

The growth of e-commerce has increased over the past few years with the development and access to technologies such as the internet, smart phones and digitalization. India has already begun transitioning to a more digital way of life before the pandemic disrupted our daily

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routines, whether it be through online shopping, cashless transactions, telemedicine, online learning, or OTT media[2]. Due to the COVID-19 crisis's restrictions on mobility, disruption of traditional supply chains, and physical company operations, firms needed to assure business continuity, and consumers needed a way to go about their daily lives. The rapid development of the nation's digital infrastructure, together with the rise of a new generation of innovation-driven entrepreneurs, is promoting the expansion of the digital economy.

E-business includes e-commerce as a subset. It is a form of commerce or transactional activity using the internet and computer networks. It involves the exchange of products and services as well as payment[3]. Before the goods or services are transferred for payment, a full set of business transactions must be performed. E-business integrates staff members and internal company operations via intranets, supplier and customer relationships via extranets, and eventually the exchange of goods and services for money. Direct delivery of goods or services is possible online or through more traditional ways, and payments can also be made electronically or by more conventional methods.

Various E-commerce methods exist in cyberspace for conducting business, including:

- A brick-and-mortar business strategy without any online commerce;
- Click-n-mortar and Click-n-brick business models, where some commercial activity is conducted online; and
- An all-clicks company concept in which everything is done online. This model includes the selling and purchase of intangible property, such as software sold or licensed online.

The difficulties in application of statutory tax requirements to the electronic transactions or to the activities in cyberspace there are challenges such as restriction on jurisdiction. The physical presence of the firm or a significant nexus component is of material relevance in business formats like brick-and-mortar. While in a click-and-mortar business model, the customer to whom the product is given is taxed according to the jurisdiction of the client's state of residency because that consumer has a significant connection with the business.

II. TRANSACTION IN E-COMMERCE PLATFORM

It is necessary to comprehend how an e-commerce transaction occurs in order to decide how to

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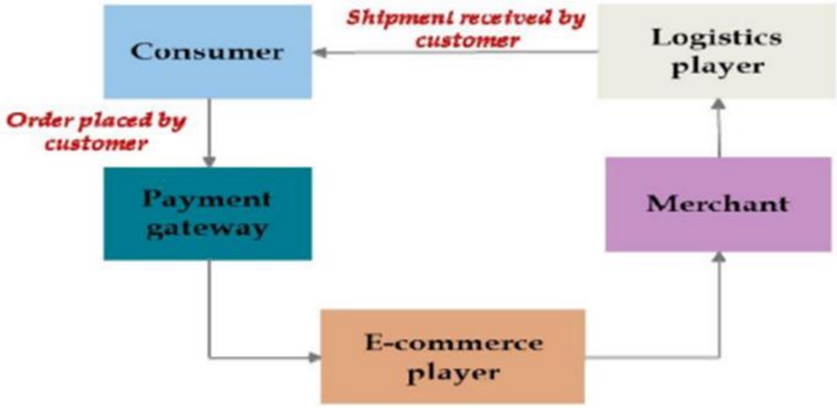
[2] Basheer K.T, *"An Analytical Study of E – Commerce in India"*, Volume 8, Issue 7, IJCRT, Pg. No 4733 – 4741 (2020)

[3] Kirti, Namrata Agrawal, "Impact of E-commerce on Taxation", International Journal of Information and Computation Technology, Volume 4, Number 1 (2014), pp. 99-106

tax one. There are several models, and they all use distinct transactional techniques[4]. The models are:

(A) Open Marketplace Model

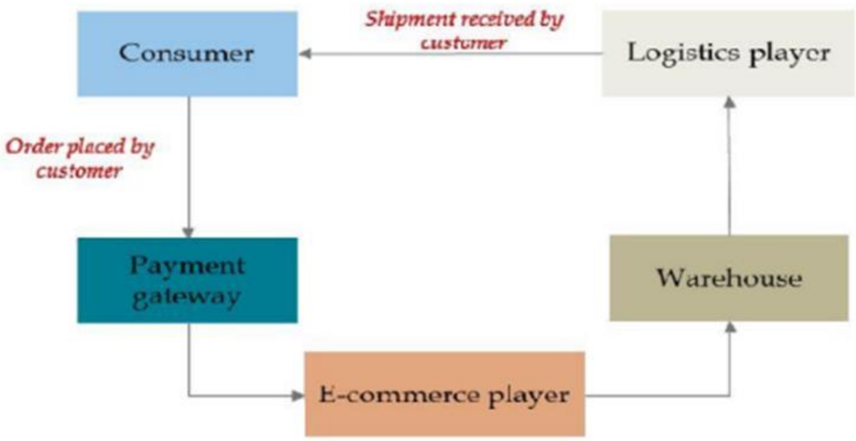
In this model, the product is delivered directly to the customer by the reseller. Pricing is influenced by anything. The Operator is not required to keep any inventory. It is prone to delivery and quality problems. Setting up this marketplace requires a small amount of capital. From an FDI perspective, this model is the most compliant. Ebay.in follows this paradigm.



