




# E-Book on e-Commerce Operators & GST



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National Academy of Customs Indirect Taxes and Narcotics (NACIN)



Andhra Pradesh Zonal Institute, Visakhapatnam

# *e-Book on e-Commerce Operators & GST*

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- *Ravi Kiran Edara, ADG,  
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# Chapter 1

## Introduction to e-Commerce Sector

1.1 E-commerce is a growing sector in India, with a yearly turnover of \$74.8 billion in 2022 and is expected to grow at a rate of 18.29% by 2026. Due to developments in technology, customer preferences, change in buying patterns, ease of transactions, reduction in cost, global access, data analytics and host of other reasons, the e-commerce is growing at high pace. There are many e-commerce companies and online shopping sites in India, offering a variety of products and services. Some of the major e-commerce marketplaces in India are :

	<b>E Commerce Operators</b>	<b>Dealing in ..</b>
1	Amazon, Flipkart(promoted by Wallmart), Ajio, Shopclues, Paytm Mall, TataCliq, Alibaba	General merchandise and other items
2	Uber, Ola, Rapido	Transportation of pax
3	Nykaa, Myntra, Purple, Sephora, Limeroad, Meesho(promoted by Softbank), NNow, Snapdeal	Beauty, fashion and cosmetics
4	BigBasket, Amazon Fresh, Jio Mart, Kaze Living, Grofers; Instamart(Swiggy)	Groceries
5	FirstCry, Hopscotch	baby products
6	Home Centre, Pepperfry	home furnishings, etc.
7	Blinkit(Zomato)	

1.2. E-commerce works by connecting buyers and sellers using various electronic channels such as a website or social media, so that customers can find products and services to purchase. Then a payment processor enables the exchange of the goods or services.

1.3 Few years ago, no one could have imagined that activities like consultancy, technical services, advisory, training, support, repair and maintenance, health care would be available on-line. Now, it is a reality. Once the transaction succeeds, the customer receives a confirmation email or SMS, and a printable receipt. If the transaction is for goods, then the seller ships the items and sends the customer a tracking number via email or SMS. If the transaction is for a service, then the service provider can reach out to schedule and complete the service.

1.4 In an online retail store, a particular seller who may or may not own a brick and mortar retail store, owns his portal to sell products through an online website. Where as in an online market place platform,(example Amazon, Flipcart), the owner of the online portal offers a platform for buyers and sellers to transact.

### 1.5 e-Commerce Business – Classification based on the stake holders involved :-

(a). **Business to Consumer (B2C):-** These e-commerce models connect business and individual customers who are end-users. The examples are flipkart, amazon, snapdeal, Paytm, shopclues etc.

(b). **Consumer to Consumer (C2C):-** Consumer to Consumer e-Commerce. These cover sale of second hand goods. Sometimes it is also referred to as online market places — It connect consumers to exchange goods and services and typically make their money by charging transaction or listing fees. The examples are eBay, olx, Ola, Uber, Urban Company etc.

(c) **Business to Business (B2B):-** In this, businesses sell to other companies. Typically, the goods and services are for business use only, such as to support productivity, collaboration, office needs, or the production process. In many cases, the buyer may also purchase the item in bulk for reselling purposes. Examples are : **Alibaba, Indiamart, Sulekha.com, rapidue technologies etc..**

(d). **Business to Government (B2G):-** Business to Government is an e-commerce model where business sells and markets its products to Government or public administrators. This model relies on successful bidding of Government contracts. A Government agency will typically put up a request for proposal and ecommerce businesses will have to bid.

(e). **Consumer to Business (C2B):-** Consumer to Business is a commerce model where consumers provide various products or services to businesses. Through the C2B model, businesses obtain information from their consumers to produce high-quality goods and services. For example, a website might enable customers to post the work they want to be completed and have businesses bid for the opportunity. Affiliate marketing services would also be considered C2B.

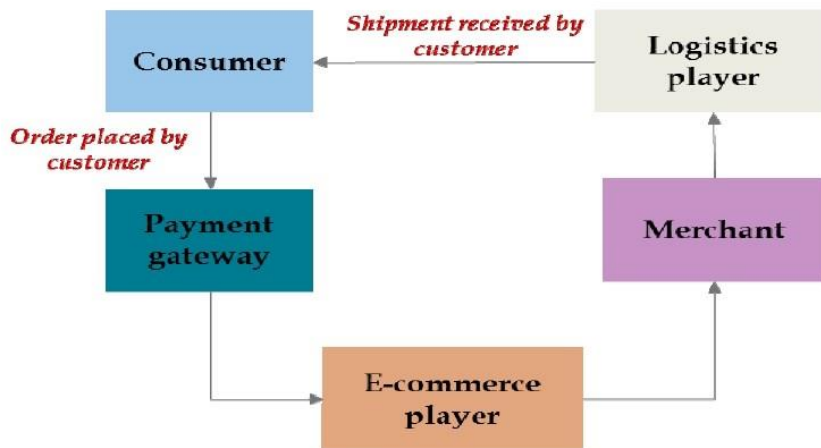
### 1.7 How e-Commerce Business Operates:- Various Business Models

#### i. **Market Place Model:-**

In this model, the e-commerce operator does not maintain his own inventory. The goods are shipped directly by participating manufacturer or wholesaler to customer. Invoices are raised by the supplier to the customer. Payment is routed through e-commerce operator, who pays to the selling manufacturer / wholesaler after deducting their commission. Amazon, Flipkart etc. work on this model. Marketplace provider charges a percentage of the sale amount as his revenue share from the vendor.

Now a days, these e-commerce operators are maintaining warehouses at various strategic locations in the country. However, goods kept in these warehouses are owned by the manufacturers /wholesalers. When goods are despatched, invoice is issued in name of the

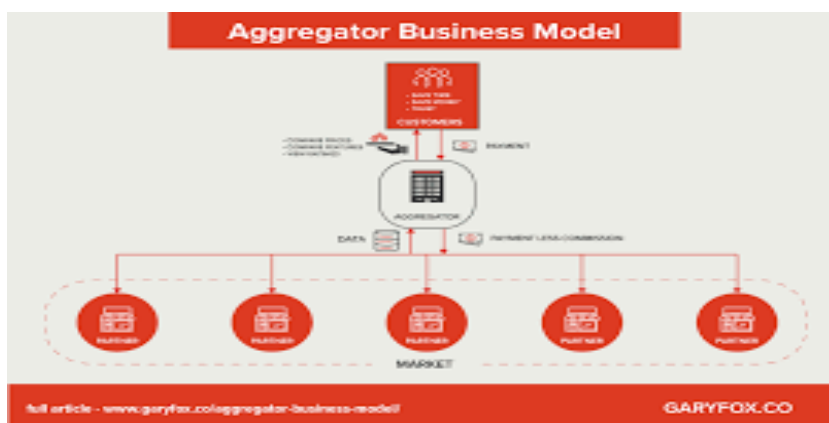
retailers / wholesalers, with their GSTN. Practically, these invoices are generated by e-commerce operator himself from those godowns.



Third-party logistics providers such as Delhivery, Ecom Express, Shadowfax, Xpressbees and more along with Valmo,” To service more cities, players are investing heavily to set up more dark stores.

ii. **Aggregator model:-**

The aggregator model operates when e-commerce operator intends to supply goods or services under his brand. Such goods/services are generally pooled from MSME sector. The e-commerce operator procures goods/services from suppliers and sells under his own invoice. This model is very prevalent in Service Sector. Aggregator is a Brand and the services provided by an Aggregator has a standard quality and price. Examples are Uber, Urban Clap and Ola.



**How an ECO in respect of booking of hotel rooms work ?**

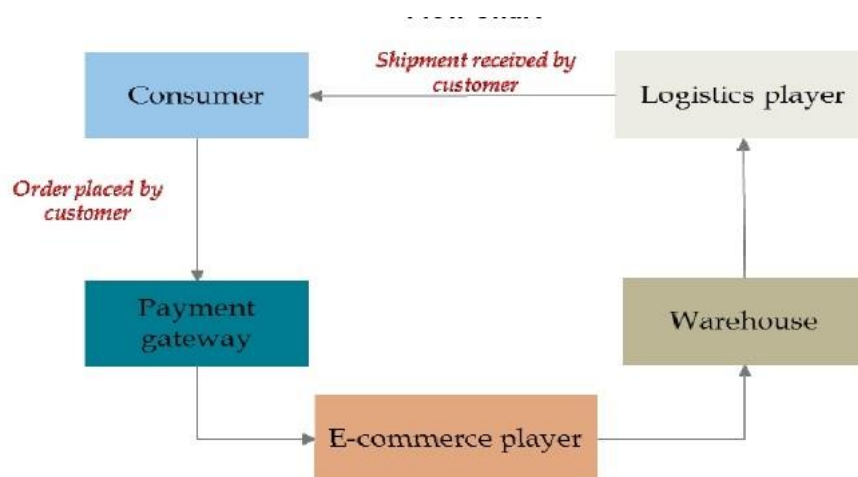
A Channel manager ( example M/s STAAH Hotel Software Private Limited) acts as a centralised platform that connects the service provider’s property management system(PMS) with multiple OTA(Online Travel Agent). It allows for seamless integration and real-time

synchronisation of room rates, availability, and other relevant information across all concerned platforms. The Channel manager communicates with the various OTA websites using Application Programming Interface(APIs) or XML data feeds. These technologies allow for seamless and secure data transfer between systems.

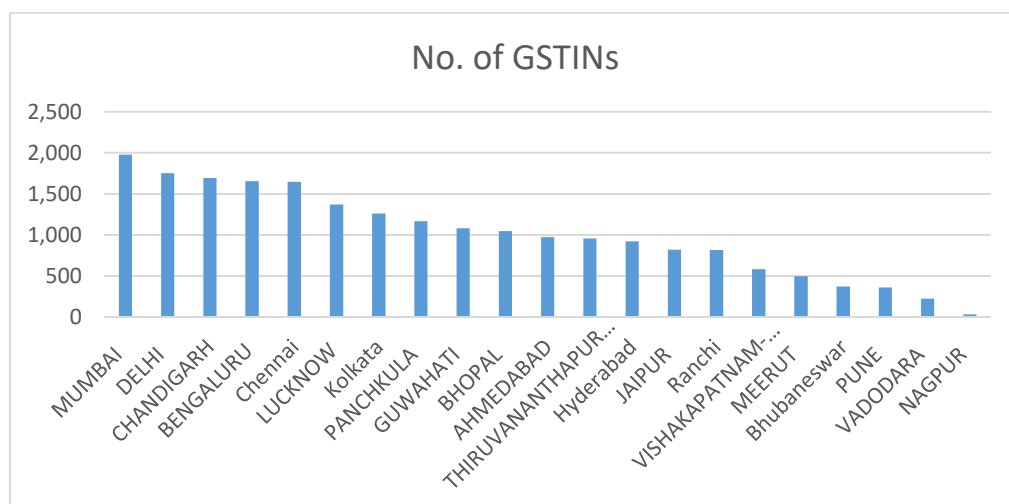
Generally, the inventory and rates are uploaded by the hotels directly on the Channel manager’s software. They are not authorised to alter the room wise tariffs. The rights to upload and amend the tariff are with hotels only.

iii. **Inventory Model:-**

Here, the e-commerce operator himself procures and stores the goods and then sales them under his own invoice. The inventory maintained by online retailer, Superior quality assurance to consumers and timely delivery to consumers as stocks are maintained and monitored, but it is capital intensive model.



**1.8 The details of ECOs registered under GST regime, Zone wise are :** Under GST regime, as on now, more than 21,000 e Commerce Operators have taken registrations across many States/Zones. The number GSTINs registered as ECOs are given below, Zone wise.



# Chapter 2

## e-Commerce and GST – Collection of Tax at Source (TCS)

2.1. Section 2(44) of the CGST Act, 2017, defines the phrase 'e-Commerce': '**Electronic commerce**' means supply of goods or services or both including digital products over digital or electronic network.

Further, e-Commerce Operator, as per Sec 2(45) of the Act means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

2.2. Typically, an e Commerce operators who is facilitating supply of goods or services or both by the supplier charges transaction fee on which GST is leviable at the rate of 18%. As per Section 52 of CGST Act, 2017, every e-commerce operator shall collect an amount not exceeding 1% [CGST+SGST] of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator. Provisions of Sec 52 of the Act has been brought into force w.e.f 01-10-2018 vide notification No 51/2018-CT dtd 13.09.2018. Further, vide notification No. 52/2018 of Central Tax dated 20.09.2018 and Notification No. 02/2018 of Integrated Tax dated 20.09.2018, the rate of TCS has been fixed at 1% (IGST or CGST+SGST). Subsequently, based on the recommendations of the GST Council, this TCS rate is reduced to 0.5 % (CGST+SGST) vide Notification No 15/2024-CT Dtd 10.07.2024(effective from the date of notification)

2.3. A good number of such suppliers may be in un-organised sector. Thus, such provision of TCS will reduce the cases of tax evasion in the hands of such suppliers especially those MSME sector. Thus, the provision of TCS under GST regulates online sellers, keeps track of transactions, and ensures timely tax deposits with the Government.

2.4 Section 52 of the CGST Act, 2017: Collection of tax at source (TCS) - Section 52<sup>1</sup> of the Act provides for authority and legal mechanism for collection of TCS and Rule 67 of the Rules provides for procedure for payment of TCS and filing of returns in prescribed formats by the ECO. As per Sec 52(1) of the Act, every ECO shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator. This power to collect the amount shall be without prejudice to any other mode of recovery from the ECO.

2.5 Here "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made

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<sup>1</sup> For text of Sec 52, pl see Annexure A.

during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

2.6 The Net Value of Taxable supplies will be calculated at GSTIN (of supplier) level and not at gross level. In other words, net supplies are to be calculated for each supplier separately. In case, net value is zero, then there shall be no collection of TCS amount. If in a particular month, the sale returns are more than supplies made, there will be no TCS for that month. However, such negative figure will not be carried forward. It may further be noted that the TCS by electronic commerce operator shall be on billing basis and not on collection basis.

2.7 TCS is to be collected once supply has been made through the e-Commerce operator and where the business model is that the consideration is to be collected by the ECO irrespective of the actual collection of the consideration. For example, if the supply has taken place through ECO on 30<sup>th</sup> Oct 2018 but the consideration for the same has been collected in the month of Nov'18, then TCS for such supply has to be collected and reported in the statement for the month of Oct'18. It may be noted that TCS is not required to be collected in respect of exempt supply.

2.8 Payment and furnishing of statement by ECO: The ECO shall pay the TCS amount collected to the Government within ten days after the end of the month in which such collection is made.

As per Sec 52(4) read with Rule 67(1) of the Rules, every ECO shall furnish a statement in GSTR 8 electronically on the common portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under Sec 52(1) of the Act. Thus, ECO shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount of TCS collected during the month after the end of such month. It may be noted that such return is required to be filed only when any amount specified at Sec 52(1) is collected. It means, the ECO is not required to file the said return for that month if in that given month, it did not do any business( nor collected any amount of TCS)

2.10 Late fee for delayed filing of return - Late fee of Rs.200 per day Rs.100 CGST and Rs.100 SGST is payable for delayed filing of return, as per section 47(1) of Act. However, this late fee is subject to maximum amount of Rs 5,000/- (CGST) and further Rs 5,000/-(SGST).

2.11 Corrections in Statement already furnished: After furnishing the statement in GSTR 8, if the ECO discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in Sec 50(1). No such rectification of any omission or incorrect particulars shall be allowed after 30<sup>th</sup> November following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.



2.12 Extension of time for furnishing of statement: The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein. Any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

**2.13 Matching of Outward supplies of ECO with details furnished by corresponding suppliers:** The details of supplies furnished by every ECO under Sec 52(4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier in such manner and within such time as may be prescribed. As per Rule 78 of the Rules, the following details relating to the supplies made through an ECO as declared in **GSTR-8**, shall be matched with the corresponding details declared by the supplier in **GSTR-1**,

- (a) State of place of supply; and
- (b) net taxable value:

2.14 In case, the time limit for furnishing **GSTR-1** has been extended, the date of matching of the above mentioned details shall be extended accordingly. The Commissioner may, on the recommendations of the Council, by order, extend the date of matching to such date as may be specified therein.

2.15 In case, the details of outward supplies furnished by the operator do not match with the corresponding details furnished by the supplier under section 37 or section 39, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

2.16 The amount in respect of which any discrepancy is communicated as above and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed. And the concerned supplier, in whose output tax liability any amount has been added shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.

2.17 Annual Return : As per Sec 52(5) of the Act, the ECO shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under Sec 52(1) during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year. As per Rule 80(2), the ECO shall furnish annual statement in Form GSTR-9B.

2.18 Here again, the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein. Any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

2.19 Claim of credit of TCS amount by the Supplier: As per Sec 52(7) of the Act, the supplier who has supplied the goods or services or both through ECO shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the ECO furnished under sub-section (4), in such manner as may be prescribed. As per Rule 67(2), the details furnished by the operator shall be made available electronically to each of the suppliers on the common portal after filing of **GSTR-8** for claiming the amount of tax collected in his electronic cash ledger after validation. The supplier can utilize that credit for payment of his tax dues. He can also claim refund of that amount.

2.20 As per Rule 60 (5), the details of tax collected at source furnished by an e-commerce operator in **FORM GSTR-8** shall be made available to the concerned person in **Part C** of **GSTR 2A** electronically through the common portal.

2.21 Notice to the ECO and penalty : Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the ECO to furnish such details relating to-

- (a) supplies of goods or services or both effected through such operator during any period; or
- (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

2.22 And such ECO on whom a notice has been served shall furnish the required information within fifteen working days of the date of service of such notice. In case the said ECO fails to furnish the information required by the notice, he shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.

As per Sec 122(vi) of the Act, where if the ECO fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52, he shall be liable to pay a penalty of ten thousand rupees or tax not collected under section 52 or short collected or collected but not paid to the Government, whichever is higher.

2.23 Registration by electronic commerce operator - Every electronic commerce operator, irrespective of his turnover, is mandatorily required to obtain GST registration, as provided

under Sec 24(x) of the Act. This registration is in addition to and separate from GST registration obtained as normal supplier. If electronic commerce operator has suppliers in different States, he is required to obtain GST Registration in each State. However, he can indicate his head office as place of business, if he does not have place of business in that State. Thus, all returns can be filed through HO. If a person is required to collect tax at source in a State or Union Territory where he does not have physical presence, he shall mention name of that State in Part A of application form GST REG-07 and mention name of State on Union territory where he has principal place of business in part B in form GST REG 07. This may be different from State/ Union Territory specified in part A – [rule 12(1A) of CGST Rules inserted w.e.f. 31-12-2018]. The proper officer may grant registration after due verification and issue a certificate of registration in form GST REG-06 within a period of three working days from the date of submission of the application - rule 12(2) of CGST Rules. The registration can be cancelled after notice, enquiry and hearing.

*Rule 12(1A) A person applying for registration to collect tax in accordance with the provisions of section 52, in a State or Union territory where he does not have a physical presence, shall mention the name of the State or Union territory in **PART A** of the application in **FORM GST REG-07** and mention the name of the State or Union territory in **PART B** thereof in which the principal place of business is located which may be different from the State or Union territory mentioned in **PART A**.*

2.24 Registration of foreign electronic commerce operator - Foreign Electronic Commerce Operator is required to obtain registration under GST. Such foreign e-commerce operator would be liable to collect TCS on such supply and would be required to obtain registration in each State/ UT. If the foreign e-commerce operator does not have physical presence in a particular State/UT, he may appoint an agent on his behalf.