The buyer selects the item, places the order, and pays for it. The operator transfers the money to the vendor after deducting its commission. The product is delivered by the vendor to the client.

(B) Inventory Led Model

In this model, the operator maintains the inventory. Because the consumer is guaranteed superior quality and on-time delivery is also guaranteed, this approach is preferable to the open marketplace model. The only drawback is the high investment required by this model.

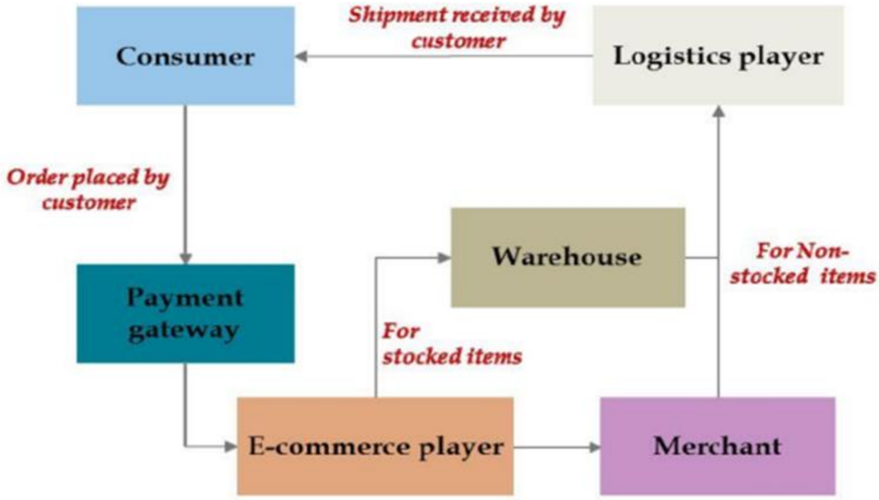


[4] "Study Paper on Taxation of E-commerce under GST", Institution of Chartered Accountants of India, 2017

The buyer selects the item, places the order, and pays for it. After receiving payment, the operator delivers the merchandise from its warehouse to the customer.

(C) Managed marketplace

The marketplace model is the one that Ecommerce businesses use. In comparison to other sellers in the market, it offers discounts and the best pricing. The cost of inventory and warehousing is lower than in an inventory-led approach since some products are sold straight to consumers. Due to its complexity in structure, this model is falling into a legal and regulatory grey area. This model is used by e-commerce companies like Amazon and Flipkart.



The buyer selects the item, places the order, and pays for it.as on when the payment is received, the operator takes the logistics part on moving of the product from its warehouse to the customer. And the seller delivers the product only in cases of unavailability of product in the warehouse, with the commission deducted the product cost is paid.

III. Taxation of E commerce

The Central and State Governments each have the power to charge taxes under India's carefully thought-out tax structure.

State governments collect municipal and state sales taxes, while the central government collects direct taxes like corporate and personal income taxes.

The tax laws in India should be properly drafted in accordance with a clear, transparent, and consistent policy that characterizes revenues in accordance with the worldwide standard[5]. When defining income from e-commerce transactions, the government should adhere to the OECD's

[5] Gurveen Kaur, Pankaj Jain, "Taxation of E-commerce Transactions in India: An Exploratory Study", International Journal of Reseach in all Subjects in Multi Languages, Volume 7, Issue 4, 2019

neutrality criterion.

IV. OCED Model Convention

The Organization for Economic Co-operation and Development (OECD) established the OECD Model Convention of 1992, which dealt with capital and income taxes. On July 15, 2014, OECD changed the agreement. In order to clarify regulations for Ecommerce taxations in India, India is guided by the principles outlined in the OECD Model Tax Convention. The OECD Model Tax Convention promoted the idea that a tax system should be equitable, straightforward, simple to execute, clear, and easy to alter for an online setting. The OECD Model Tax Convention states that the tax system that applies to online transactions should be just as efficient as the tax system that applies to transactions that take place in a physical location. The OECD is of the opinion that the government should tax E-Trade according to the same rules it uses to tax traditional commerce. The principles are:

- "Neutrality – Taxation should seek to be neutral and equitable between forms of e-commerce and between conventional and e-commerce, so avoiding double taxation or unintentional non-taxation.
- Efficiency – Compliance costs to business and administration costs for governments should be minimized as far as possible.
- Certainty and Simplicity – Tax rules should be clear and simple to understand, so that taxpayers know where they stand.
- Effectiveness and Fairness – Taxation should produce the right amount of tax at the right time, and the potential for evasion and avoidance should be minimized.
- Flexibility – Taxation systems should be flexible and dynamic to ensure they keep pace with technological and commercial developments." [6]

V. Tax regime in India

(A) VAT/CST on E-commerce Transactions

E-commerce transactions in India were complicated by a number of indirect taxation laws, including VAT and CST. The application of Value Added Tax (VAT) on online marketplace enterprises in several States was one of the main concerns for e-Commerce operators[7]. Additionally, when e-commerce companies store the products, they purchase from various

[6] "Electronic Framework: Taxation Framework Conditions" (OECD, Paris, 1998) prepared by CFA for OECD Ministerial Conference held in Ottawa, Canada on 8th October, 1998.
[7] "Impact of GST on Electronic Commerce", The Institute of Chartered Accountants of India, 2018

sellers in their stores before shipping them to the right clients, disputes have happened. The tax authorities are unsure whether this product movement from supplier to storehouse would be regarded as a sale of goods and be subject to the payment of VAT or CST. Even more complications develop when transactions trigger events linked to sales in various States, raising the question of whether the transaction is subject to CST or VAT.

(B) Service tax on E-commerce transactions

Service tax is not applied to the sale of goods. Service tax, however, is imposed on any commissions or other fees that online shopping carts charge merchants in return for letting them use their logos, trade names, etc. Additionally, the services of aggregators have been specifically added to the service tax's scope and are now subject to reverse charge[8]. The creation, delivery, and use of digital software and material as well as the access to internet information all required payment of service tax. Additionally, starting in 2015, the Union Budget 2015–16 mandated the imposition of service tax on transactions made through e-Commerce under the aggregator model.

Online marketplaces were subjected to double taxation and were obligated to pay service tax, VAT, and CST. The VAT authorities say that since e-Commerce businesses are engaged in the supply and distribution of commodities, they should be classified as "dealers." Additionally, according to the authorities, these businesses represent sellers as commission agents or consignment brokers. Therefore, these businesses fall under the category of "dealers" and must pay their VAT obligations.

(C) Entry tax on E-commerce transactions

Several States, including Orissa, Uttarakhand, Mizoram, and West Bengal, had regulations requiring them to impose additional taxes on e-commerce enterprises for "delivering" goods to clients within their jurisdictions.

The application of entrance taxes on goods bought online has caused additional challenges for the eCommerce sector, which already has a number of issues. Entry taxes have also slowed down the delivery of goods in interstate transactions.

(D) Equalization Levy

Often referred to as the "Google Tax." T At a time when the government is promoting the idea of "Ease of doing" business in the country, the imposition of the equalization levy may have a detrimental effect by increasing the compliance cost and accounting issues for the e-Commerce

[8] *Ibid*

industry. The so-called "Google Tax," on the other hand, aims to levy a tax on the earnings that internet giants like Facebook, Whatsapp, Twitter, LinkedIn, and Google make from drawing Indian advertisers to their platforms through advertisements. However, it is the responsibility of the Indian advertisers to deduct, deposit, and make any further compliances. Companies like Facebook may in fact shift the burden on Indian business owners.

The government appears to be planning to impose taxes on digital transactions in the future, including mobile applications, TV commercials on international channels, etc. The equalization levy appears to be only the beginning.

VI. GST AND E-COMMERCE

The definition of E-commerce in GST Act under Section 2: Definitions

- Section 2(44): electronic commerce means supply of goods or services or both including digital products over digital or electronic networks[9].
- Section 2(45): electronic commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce[10].

(A) Levy

The electronic commerce operator has not received any threshold exemptions[11]. Therefore, anyone who operates an electronic commerce site or supplies through one (apart from those who provide notified services pursuant to section 8(4)) shall be required to deduct GST from each rupee of supply under section 9 of CGST[12].

In the case of a stock-and-sell business, GST would be assessed on the total worth of the items and would be paid by both the website's owner and the owner of the commodities. However, in the event of a marketplace, GST would apply to both the transaction between the seller and the consumer as well as the transaction between the seller and the marketplace. The site owner must only remit GST on the commission he received, whereas the seller must remit GST on the whole value of the items he supplies, subject to TCS u/s 56, if applicable. GST will be applied to the value of supplies made through these websites in the event of service models.

In the conventional approach, the site owner, who is a service provider, is required to levy and discharge GST. Although the levy is on the service provider to customers in the case of

[9] Section 2, Central Good and Services Act, 2017
[10] *Ibid*
[11] GST Sectoral Series, E-commerce, Frequently asked question: Ecommerce, Central Board of Excise and Customs, 2017
[12] Section 9: Levy and Collection of Central/ State Goods and Services Tax, Central Goods and services Act, 2017

aggregators, section 8 has given the aggregator some situations when it is responsible for paying the tax (4). Only in the instance of C2C transactions is it possible to argue that no GST is due since the supplies were not made in furtherance of or in the course of operating a business.