2.25 Registration of supplier who is supplying goods or services through e-commerce operator - Registration of supplier who is supplying goods or services through e-commerce operator is mandatory irrespective of his annual turnover (except in case of supply of services). Refer Sec 24(ix) of the Act. The supplier cannot supply under composition scheme. He must supply goods or services through normal scheme only. Thus, persons who are suppliers of service and supplying services through e-commerce operator are not required to register under GST if their aggregate turnover is less than Rs.20 lakhs per annum (Rs.10 lakhs in case of special category states as specified in first proviso to section 22(1) of CGST Act read with Explanation (i) to section 22(1) of CGST Act - Notification No. 65/2017-CT dated 15-11-2017. As mentioned, this relaxation is not applicable to supplier of goods. However, effective from 01.10.2023 relaxations have been provided to supplier of goods who is under threshold limit of Rs 20 lakhs but wants to supply his goods to an ECO. Please refer to Chapter 4. Similar relaxations have been given in case of supplier of goods under Composition scheme.

2.26 Clarification of collection of tax at source by Tea Board of India(Tea Board) : Tea Board being the operator of the electronic auction system for trading of tea across the country including for collection and settlement of payments, admittedly falls under the category of

electronic commerce operator liable to collect TCS in accordance with the provisions of section 52 of the Act.

2.26.1 .The participants in the said auction are the sellers i.e. the tea producers and auctioneers who carry out the auction on behalf of such sellers and buyers. The buyers in the said auction make payment of a consolidated amount to an escrow account maintained by the Tea Board. The said consolidated amount is towards the value of the tea, the selling and buying brokerages charged by the auctioneers and also the amount charged by the Tea Board from sellers, auctioneers and buyers. Thereafter, Tea Board pays to the sellers (i.e. tea producers), from the said escrow account, for the supply of goods made by them (i.e. tea) and to the auctioneers for the supply of services made by them (i.e. brokerage). Under no circumstances, the payment is made by the Tea Board to the auctioneers on account of supply of goods i.e., tea sold at auction.

2.26.2. An issue was raised whether the Tea Board should collect TCS from the sellers of tea (i.e. the tea producers), or from the auctioneers of tea or from both. Vide powers conferred under sub-section (1) of section 168 of the CGST Act, the CBIC has clarified<sup>2</sup>, that TCS at the notified rate, in terms of section 52 of the CGST Act, shall be collected by Tea Board respectively from the –

- (i) sellers (i.e. tea producers) on the net value of supply of goods i.e. tea; and
- (ii) auctioneers on the net value of supply of services (i.e. brokerage).

2.27 Clarification<sup>3</sup> on Multiple E-commerce Operators in one transaction. In the case of Open Network for Digital Commerce (ONDC) Network or similar other arrangements, there can be multiple ECOs in a single transaction - one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer-side ECO could collect consideration, deduct their commission and pass on the consideration to the seller-side ECO. Here, both the Buyer-side ECO and the Seller-side ECO qualify as ECOs as per Section 2(45) of the CGST Act. In this context, clarity has been sought as to which ECO should deduct TCS and make other compliances under section 52 of CGST Act.

**2.27.1 Clarification 1:** In such a situation, where the supplier-side ECO himself is not the supplier in the said supply, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him. Here, the buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act. In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 of CGST Act with respect to this particular supply.

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<sup>2</sup> Circular No. 74/48/2018-GST, Dated the 5th November, 2018

<sup>3</sup> Circular No. 194/06/2023-GST dated 17.07.2023

**2.27.2. Clarification 2:** In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, the TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it. Here, the buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in Sec 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, as applicable, pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

2.27 Place of supply for e-commerce operator for recharge of talk time of the Telecom Operator/recharge of DTH/in relation to convenience fee charged from the customers on booking of air tickets, rail supplied through its online platform - Place of supply in case of as per section 12(11) of the IGST Act, 2017, the address on record of the customer with the supplier of services is the place of supply.

**Note:** India's foreign direct investment rules don't allow foreign funded online marketplaces to own inventory or control sellers on their platforms. Because of these restrictions, the **dark stores** are not owned by the quick commerce platforms themselves, but by separate entities. However, there are some grey areas in their structures.

# Chapter 3

## Liability for Payment of Tax

3.1 As per Sec 9(5)<sup>4</sup> of the Act and Sec 5(5) of the IGST Act,2017, the ECO himself is deemed to be a supplier for the purpose of payment of tax. As per this, in respect of certain notified categories of services, GST shall be paid on such supplies by the ECO himself and not the actual supplier of the services. All the provisions of the Act shall apply to the ECO as if he is the person liable for paying tax in relation to the supply of such services. In case the said ECO does not have a physical presence in the taxable territory, any person representing such ECO for any purpose in the taxable territory shall be liable to pay tax. And further, where the ECO does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such ECO shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

3.2. The Government has issued 4 notifications under Sec 9(5) of the Act, to notify some services in respect of which, the ECO is liable to pay the GST and obviously the actual supplier is not required to pay the GST. The said notifications are tabulated and mentioned at Annexure B.

3.3. Summarizing, in respect of the following services, the ECO is liable to pay GST and not the actual supplier :

Sl No	Description of Services	Date from which ECO is liable to pay GST	Rate of Tax(CGST+SGST)
1	Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;	01.07.2017	5% without ITC
2	Services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act.	01.07.2017	12% or 18% depending upon on Hotel Tariff
3	services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act.”.	2.08.2017	5% without ITC
4	Omnibus or any other motor vehicle	01.01.2022	5% without ITC

<sup>4</sup> For text of Sec 9(5) of the Act, please refer to Annexure A.

5	Supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.”	01.01.2022	5% without ITC
6	Liability in case of Omnibus is restricted as : Services by way of transportation of passengers by an omnibus except where the person supplying such service through electronic commerce operator is a company.”;	20.10.2023	5% without ITC

3.4. In order to clarify certain doubts upon issuance of the above referred notifications, the Board has issued following clarifications vide Circulars referred to therein :

3.5. Whether homestays providing accommodation through an ECO, below threshold limit are exempt from taking registration?

Clarification<sup>5</sup> : Notification No. 17/2017-Central Tax (Rate), has been issued making ECOs liable for payment of GST in case of accommodation services provided in hotels, inns guest houses or other commercial places meant for residential or lodging purposes provided by a person having turnover below Rs. 20 lakhs (Rs. 10 lakhs in special category states) per annum and thus not required to take registration under section 22(1) of CGST Act. Such persons, even though they provide services through ECO, are not required to take registration in view of section 24(ix) of CGST Act, 2017.

It may be noted that even though above clarification was given in respect of accommodation services, but the principles shall apply to other services notified under Sec 9(5).

3.6. Vide Notification No 17/2021-CT(R) dtd 18.11.2021, the tax on supplies of restaurant service supplied through e- commerce operators shall be paid by the ECO. The Board has provided clarifications<sup>6</sup> regarding modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO). Clarifications are as follows:

Issue 1 : In respect of services notified under Sec 9(5), whether the ECO have to still collect TCS in compliance with section 52 of the CGST Act, 2017 ?. It is clarified that the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.

Issue 2 : Would ECOs have to mandatorily take a separate registration w.r.t supply of services [notified under 9(5)] through them even though they are registered to pay GST on services on

<sup>5</sup> Circular No 27/01/2018-GST Dtd 04.01.2018

<sup>6</sup> Circular No 167/23/2021-GST Dtd 17.12.2021. For full text, please refer to Annexure A.

their own account? Clarification : As ECOs are already registered in accordance with rule 8 (in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.

Issue 3 : Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities? Clarification : Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.

Issue 4 : What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?

Clarification : It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover

Issue 5 ; Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B? Clarification : No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).

Issue 6 : Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?

Clarification : ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO)

Issue 7 : Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?. Clarification : No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.

Issue 8 : Would supply of goods or services other than restaurant service' through ECOs be taxed at 5% without ITC?



Clarification : ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies. Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.

Issue 9 : Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?

Clarification : Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order

Issue 10 : Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO? Clarification : The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.

Issue 11 : Clarification may be issued as regard reporting of restaurant services, value and tax liability etc in the GST return

Clarification: In respect of services notified under Sec 9(5) of the Act, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified under section 9 (5) of the CGST Act,2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being. Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.

Note : Later, a Notification No 14/2022- GST, Dtd 05.07.2022 has been issued, where certain amendments have been done in Return GSTR 3B, so that both the actual supplier and the ECO captures the data in the said Return in respect of services notified under Sec 9(5) of the Act. The changes are :

- (a) in paragraph 3.1, in the heading, after the words —liable to reverse charge, the brackets, words and figures —(other than those covered in 3.1.1) shall be inserted;
- (b) after paragraph 3.1, the following paragraph shall be inserted, namely: -

3.1 Details of Outward supplies and inward supplies liable to reverse charge (other than those covered in 3.1.1) Notf No 14/2022-CT, dtd 05.07.2022. Form is available from 01.08.2022.					
(1)	(2)	(3)	(4)	(5)	(6)
(a) – Outward taxable supplies (other than zero rated, nil rated and exempted)					
(b) – Outward taxable supplies (zero rated)					
(c) – Other outward supplies (Nil rated, exempted)					
(d) – Inward supplies (liable to reverse charge)					
(e) – Non-GST outward supplies					

“3.1.1 Details of supplies notified under Sec 9(5)/5(5)					
(1)	(2)	(3)	(4)	(5)	(6)
(i) Taxable supplies on which ECO pays tax under Sec 9(5) [to be furnished by ECO]					
(ii) Taxable supplies made by the registered person through ECO on which ECO is required to pay tax under Sec 9(5) [to be furnished by the registered person making supplies through ECO].					

(c) in paragraph 3.2, in the heading, after the words, figures, brackets and letter —supplies shown in 3.1(a), the word, figures, brackets and letter —and 3.1.1(i) shall be inserted;

(e) Under the heading the Instructions, after paragraph 3, following paragraphs shall be inserted, namely: - —

(4) An Electronic Commerce Operator (ECO) shall not include in 3.1(a) above, the supplies on which the ECO is required to pay tax under sub-section (5) of section 9 of the Central Goods and Services Tax Act, 2017 and shall report such supplies in 3.1.1(i) above.

(5) A registered person making supplies through an Electronic Commerce Operator (ECO) shall not include in 3.1(a) above, the supplies on which the ECO is required to pay tax under sub-section (5) of section 9 of the Central Goods and Services Tax Act, 2017 and shall report such supplies in 3.1.1(ii) above.;

Further, the format of GSTR 1 has been amended vide NN No 26/2022-Dtd 26.12.2022 to align it with provisions of Sec 9(5) of the CGST Act, 2017.

Advisory on GSTR-1/IFF issued by GSTN: Introduction of New 14 and 15 tables Notification No.: 26/2022 – Central Tax dated December 26, 2022

Purpose: The purpose of this advisory is to make taxpayers aware of the new Table 14 and 15 in FORM GSTR-1 and IFF. These tables are relevant for only those taxpayers who either supply through E-Commerce operator (ECO) or are themselves liable to pay tax under Section 9(5) of the GST Act.

Introduction: As per Notification No. 26/2022 – Central Tax dated 26th December 2022 two new tables Table 14 and Table 15 were added in GSTR-1 to capture the details of the supplies made through e-commerce operators (ECO) on which e-commerce operators are liable to collect tax under section 52 of the Act or liable to pay tax u/s 9(5). These two new tables will be available in GSTR-1/IFF from January-2024 tax periods onwards

### 3. Table Wise Details

Table Details	Description
14. (a) Details of the supplies made through e-commerce operators on which e-commerce operators are liable to collect tax under section 52 of the Act [Supplier to report]	<p>The ECO-GSTIN wise summary of the supplies made through ECO on which ECO is liable to collect tax at sources (TCS) and liability on which has already been reported in any table 4 to 10 of GSTR-1, shall be reported by the supplier in this section.</p> <ul style="list-style-type: none"> <li>• No taxable value or tax liabilities will be auto populated from this table to GSTR-3B.</li> <li>• Amendments to be reported in 14A(a).</li> </ul>
14. (b) Details of the supplies made through e-commerce operators on which ecommerce operators are liable to pay tax u/s 9(5) [Supplier to report]	<p>In this section the summary details of the supplies made through ECO on which ECO is liable to pay tax u/s 9(5) is to be reported by the supplier. Tax on such supplies shall be paid by the ECO and not by the supplier. This is to be reported net of credit / debit note (if any).</p> <ul style="list-style-type: none"> <li>• Such values will be auto-populated to Table 3.1.1(ii) of GSTR-3B.</li> <li>• Amendments to be reported in 14A(b).</li> </ul>
15. Details of the supplies made through e-commerce operators on which e-commerce operator is liable to pay tax u/s 9(5) [e-commerce operator to report]	<p>ECO shall report the supplies on which they are liable to pay tax u/s 9(5) in Table 15. Such supplies shall not be reported anywhere else in GSTR-1/IFF.</p> <ul style="list-style-type: none"> <li>• Registered Supplier and Registered Recipient (B2B)– In this section the details of such supplies where both the supplier and receiver of supplies are registered person, is to be reported by ECOs at invoice level. This will be available in IFF also. Debit Note /</li> </ul>

	<p>credit note (if any) to be reported in Table 9B.</p> <ul style="list-style-type: none"> <li>• Registered Supplier and Unregistered Recipient (B2C)– In this section the supplier level details along with POS and rate wise detail of the supplies related to the transaction where the supply is being made from a registered supplier to unregistered recipient need to be reported by e-commerce operator. This will not be available in IFF. This is to be reported net of credit / debit note (if any).</li> <li>• Unregistered Supplier and Registered Recipient (URP2B)– In this section the document level details of the supplies made from unregistered supplier to registered recipient through ECO needs to be reported by the e-commerce operator. The detail to furnish will include the document detail and GSTIN of recipient. This will be available in IFF also. Debit Note / credit note (if any) to be reported in Table 9B.</li> <li>• Unregistered Supplier and Unregistered Recipient (URP2C)– In this section the POS and rate wise detail of the supplies to be reported by e-commerce operator related to the transaction of such supplies from an unregistered supplier to unregistered recipient through ECO. This will be not be available in IFF. This is to be reported net of credit / debit note (if any).</li> <li>• The values shall be auto-populated in Table 3.1.1(i) of corresponding GSTR-3B and such liabilities is to be paid by the ECOs in GSTR-3B in cash.</li> <li>• Amendments to be reported in Table 15A(I) &amp; 15A(II)</li> </ul>
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Other Salient Features :- 1. Taxable value along with tax liabilities from all the above four sections i.e., B2B, B2C, URP2B and URP2C of table 15 will be auto-populated to table 3.1.1(i) of GSTR-3B.

2. There will be no auto-population of e-invoice in Table -15. E-invoices reported for 9(5) supplies will be populated in FORM GSTR-1 as per existing functionality. E-commerce operator are advised to examine and add such records in table 15 related to 9(5) supplies

### **Introduction of new table ECO-Documents in GSTR-2B**

The taxpayers are also being provided a facility to pass input tax credit (ITC) to the registered taxpayers who are receiving the supplies u/s 9(5) through ECO. Such ITC will be available to the registered recipient in newly introduce section in GSTR-2B. A new table “ECO - Documents” is being added under all other ITC section in GSTR-2B. In this table, the registered recipient can view the document details of the supplies received through e-commerce operator on which e-commerce operator is liable to pay tax under section 9(5) of the Act.

The values will be auto populated from Registered Supplier and Registered Recipient (B2B) and Unregistered Supplier and Registered Recipient (URP2B) section of table 15 to this new ECO - Documents table of GSTR-2B

# Chapter 4

## FACILITIES TO SUPPLIERS OF GOODS UNDER MSME CATEGORY

**4.1 Facilitate e-commerce for micro enterprises:** GST Council in its 47th meeting had granted in-principle approval for allowing unregistered suppliers and composition taxpayers to make intra-state supply of goods through E-Commerce Operators (ECOs), subject to certain conditions.

### Background:

**4.2 Compulsory registration for supplier supplying goods or services through ECOs under section 24(ix) of the CGST Act, 2017** – In terms of clause (ix) of section 24 of the CGST Act, persons supplying goods or services or both through ECOs, who are required to collect tax at source under section 52, are compulsory required to obtain registration, irrespective of annual aggregate turnover. The said Sec 24 reads as :

“24. Compulsory registration in certain cases. — Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act, —

(i) .....

.....

(ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;

4.3 As per Sec 22(1), if turnover is less than Rs 20 lakhs, such person is not liable for registration. The section reads as –

Section 22(1) of the CGST Act provides for requirement of registration. “Persons liable for registration. —

(1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

4.4 It may be pertinent to mention that in terms of sub-section (2) of section 23 of the CGST Act, the Government has exempted persons supplying services through e-commerce operators for taking compulsory registration and such persons are entitled to avail the threshold exemption vide notification No. 65/2017-Central tax dated 15.11.2017. The said Section reads as :

“23. Persons not liable for registration. —

(1) The following persons shall not be liable to registration, namely: — .....

(2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.”

4.5 In effect, as the provisions of GST Laws stand now, only the persons supplying goods through ECOs are compulsory required to obtain registration, irrespective of their aggregate annual turnover.

4.6 The requirement of compulsory registration for supplier supplying goods or services through ECOs under section 24(ix) of the CGST Act, irrespective of aggregate annual turnover, has resulted in huge disparity between online and offline sellers. The online sellers, even if having aggregate turnover well below the threshold limit, are required to get compulsorily registered under the existing provisions of CGST Act thereby discouraging MSMEs, including small artisans and women entrepreneurs, from supplying goods and services through ECOs. Requests have been made by various associations to remove the provision of compulsory registration for small businesses / suppliers / MSMEs supplying through ECOs in order to bring them at par with other offline suppliers.

4.7 Recommendation of the GST Council :

A) Provide exemption from mandatory registration under section 23(2) of the CGST Act for class of suppliers making supplies of goods through E-commerce operators, subject to conditions that –

a). The exemption is available upto aggregate turnover on all India basis not exceeding the turnover specified under sub-section (1) of section 22 of the CGST Act and notifications issued thereunder. [Similar exemption was provided for Casual taxable persons, making taxable supply of handicrafts goods, from obtaining registration under CGST Act vide Notification No.32/2017-Central Tax dated 15th September, 2017 & amendment made vide Notification No.38/2017-CT dated 13th October,2017. Further, in terms of sub-section (2) of section 23 of the CGST Act, the Government has exempted persons supplying services through e-commerce operators for taking compulsory registration and such persons are entitled to avail the threshold exemption vide notification No. 65/2017-Central tax dated 15.11.2017.]; To operationalise, a Notification may be issued under Section 23(2) of the CGST Act, 2017 for exempting unregistered persons from obtaining mandatory registration for supplying goods through electronic commerce operators

b). they shall not make any inter-State taxable supply;

c). they would be mandatorily required to declare their Permanent Account Number (PAN) and Principal place of business.

d). For each PAN, such unregistered person shall be restricted to declare principal place of business in only One State.

e). Suitable Notification may be issued under Section 148 of the CGST Act, 2017 for providing special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by unregistered persons

f). The ECO would be required to declare the supplies made by unregistered persons through them in FORM GSTR-8 statement (by inserting a suitable table in it). ECO would also be mandated to ensure that no inter-State supply through them is allowed in respect of such unregistered persons by making necessary checks and validations on their system/platform; failing which the penalty would be imposable on ECO. Needless to mention that ECO will not be required to deduct any TCS in respect of such supplies made by unregistered persons through them.

g). Rule 67(2)of CGST Rules, 2017 may be amended to clearly bring out that the details of TCS furnished by ECOs in FORM GSTR-8 shall be made available only to the registered suppliers, as, supplies by unregistered persons do not attract TCS. Accordingly, the said Rule may be amended as under:

*(2) The details of tax collected at source under sub-section (1) of Section 52 furnished by the operator under sub-rule (1) shall be made available electronically to each of the registered suppliers on the common portal after filing of FORM GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.*

h) ECO should be held responsible to ensure that unregistered dealers are only allowed to make intra-state supplies through its platform.

i) Penal provision may have to be incorporated for imposing penalty on ECOs, in case of inter-State supply made by unregistered person through them.