(B) Liability to pay

Every person who provides goods or services through electronic commerce operators is obliged to be compulsorily registered under Section 24 (ix) of the CGST Act, without any threshold exemption cap. The Government may, however, choose to exempt a particular supplier from registration[13]. According to Section 24(ix) of the CGST Act, 2017, these individuals are not eligible for the threshold exemption and must register regardless of the value of the supply they made. The supply must, however, be made through an electronic commerce operator that is required to collect tax at source pursuant to Section 52 of the CGST Act of 2017. Only then is this obligation relevant. The providers of such services are, nevertheless, eligible for threshold exemption where the e-commerce operators are required to pay tax on behalf of the suppliers pursuant to a notification issued under section 9(5) of the CGST Act, 2017.

As of right now, it is believed that GST will be paid as usual. To collect tax at source, a specific provision was made applicable as in the event of operators of e- commerce. Such an operator of e- commerce shall be subject to the provisions of the Act as if he's the person responsible for deducting the tax associated with the provision of such services, and the 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[14].

Addition to these, every e-commerce operator is required to collect 1% of the net worth of all taxable supplies made through it in transaction where the operator is required to collect both the consideration and the applicable GST regarding those sales[15]. The operator of the electronic commerce would be responsible for any payments owed in this regard.

(C) Reports/returns

Electronic commerce operators are required to submit monthly Tax Collection at Source (TCS) returns in addition to monthly and annual returns. Monthly TCS returns are electronic statements that should be submitted in less than ten days of the end of every month. They contain details on all incoming and outgoing supplies of goods or services made through the controller

[13] Section 9(5), Central Goods and Services Act, 2017
[14] Priti Jadhav, Manjushree Yewale, Trupti Kalyankar, Vandana Nemane," Impact of GST on E-commerce", International Journal of Advanced Engineering Research and Science, Volume 4, Issue 8, 2017
[15] Akanksha Khurana and Aastha Sharma, Goods and Services tax in India - A positive reform for indirect tax system, International Journal of Advanced Research (2016), Volume 4, Issue3, PP 500-505

along with any returns of goods and services.

VII. Impact of GST on E-commerce

The following are some ways that the provisions of the GST Act will affect suppliers and e-commerce operators' business strategies:

- Both e-Commerce players and sellers will need to input invoice-by-invoice information of supply in their separate returns, and the GST system will match them. This is how the rules of the GST Act will affect the business plans of both e-Commerce operators and suppliers. If they cannot reconcile, it will increase the seller's liabilities. This will result in more compliance.
- On the first type of e-Commerce model, where both the operator and the supplier act on a principal-to-principal (P2P) basis, TCS provisions shall be attracted. It will result in numerous compliances, and penalty clauses will apply in the event of non-compliance.
- The majority of registered sellers on marketplaces are small and medium-sized businesses. Under the GST Act, the government has introduced a composition programme. According to Section 10(2) of the CGST Act, a person cannot choose the composition scheme if they are making a supply of goods through such an e- commerce operator who now is obligated to collect tax at source. One benefit of the composition scheme is that there is a reduction in the number of returns required each year from 37 to just 5.
- Section 24 of this Act mandates that e-Commerce operators and individuals who provide goods, services, or both be registered. Therefore, under this Act, every small seller with a turnover of up to 20 lacs that is not otherwise compelled to register will be required to do so.
- According to the registration requirements in Chapter-VI of the CGST Act, every business engaged in electronic commerce must register in each State where they are making taxable supplies. Given that the e-commerce business model is set up so that the seller anticipates orders from all states, they are required to register in each state.
- However, since a C to C transaction won't be conducted in the course or advancement of business, no GST will be due. For instance, when one person sells their used furniture to another person on OLX, no GST is required to be paid.

As a result, both E-Commerce operators and suppliers can expect a significant compliance burden from the GST with regard to registration, returns, filing statement of supplies, and TCS returns.

VIII. Conclusion

The rise of this industry generates a significant amount of cash for the government due to the increase in opportunities in the e-commerce sector as previously indicated. Even if ecommerce as a business has expanded and large transactions happen frequently, these transactions have been included in the scope of the GST without any doubt regarding any of the act's requirements.

GST operators are required to make a significant increase in compliance requirements. A further obligation in the form of filing a statement of supplies made through it has been placed on such operators, in addition to monthly returns for inward supplies, outgoing supplies, etc. The government is actively supporting a digitized economy, and the e-commerce sector in India is among the ones that is growing the fastest. The implementation of such onerous compliances stunts the development of this sector.

Government-introduced legal framework should promote future growth rather than pose barriers to it. However, through the past year the e-commerce sector has seen drastic growth, even though there are multiple compliance requirements by the law, the growth and use of the e-commerce sector has never been a hindrance to it.

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