4.10 Now, the procedure is notified under Sec 23(2) of the Act vide Notification No. 34/2023-Central Tax, dated the 31st July, 2023, w.e.f 01.10.2023.

The conditions are: —

(i) such persons shall not make any inter-State supply of goods;

(ii) such persons shall not make supply of goods through electronic commerce operator in more than one State or Union territory;

(iii) such persons shall be required to have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961);

(iv) such persons shall, before making any supply of goods through electronic commerce operator, declare on the common portal their Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961), address of their place of business



and the State or Union territory in which such persons seek to make such supply, which shall be subjected to validation on the common portal;

(v) such persons have been granted an enrolment number on the common portal on successful validation of the Permanent Account Number declared as per clause (iv);

(vi) such persons shall not be granted more than one enrolment number in a State or Union territory;

(vii) no supply of goods shall be made by such persons through electronic commerce operator unless such persons have been granted an enrolment number on the common portal; and

(viii) where such persons are subsequently granted registration under section 25 of the said Act, the enrolment number shall cease to be valid from the effective date of registration.

4.11. Special Procedure to be followed by ECO in respect of goods supplied by Unregistered persons :

4.11.1 As per Notification number 37/2023-CT dated 04.08.2023, effective from 01.10.2023, the ECO has to follow the following special procedure in respect of supply of goods made through it by the persons exempted from obtaining registration (hereinafter referred to as the said person) in accordance with the notification issued under sub-section (2) of section 23 vide notification number 34/2023- Central Tax, dated the 31st July, 2023, namely: —

(i) the ECO shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person;

(ii) the ECO shall not allow any inter-State supply of goods through it by the said person;

(iii) the ECO shall not collect tax at source under sub-section (1) of section 52 in respect of supply of goods made through it by the said person; and

(iv) the ECO shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

4.11.2. . Where multiple electronic commerce operators are involved in a single supply of goods through electronic commerce operator platform, “the electronic commerce operator” shall mean the electronic commerce operator who finally releases the payment to the said person for the said supply made by the said person through him.

This special procedure is notified under Sec 148 of the Act.

4.20. Amendment in GSTR 8 : In the said rules, in FORM GSTR-8, with effect from the 1st day of October, 2023,-

(a) after serial number 3 and the entries relating thereto, the following serial number and entries, shall be inserted, namely;-

“3.1. Details of supplies made through e-commerce operator by unregistered suppliers

Enrolment no. of supplier	Gross value of supplies made	Value of supplies returned	Net value of the supplies
(1)	(2)	(3)	(4)

(b) after serial number 4 and the entries relating thereto, the following serial number and entries , shall be inserted, namely;-

“4.1. Amendments to details of supplies made through e-commerce operator by unregistered suppliers

Original Details			Revised details		
Month	Enrolment of Supplier	Enrolment of Supplier	Gross value of supplies made	Value of supply returned	Net value of the supplies
(1)	(2)	(3)	(4)	(5)	(6)

#### 4.12. Special Procedure in respect of supplies from Composition Dealers:

Representations have also been received requesting for allowing Composition dealers to use E-Commerce platforms. The composition scheme available as per section 10 of the CGST Act cannot be opted by registered persons supplying goods or services on e-commerce platforms, by virtue of exception carved out under section 10(2)(d) of the CGST Act. As a result, there is again lack of parity between online and offline sellers, thereby discouraging small sellers from operating on e-commerce platforms. It has been represented that Composition scheme should be allowed for small and mid-size sellers operating through online marketplaces with TCS of 1% still being complied with by the e-commerce operator.

4.13 Section 10 of the CGST Act provides for eligibility and conditions for opting to pay tax under composition scheme. Sub-section (2) of section 10 of the Act is reproduced hereunder:

(2) The registered person shall be eligible to opt under sub-section (1), if: —

(a) save as provided in sub-section (1), he is not engaged in the supply of services;

(b) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act;

(c) he is not engaged in making any inter-State outward supplies of goods or services;

(d) he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;

(e) .....

4.14 Accordingly, in terms of section 10(2)(d) of the CGST Act, persons supplying goods or services or both through ECOs, who are required to collect tax at source under section 52, are not eligible for opt for composition scheme. Similar provision exists under section 10(2A) (c) of the CGST Act.

B. Recommendations in respect of the composition taxpayers supplying through electronic commerce operators

4.15. To remove the condition restricting registered persons engaged in supplying through electronic commerce operators from opting for the Composition Levy, clause (d) to sub-section (2) and clause (c) to sub-section (2A) of Section 10 of CGST Act, 2017 may be amended as under:

(i) clause (d) to sub-section (2) of Section 10 of CGST Act, 2017 may be amended as under:  
(d) he is not engaged in making any supply of ~~goods or~~ services through an electronic commerce operator who is required to collect tax at source under Section 52;

(ii) clause (c) to sub-section (2A) of Section 10 of CGST Act, 2017 may be amended as under:  
(c) engaged in making any supply of ~~goods or~~ services through an electronic commerce operator who is required to collect tax at source under Section 52;

4.16 . Notification may be issued under Section 148 of the CGST Act, 2017 for providing special procedures to be followed by the electronic commerce operators in respect of supplies of goods through them by composition taxpayers.

4.17 Further, ECO would be required to declare the supplies made by such composition dealers through them through existing GSTR-8 statement (by inserting a suitable table in it, if required). ECO would also be mandated to ensure that no inter-State supply through them is allowed in respect of composition dealers by making necessary checks and validations on their system/platform

4.18 Whenever a registered person supplies goods/services through e-commerce operator, TCS collected by e-commerce operator would be credited to electronic cash ledger of the of the composition dealer supplying goods/services. Given that composition sellers are required to remit taxes in cash only, they can then make payment of GST on outward supplies using TCS balance available in the electronic cash ledger. This will have no bearing on the working capital of the such composition dealers. From a compliance perspective, it would encourage small sellers to adopt GST compliances effectively, since composition dealers are exempt from

maintenance of elaborate accounts and records. Instead, they have to file a simple quarterly return.

4.19 As per Notification number 36/2023-CT dated 04.08.2023, effective from 01.10.2023, the ECO has to follow the following special procedure in respect of supply of goods made through it by the persons paying tax under section 10 of the said Act (Composition suppliers), namely:

- (i) the ECO shall not allow any inter-State supply of goods through it by the said person;
- (ii) the ECO shall collect tax at source under sub-section (1) of section 52 of the said Act in respect of supply of goods made through it by the said person and pay to the Government as per provisions of subsection (3) of section 52 of the said Act; and
- (iii) the ECO shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

This special procedure is notified under Sec 148 of the Act.

4.21 Recommendations in respect of the penal provisions for non-compliant electronic commerce operators

The scheme approved by the Council is based on certain compliances on part of the electronic commerce operators in respect of the supplies made by the unregistered persons and Composition taxpayers through them. Such compliances include the following:

- (i) Not allowing unregistered persons to supply goods through electronic commerce operators without enrolment as prescribed.
- (ii) Not allowing inter-state supplies through electronic commerce operators by unregistered persons or composition taxpayers.
- (iii) Reporting the details of supplies made by unregistered persons through electronic commerce operators in FORM GSTR-8.

4.22 An examination of the existing provisions of the CGST Act, 2017 reveals that no specific provisions exist in CGST Act, 2017 presently providing for demand or penalty in cases of violation of the aforementioned compliances by electronic commerce operators. In the absence of such provisions, there may not be any effective guard against violations by the electronic commerce operators.

4.23 Therefore, the Law Committee in its meeting held on 05.11.2022 has recommended that relevant provisions may be made in the CGST Act for such instances by inserting sub-section (1B) in Section 122, as under:

(1B) Any electronic commerce operator who-

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration through a notification or an order issued under this Act to make such supply through an electronic commerce operator;

(ii) allows an inter-state supply of goods or services or both through it by a person who is not eligible to make such inter-state supply; or

(iii) fails to furnish the correct details in the statement to be furnished under subsection (4) of Section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under the provisions of this Act,

shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the amount of tax involved considering the said supply to have been made by a registered person, other than a person paying tax under Section 10, whichever is higher.

#### 4.24 Finance Act 2013

137. In the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Central Goods and Services Tax Act), in section 10,—

(a) in sub-section (2), in clause (d), the words "goods or" shall be omitted;

(b) in sub-section (2A), in clause (c), the words "goods or" shall be omitted

155. In section 122 of the Central Goods and Services Tax Act, after sub-section (1A), the following sub-section shall be inserted, namely:—

"(1B) Any electronic commerce operator who—

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

(iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher."

# Chapter 5

## Important Case laws and Decisions

### High Court

High Court: E-commerce operators are class distinct from individual supplier'; GST on auto-rickshaw/non-AC bus 'not discriminatory'- Uber India Systems Pvt. Ltd. & Ors. vs. UOI & Anr, in the High court of Delhi at New Delhi, W.P.(C) 14048/2021 dated- 12.4.2023.

The supply of services through the ECOs as an independent taxable event of supply, distinct from the individual service providers; Gliding through the effect of Notifications(Notification Nos. 17/2017-CT (R), dated June 28, 2017 and Notification No. 23/2017-CT(R) dated August 22, 2017), Delhi HC holds that Nos. 17/2017-CT (R), dated June 28, 2017 and Notification No. 23/2017-CT(R) dated August 22, 2017, levying GST on the service of transportation by mode of auto rickshaw and non-air-conditioned stage carriages when availed through E-commerce Operators (ECOs) like Uber or Make-My-Trip w.e.f. Jan 2022, do not create an unreasonable classification and Government is *empowered to issue the impugned Notifications under Section 9(5) and 11 of the Act of 2017*

### AAAR

2. AAAR: Upholds AAR, Taxi aggregator liable to GST on amount billed through digital platform- In the matter of Opta Cabs Private Limited -

Order No. KAR/AAAR/04/2018-19 dated 04.12..2018

Karnataka AAAR upholds the decision of AAR, taxi aggregator liable to pay tax on services provided by a motor cab or maxi cab or motor cycle or radio-taxi, by way of transportation of passengers, on amounts billed by it on behalf of taxi operators in accordance with Section 9(5) of CGST Act r/w Notification No. 17/2017-Central Tax (Rate);

### AAR

3. AAR: 'Independent' service by auto-driver on 'Namma Yatri' App, not supply through 'electronic commerce operator' - In the matter of Juspay Technologies Pvt Ltd-Advance Ruling No. KAR ADRG 31/2023 dt. 15.09.2023

Karnataka AAR rules that supply by service provider (auto-rickshaw driver) to service recipient (customer) on the Applicant's computer application i.e. 'Namma Yatri' App, is not supply of service "through" the electronic commerce operator (ECO) and not liable for discharge of tax liability u/s 9(5) of CGST Act, 2017; the 'Namma Yatri' App is designed to end the role of Applicant to only connecting the auto-rickshaw driver to its customers in exchange for membership fee and subscription fee and doesn't involve taking the responsibility for the operational and completion of ride; Further, observes that the 'Namma Yatri' App is

essentially a ride-hailing platform for Bengaluru's auto-rickshaw community which was launched via Open Network for Digital Commerce (ONDC) vide which auto-rickshaw drives can directly connect with their customer by registering themselves in the app; Distinguishing itself from rent-a-aggregator,

4. AAR: E-commerce operator MYn not liable to collect/dischage GST u/s 9(5) for independent supply of cab-service - In the matter of Multi-Verse Technologies Pvt Ltd - Advance Ruling No. KAR/ADRG 36/2022dated 27.10.2022.

Karnataka AAR holds the Applicant not liable to collect and pay GST u/s 9(5) as an E-commerce Operator on 'cab operator service' availed by subscribers of APP MYn; AAR observes that even though Applicant qualifies as an e-commerce operator, it falls short of conditions mandated u/s 9(5) of CGST Act for qualifying as 'person liable to discharge tax liability' as supply of services are not through the e-commerce operator but are independent; supply happens independent of the applicant and applicant is involved only in the identification of the supplier of services and doesn't take responsibility for the operational and completion of the ride.

5. AAR: Registration compulsory for E-commerce operator intending to develop cab booking app - In the matter of Gensol Ventures Pvt. Ltd - ADVANCE RULING NO. GUJ/GAAR/R/48/2021 dated 27.08.2021.

Gujarat AAR rules that an e-commerce operator intending to own, develop an electronic/digital platform for booking of cabs, is liable to be registered and pay GST as per section 9(5) of CGST Act as if he is the supplier of service i.e. passenger transportation services (PTS).

6. AAR: No natural bundling in services by Taxi-aggregator; Pick up charges taxable at 5%, Other income at 18% - Advance Ruling No.- KAR ADRG 22/2021 dated 07-04-2021- In the matter of Kou-Chan Technologies Pvt. Ltd.

Applicant, Associate Partner being proprietor or single individual, and the taxi driver/owner is providing 2 taxable services (i) online platform and (ii) insurance coverage to passengers which are neither related nor ancillary to insurance services as also are not in conjunction with each other, in ordinary course of business, thus not 'naturally bundled'; Finds that "Passenger Convenience Charges" collected on pick-up service are part of service of transportation of passengers by radio taxi and hence taxable at 5% GST as per Notification No. 17/2017-CTR dated June 28, 2017. Goodwill bonus paid by passenger to driver on which service charge is collected as well as cancellation charges, attract 18% GST, for the reason that "goodwill amount to drivers is consideration and activity of tolerating the cancellation is also a consideration for supply of service.

7. AAR: E-commerce operators not liable to GST on driver/operator's services, however, tax to be collected - In the matter of Humble Mobile Solutions Private Limited- Advance Ruling No.- KAR ADRG 58/2019 dated – 19.09.2019.

Karnataka AAR holds that applicant is not liable to pay tax for the supply of services by drivers/operators (service providers) booked by customers through e-commerce platform, but is liable to pay tax on the services provided to the drivers; However, observes that applicant is liable to tax collection at source u/s 52 on net value of taxable supplies made by the drivers through it where the consideration is to be collected by the applicant.

8. AAR: Facilitating/making available pundits for pujas using online platform, taxable, registration mandatory as E-commerce operator -  
Advance Ruling No.- GST-ARA-32/2018-19/B-131 dated 23.10.2018 -

In the matter of **Sadashiv Anajee Shete**

Maharashtra AAR holds applicant engaged in business of assisting believers, followers and devotees to book Pundits/Brahmins online for their religious ceremonies like pujas, etc., not exempt under Sr. No. 13 of Notification No. 12/2017-Central Tax (Rate); applicant is acting as an 'Intermediary', and liable to compulsory register u/s 24 of CGST/MGST Act as an E-commerce operator; applicant would be liable to pay GST on value of commission received from website users" and not "on total amount received".



# Chapter 6

## Major Cases

### Case 1 - Source : Hyderabad Zonal Unit

M/s Aayuv Technologies Private Limited (tradename "Ekincare", hereafter called as "M/s Ekincare") having their principal place of business located at Hyderabad-500 038 are registered with the Department vide GSTIN 36AAMCA9601N2Z6 for providing "health services by a clinical establishment, health check-up, diagnosis etc", "maintenance of medical records service" and online information and data and are administered by State authorities.

2. M/s Ekincare are primarily engaged in providing information technology(IT) consulting and support services related to healthcare to their corporate customers through their online platforms i.e. through an app, website and via telephone. Corporate companies enter into agreements/contracts with M/s Ekincare for providing healthcare services and allied benefits such as mental health, gymnasium facility etc to their employees. M/s Ekincare acts as a facilitator or aggregator who connects the end-user i.e, employees and their family members with the respective service providers like pharmacies, gymnasium, diagnostic centers, doctors etc. It only provides the technology platform for booking of services for its user. M/s Ekincare have developed a mobile application that can be accessed only by the employees of their customer companies for booking any service which in turn would be provided by various hospitals/diagnostic centers. They also collect data related to the health of their users and maintain records of the same. M/s Ekincare sometimes organizes online/onsite events, wellbeing programmes, health coach programmes at the premises of the Corporate or elsewhere basing on the agreement between the Company and M/s Ekincare. All the transactions being carried out by M/s Ekincare are principal to principal basis.

3. Intelligence developed by the officers of the Directorate General of GST Intelligence (for short "DGGI), HZU, Hyderabad revealed that M/s Ekincare are not discharging their GST liability on the whole consideration received and they are claiming exemption on the part of the turnover by classifying their service as "health services by a clinical establishment, health checkup/diagnosis etc" under HSN 9993 during the period from 07/2017 to 03/2021.

4. Based on the above intelligence, investigation was initiated under inspection mode. Scrutiny of documents furnished by the taxpayer revealed that M/s Ekincare enters in two kinds of agreements with their customers viz. (i) direct health check-ups to corporate employees termed as 'Pay per use' or 'PPU. The PPU agreement is exclusively meant for health check-ups to be conducted at various diagnostic centers with whom they have entered into agreements (ii) subscription package which involves providing comprehensive package of service including health check-ups, gym membership, wellness programmes etc.

5. M/s Ekincare is discharging GST@ 18% on consideration received from subscription package by classifying HSN code 999319. M/s Ekincare is not discharging their GST liability on the consideration received under PPU agreements. M/s Ekincare do not have facilities ie labs, equipment, technicians, pharmacy, diagnostic, professionals to conduct health check-ups on their own and therefore they sub-contract the job to various diagnostic centers. As per the terms and conditions mentioned in the website, M/s Ekincare "**acts as a facilitator and merely provides an online platform**" to the end user to select and book a particular health check-up, doctor's appointment for consultation and/or clinics amongst the options made available to the End User pursuant to the specific ekincare's Services selected and opted by the associated Corporate of the End User. Further, any discrepancy that may exist between the details on the Platform and actual availability shall be raised by the User with the Service Provider directly and shall be resolved between the user and the actual Service Provider. M/s Ekincare will have no responsibility in that process of resolution and shall not take liability for such discrepancies. M/s Ekincare deny any liability with respect to the acts, omissions, errors, representations, warranties, breaches or negligence on the part of actual service provider. From the above, it is evident that the taxpayer is not rendering any health care services. On scrutiny of various PPU agreements, it is seen that M/s Ekincare is providing their services through their 'SAAS Platform and also they deny any responsibility in case of non-completion of any particular test. Further, as per agreement, there is a specific provision that M/s Ekincare would charge GST over and above their service fee..

6. As per S.No.74 of Notification No. 12/2017 Central Tax (Rate) dated 28.6.2017, "health care services by a clinical establishment, an authorised medical practitioner or para-medics" are exempted from payment of GST. In the instant case, the taxpayer appears to be not eligible for claiming exemption under the above notification in as much as they do not fall under the definition of clinical establishment. A voluntary statement of Shri Kiran Kalakuntia, Director of M/s Ekincare was recorded on 23.03.2021 wherein he specifically admitted that they did not obtain registration under "The Clinical Establishments (Registration and Regulation) Act, 2010". M/s Ekincare is also not registered under "The Telangana Allopathic Private Medical Care Establishments (Registration and Regulation) Act, 2002" to act as private medical care establishment. From the foregoing, it appears that the services provided by M/s Ekincare do not fall under the purview of healthcare services. M/s Ekincare is merely providing information technology (IT) consulting and support services that is rightly classified under the HSN 998313. Further, the issue relating to proportionate reversal of ITC under Rule 42 of the CGST Rules, 2017 is also under examination.

7. On preliminary scrutiny of records / data recovered during search operations, it is noticed that M/s Ekincare have evaded payment of GST of Rs **3.5 Cr** on the taxable income of **Rs 19.45 Cr** which is claimed as exempted supply during the period July, 2017 to March, 2021.

**Case No 2 - Source : DGGI , Kolkata**

M/s. Delightful Gourmet Private Limited (Trade Name Licious, hereinafter referred to as DGPL) is engaged in supply of fresh, marinated or cold cut non-vegetarian products like meat, fish, eggs and seafood under the brand Licious through their website [www.licious.in](http://www.licious.in), apps and various food delivery apps. Intelligence was gathered that DGPL is engaged in supply of its aforementioned goods which include exempted as well as taxable goods, against consideration including delivery/contactless service charges (for orders below a certain amount), without charging appropriate GST applicable on the delivery/contactless service charges involved in the supply.

2. It is found that in the invoices issued by DGPL for a combined supply of both exempted as well as taxable goods, delivery/contactless service charges was proportionately bifurcated and attributed to the constituent taxable and exempt items according to their respective prices, and GST liability with regard to such delivery/contactless service charges was discharged only on that part of the value of delivery/contactless service charge attributed to the taxable item in the invoice at the rate applicable to the taxable item. However, supply of both such exempted as well as taxable goods under a single invoice cannot be considered as a composite supply u/s 2(30) of CGST Act 2017, as the goods here are not naturally bundled, nor supplied in conjunction with each other in the ordinary course of business, nor any of them forms a principal supply. Therefore, each of all the supplies, including that of delivery service/contactless service, under such invoice for supply of both taxable and exempt goods, should be treated as separate and unique supply independent of each other and levy of GST should follow accordingly on the full value of each such individual supply at applicable rate. Hence, supply of delivery/contactless service in such case attracts the GST rate specified for "Local Delivery Service (SAC 996813)' on the full value of service and such act of omission and commission by DGPL resulted in evasion of tax.

### **Case No 3 : Source : Delhi Zonal Unit**

Intelligence developed by the officers of DGGI, Delhi Zonal Unit indicated that M/s Innovative Retail Concepts Private Limited ('IRCPL' in short) is engaged in the supply of groceries and other household items to individual end customers in India. Such groceries and other household items are chargeable to GST at different rates varying from 0% to 28%. As part of the supply of such goods, IRCPL collects delivery and handling charges from the customers towards delivery of the goods supplied to the doorstep of individual end customers in cases where the total order value for the customer is less than a specific threshold as may be decided by IRCPL from time to time. Such delivery and handling charges are apportioned based on the value of goods supplied and GST is charged thereon on "Delivery and handling charges" based on tax rate as applicable to the goods supplied considering the delivery and handling services as being in composite nature with the supply of groceries and other household items.

This have resulted in short payment of GST by way of misclassifying the delivery services and handling services as composite in nature with the supply of goods rather than discharging GST at the notified tax rate i.e., @ 18% under the SAC "996813- Local Delivery Services" and SAC "996819- Other Delivery Services N.E.C respectively.

3. In their statement, Head of the Finance of IRCPL stated that the delivery/handling charges are being shown as separate consideration on the Big Basket app to the end customer at different stages of purchase of products i.e. at the time of placing the order, in the final estimate shown to the customer and the time of final checkout. He further stated that Delivery charges/Handling charges are only being apportioned at the time of generation of the invoice and this apportionment is never mentioned on the Big basket App and the website including the Terms agreed by the end customers and the FAQs available on the same.

4. As per the CBIC guidelines issued in respect of composite supply and mixed supply, one of the indicators to ascertain whether the services are naturally bundled in ordinary course of business is the perception of the consumer or the service receiver. Throughout the purchase on the Big basket app, the perception of the customer is that he is receiving supply of goods as well as delivery services separately and he is also being charged separately for both of them. In the instant case, the supply of goods and supply of delivery services are advertised/shown differently in the entire course of Purchase and not as a single supply/package. Hence the question of being composite supply does not arise.

5. Also, as per the Circular No 47/21/2018-GST dated 08.06.2018 it is also clarified that the taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case. Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rate as applicable to such goods and services separately. In the instant case, right from the placing of order upto the generation of invoice, supply of goods and supply of delivery/handling services have been shown separately. More over, even in the Invoice issued to the end customer, the total Delivery and handling fees are being mentioned separately and hence IRCPL was liable to discharge GST at the rate as applicable to such goods and services separately.

6. In view of the above, supply of goods along with Delivery/handling services is not naturally bundled, not being supplied in conjunction with each other and are not apt to be classified as being in composite nature with the supply of goods. Hence, IRCPL was liable to discharge GST @ 18% on the delivery and handling fees received from the customer which they failed to do causing loss to the government revenue. It is also pertinent to mention here that IRCPL prior to October 2020 were discharging GST @ 18% on delivery charges but they abruptly changed their practice without any legal background.

# Chapter 7

## Extracts of Legal Provisions

### A.Act:

**Sec 2(44)** - 'Electronic commerce' means supply of goods/services including digital products over digital or electronic network.

**Sec 2(45)** - 'e-Commerce Operator' means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

### **Sec 9(5) of CGST Act**

“The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which 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 supplier liable for paying the tax in relation to the supply of such services:

**Provided** that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

**Provided** further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.”

### **Sec 5(5) of IGST Act, 2017**

The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which 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 supplier liable for paying the tax in relation to the supply of such services:

**Provided** that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

**Provided** further that where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory,

such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

## **Section 52. Collection of tax at source.-**

(1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

**Explanation** .-For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

(2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.

(3) The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.

(4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month:

<sup>1</sup>[**Provided** that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:

**Provided** further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.]

<sup>2</sup>[**Explanation** : - For the purposes of this sub-section, it is hereby declared that the due date for furnishing the said statement for the months of October, November and December, 2018 shall be the <sup>3</sup>[07th February, 2019].]

(5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year

<sup>4</sup>[**Provided** that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:

**Provided** further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.]

(6) If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

**Provided** that no such rectification of any omission or incorrect particulars shall be allowed after the <sup>5</sup>[thirtieth day of November] following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

(7) The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.

(8) The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.

(9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under <sup>6</sup>[section 37 or section 39], the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

(10) The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

(11) The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.

(12) Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to-

(a) supplies of goods or services or both effected through such operator during any period; or

(b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers,  
as may be specified in the notice.

(13) Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.

(14) Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.

**Explanation.** -For the purposes of this section, the expression "concerned supplier" shall mean the supplier of goods or services or both making supplies through the operator.

## **B. Rules:**

### **Rules 67- submission of statement of supplies through an e-commerce operator**

#### **Rule 78. Matching of details furnished by the e-Commerce operator with the details furnished by the supplier .-**

The following details relating to the supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1,

(a) State of place of supply; and

(b) net taxable value:

**Provided** that where the time limit for furnishing FORM GSTR-1 under section 37 has been extended, the date of matching of the above mentioned details shall be extended accordingly.

**Provided** further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching to such date as may be specified therein.

## **C. Notifications:**

### **Under CGST:**

**1. Notification No. 65/2017 – Central Tax dated 15.11.2017 - exempted from obtaining registration to persons making supplies of services from whom TCS collected- <20 lakhs**

**2. Notification No. 51/2018 – Central Tax dated 13.09.2018 - provisions of section 52 shall come into force – collection of TCS**

**3. Notification No. 52/2018 – Central Tax dated 20.09.2018 - at a rate of half per cent. of the net value of intra-State taxable supplies**

**4. Not. No. 34-CT dated 31.07.2023 - waiving of the mandatory GST Registration Requirement for persons supplying goods through Electronic Commerce Operator**

**5. Not. No. 36-CT dated 04.08.2023 - Special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by composition taxpayers**



- 6. Not. No. 37-CT dated 04.08.2023 - Special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by unregistered persons.**
- 7. Not. No. 01/2024-IT dated 10.07.2024 - Amended the notification No. 02/2018-Integrated Tax, dated 20-09-2018 by reducing the rate of TCS from one percent to half percent.**
- 8. Not. No. 15/2024- CT dated 10.07.2024 -Amended the notification No. 52/2018-Central Tax, dated 20-09-2018 by reducing the rate of TCS from half percent to 0.25 percent.**
- 9. Notification No. 17/2017-Central Tax (Rate) dated 28.06.2017 - transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle & accommodation services - the tax on intra-State supplies shall be paid by the electronic commerce operator.**
- 10. Notification No. 23/2017-Central Tax (Rate) dated 22.08.2017 - Seeks to amend notification No. 14/2017- Integrated Tax (Rate) dated 28.06.2017 to make ECO responsible for payment of GST on services provided by way of house-keeping such as plumbing, carpentering etc.**
- 11. Notification No. 17/2021-Central Tax (Rate) dated 18.11.2021 – Amendment to 17/2017-CTR – added Omnibus, Restaurant services.**
- 12. Notification No. 16/2023-Central Tax (Rate) dated 19.10.2023 - Amendment to 17/2017-CTR - transportation of passengers by an omnibus except where the person supplying such service through electronic commerce operator is a company.**

## **Under IGST:**

- 1. Notification No. 02/2018 – Integrated Tax dated 20.09.2018 - provisions of section 52 shall come into force - collection of TCS**
- 2. Notification No.14/2017-IntegratedTax (Rate) dated 28.06.2017 - transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle & accommodation services - the tax on inter-State supplies shall be paid by the electronic commerce operator.**
- 3. Notification No.23/2017-Integrated Tax (Rate) dated 28.08.2017 - Seeks to amend notification No. 14/2017- Integrated Tax (Rate) dated 28.06.2017 to make ECO responsible for payment of GST on services provided by way of house-keeping such as plumbing, carpentering etc.**
- 4. Notification No. 17/2021- Integrated Tax (Rate) dated 18.11.2021 – Amendment to 14/2017- IGST (Rate) dated 28.06.2017 – added Omnibus, Restaurant services.**

**5. Notification No. 19/2023-Integrated Tax (Rate) dated 19.10.2023 - Amendment to 14/2017-ITR - transportation of passengers by an omnibus except where the person supplying such service through electronic commerce operator is a company.**

**Gist of notifications issued under Sec 9(5) of the CGST Act:**

Sl No	Notification No and date	Effective From	Category of services
1	17/2017-CT(R), dtd 28.06.2017	01.07.2017	<p>(i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;</p> <p>(ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act.</p> <p>Explanation.- (a) “radio taxi” means a taxi including a radio cab, by whatever name called, which is in two way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS);</p> <p>(b) “maxicab”, “motorcab” and “motor cycle” shall have the same meanings as assigned to them respectively in clauses (22), (25) and (26) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).</p>
2	23/2017-CT(R) dtd 22.08.2017	22.08.2017	<p>(iii) services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act.”.</p> <p>[Entry No 25 of Notf No 11/2017 amended by No 1/2018 dtd 25 Jan 2018</p> <p>“(ii) Services by way of house-keeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under sub-section (1) of section 22 of the Central Goods and Services Tax Act, 2017. GST rate is 5%]</p>
3	17/2021-CT(R), dtd 18.11.2021	01.01.2022	<p>(i) in clause (i), for the words “and motor cycle;”, the words “, motor cycle, omnibus or any other motor vehicle;” shall be substituted;</p> <p>(ii) after clause (iii), the following clause shall be inserted, namely:-</p> <p>“(iv) supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.”</p> <p>2. In the said notification, in Explanation, -</p> <p>(i) in item (b), for the words, brackets, numbers and figures “and “motor cycle” shall have the same meanings as assigned to them respectively in clauses (22), (25) and (26) of section 2 of the Motor Vehicle Act, 1988 (59 of 1988).”, the words, brackets, numbers and</p>

			<p>figures ,“, motor cycle, motor vehicle and omnibus shall have the same meanings as assigned to them respectively in clauses (22), (25), (27), (28) and (29) of section 2 of the Motor Vehicle Act, 1988 (59 of 1988).” shall be substituted;</p> <p>(ii) after item (b), the following shall be inserted namely, -  “(c) specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.”</p> <p>Sl No 17 of Notif No 12/2017 SAC 9964 - (e) metered cabs or auto rickshaws (including e-rickshaws) is completely exempted.</p> <p>Vide Notification 16/2021 the above is removed - “Provided that nothing contained in item (e) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017).”</p> <p>Sl No 15 of Notif No 12/2017 – SAC 9964- Transport of passengers, with or without accompanied belongings, by – ( is exempted)</p> <p>(b) Non-air-conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or</p> <p>(c) Stage carriage other than air-conditioned stage carriage.</p> <p>The following proviso is added vide notification No 16/2021 CT(R), dtd</p> <p><b>Provided that nothing contained in items (b) and (c) above shall apply to services supplied through an <u>electronic commerce operator</u>, and notified under sub-section (5) of Section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017).</b></p> <p>Thus supply of even Non-AC bus tickets through ECO attracts GST @ 5% as per Sl. No. 8 (vi) of Notification No. 11/2017-Central Tax(Rate) dated 28.06.2017 as amended</p>
4	16/2023-CT(R) Dtd 19 Oct 2023	20.10.2023	<p>(i.) in clause (i), for the words “omnibus or any other motor vehicle”, the words “or any other motor vehicle except omnibus” shall be substituted;</p> <p>(ii.) after clause (i), the following clause shall be inserted, namely:-  “(ia) services by way of transportation of passengers by an omnibus</p>

			except where the person supplying such service through electronic commerce operator is a company.”; (iii.) in the Explanation, after item (c), the following item shall be inserted, namely, - “(d) “Company” has the same meaning as assigned to it in clause (20) of section 2 of the Companies Act, 2013(18 of 2013).”.
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Note 1 : In respect of Hotels and accommodation and Housekeeping services, provisions of Sec 9(5) of the Act will not apply if a person supplying(not ECO) , these service are liable for registration under section 22(1) of the CGST Act,2017.

Note 2 : The tax rate on house-keeping services like plumbing, carpentering etc. provided through e-commerce operator is 5% (2.5% CGST ad 2.5% SGST/UTGST) w.e.f. 25-01-2018, subject to non-availment of input tax credit – Refer to Entry No 23 Notification No 1/2018-CT(R), dtd 23.01.2018

“(ii) Services by way of house-keeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under sub-section (1) of section 22 of the Central Goods and Services Tax Act, 2017.”

## **D. Circulars:**

1. **Circular No.209/3/2024-GST dated 26.06.2024 – Place of supply of goods being made through e-commerce platforms to an unregistered person where billing address is different from the address of delivery of goods – delivery address is the place of supply.**
2. **Circular No. 194/06/2023-GST dated 17.07.2023 - Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction.**
3. **Circular No. 167 / 23 /2021 – GST dated 17.12.2021 - GST on service supplied by restaurants through e-commerce operators.**
4. **Circular No. 74/48/2018-GST dated 05.11.2018 - Collection of tax at source by Tea Board of India**
5. **4. Circular No. 27/01/2018-GST dated 04.01.2018 - Homestays providing accommodation through an Electronic Commerce Operator, below threshold limit are exempt from taking registration.**

### **Text of Important Circulars:**

**Circular No. 167 / 23 /2021 - GST , Dtd 17th December, 2021**

Sub: GST on service supplied by restaurants through e-commerce operators –reg.

The GST Council in its 45th meeting held on 17th September, 2021 recommended to notify 'Restaurant Service' under section 9(5) of the CGST Act, 2017. Accordingly, the tax on supplies of restaurant service supplied through e-commerce operators shall be paid by the e-commerce operator. In this regard notification No. 17/2021 dated 18.11.2021 has been issued.

2. Certain representations have been received requesting for clarification regarding modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO). Clarifications are as follows:

Issue 1 : Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?

Clarification : As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.

Issue 2 : Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?

Clarification : As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.

Issue 3 : Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?

Clarification : Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.

Issue 4 : What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?

Clarification : It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover

Issue 5 ; Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?

Clarification : No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).

Issue 6 : Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?

Clarification : ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO)

Issue 7 : Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?

Clarification : No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.

Issue 8 : Would supply of goods or services other than restaurant service' through ECOs be taxed at 5% without ITC?

Clarification : ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies. Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.

Issue 9 : Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?

Clarification : Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order

Issue 10 : Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?

Clarification : The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.

Issue 11 : Clarification may be issued as regard reporting of restaurant services, value and tax liability etc in the GST return

Clarification : A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified under section 9 (5) of the CGST Act,2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being. Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.

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**Circular No. 74/48/2018-GST, Dated the 5th November, 2018**

Subject: Collection of tax at source by Tea Board of India – Reg.

Tea Board of India (hereinafter referred to as the, “Tea Board”), being the operator of the electronic auction system for trading of tea across the country including for collection and settlement of payments, admittedly falls under the category of electronic commerce operator liable to collect Tax at Source (hereinafter referred to as, “TCS”) in accordance with the provisions of section 52 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as, “the CGST Act”).

2. The participants in the said auction are the sellers i.e. the tea producers and auctioneers who carry out the auction on behalf of such sellers and buyers.

3. It has been represented that the buyers in the said auction make payment of a consolidated amount to an escrow Account maintained by the Tea Board. The said consolidated amount is towards the value of the tea, the selling and buying brokerages charged by the auctioneers and also the amount charged by the Tea Board from sellers, auctioneers and buyers. Thereafter, Tea Board pays to the sellers (i.e. tea producers), from the said escrow account, for the supply of goods made by them (i.e. tea) and to the auctioneers for the supply of services made by them (i.e. brokerage). Under no circumstances, the payment is made by the Tea Board to the auctioneers on account of supply of goods i.e., tea sold at auction

4. A representation has been received from Tea Board, seeking clarification whether they should collect TCS under section 52 of the CGST Act from the sellers of tea (i.e. the tea producers), or from the auctioneers of tea or from both.

5. The matter has been examined. In exercise of the powers conferred under sub-section (1) of section 168 of the CGST Act, for the purpose of uniformity in the implementation of the Act, it is hereby clarified, that TCS at the notified rate, in terms of section 52 of the CGST Act, shall be collected by Tea Board respectively from the –

- (i) sellers (i.e. tea producers) on the net value of supply of goods i.e. tea; and
- (ii) auctioneers on the net value of supply of services (i.e. brokerage).

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**Circular No. 194/06/2023-GST dated 17.07.2023**

**Subject: Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction.**

Reference has been received seeking clarification regarding TCS liability under section 52 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), in case of multiple E-commerce Operators (ECOs) in one transaction, in the context of Open Network for Digital Commerce (ONDC).

21 In the current platform-centric model of e-commerce, the buyer interface and seller interface are operated by the same ECO. This ECO collects the consideration from the buyer, deducts the TCS under Sec 52 of the CGST Act, credits the deducted TCS amount to the GST cash ledger of the seller and passes on the balance of the consideration to the seller after deducting their service charges.

22 In the case of the ONDC Network or similar other arrangements, there can be multiple ECOs in a single transaction - one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer-side ECO could collect consideration, deduct their commission and pass on the consideration to the seller-side ECO. In this context, clarity has been sought as to which ECO should deduct TCS and make other compliances under section 52 of CGST Act in such situations, as in such models having multiple ECOs in a single transaction, both the Buyer-side ECO and the Seller-side ECO qualify as ECOs as per Section 2(45) of the CGST Act.

3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues as under:

**Issue 1: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side**



**ECO himself is not the supplier in the said supply, who is liable for compliances under**



**section 52 including collection of TCS?**

**Clarification:** In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.

e.g.: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 of CGST Act with respect to this particular supply.

**Issue 2: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances under section 52 including collection of TCS?**



**Clarification:** In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

e.g. Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in Sec 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, as applicable, pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

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