Goods and Services Tax Imperatives for E-Commerce

A cashless economy, and thereby, e-commerce, is considered a beacon of hope for a better tomorrow

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'Digital India'-driven start-ups have been touted as the next driving force for the Indian economy, by the Government of India on several occasions. During the recent demonetization drive, the role of the digital economy for eradication of black money and corruption was frequently stressed upon. This strongly indicates as to how the cashless economy, and thereby, electronic commerce is considered as a beacon of hope for a better tomorrow by the Government, and accordingly, influences the policy and legislative decisions.

In India, increased Internet penetration through availability of smartphones and data network has led to a new world of opportunities for start-ups through e-commerce. According to NASSCOM's latest estimates, India's e-commerce market is estimated to be USD 33 billion in the financial year 2017. For the financial year 2016-17, e-commerce sales reached USD 16 billion with a projection of a sevenfold growth within the next two fiscals as estimated by Morgan Stanley.

By 2020, online commerce sales are expected to cross USD 120 billion mark. The number of consumers who purchase goods and services online is expected to cross 100 million by 2017 end with the e-retail market likely jumping 65% on y-o-y in 2018.

The rise of electronic commerce in India has resulted in conception of online marketplaces among other things. Online marketplace is an e-commerce platform owned by the e-commerce operator such as Snapdeal, Myntra, and Amazon etc., where vendors of any scale can sell directly to the end consumers. Thus, electronic commerce opened new avenues for small-to-medium vendors to sell their goods to a larger base of consumers at a much lower cost.

The bright performance of electronic commerce sector made it imperative for the taxman to focus on plugging any tax leakages and to provide a level-playing field to offline retailers.

E-commerce in India has witnessed a sudden boom since the late 90s with the advent of Internet, technology, and entrepreneurship. Accordingly, keeping in sync with the technology and to reduce corruption and red-tapism, the legislature moved to implement GST which is completely premised on information technology and has a futuristic approach with a focus on minimum human intervention and maximum efficiency. GST aims to usher an era of broader based indirect tax with organized business structure. The new indirect tax regime has an inbuilt incentive for compliance abidance, for example, GST regime has the provision of 'GST Compliance Rating' which will add value to the business of the honest tax payer.

> The internet economy does not pit the big against the small. It's about the swift against the slow

GST in Principle

In the GST regime, all of indirect taxes are subsumed and tax is levied on 'supply' of goods and/ or services. GST is a destination-based consumption tax as opposed to erstwhile origin-based tax like Central Excise.

India has adopted a dual GST model wherein both Centre and States have simultaneous power to levy GST on 'supply'. Intra-state supply is subject to Integrated GST (IGST), whereas inter-state supplies are subject to both Central GST (CGST) and State GST (SGST) or Union Territory GST (UTGST). However, rate of GST for a particular 'supply' is same, be it interstate or intrastate.

For implementation of GST, the Central and State Governments along with private entities have jointly registered Goods and Service Tax Network (GSTN) to provide IT infrastructure services to Central and State Governments, taxpayers, and other stakeholders. GSTN is responsible to build and operationalize the GST system.

Taxability of E-Commerce

Taxability of the e-commerce transaction differs from other trade transactions. Generally, in such transactions, though the impression is that the e-commerce operator is the provider of goods/services, the actual provider of goods/ services are third-party vendors. Now these vendors may either belong to the organized or unorganized sector and may operate at different scales. Accordingly, taxability of this bunch is challenging, wherein the legislature is required to apply intelligible differentiators so as to achieve substantive equality.

Further to this objective, GST has special provisions with respect to e-commerce operators and vendors selling through them, such as, special category of return in Form GSTR-8, mandatory registration, tax collection at source from the vendors, tax payment on behalf of vendors in certain case of supplies notified under Section 9(5) of the Central Goods and Services Tax Act, 2017 (CGST Act), among others.

GST: Special Provisions for E-Commerce

Mandatory Registration for E-commerce Operators and their Vendors: Under the GST regime, a specific threshold limit of aggregate turnover is prescribed for registration, i.e., INR 20 lakhs in general and INR 10 lakhs for specified States. However, the threshold limit is not applicable in case of e-commerce operators.

Further, even the sellers who supply goods and/or services through an e-commerce operator are required to get registered under GST, irrespective of the threshold limit. However, there are two exceptions whereby suppliers selling through e-commerce operators may avail threshold exemption:

(a) where e-commerce operators are liable to pay tax on behalf of the suppliers, or

(b) if the supply is made through such e-commerce operator that is required to collect TCS.

GST provides for state-specific registration, and therefore, all e-commerce operators will have to register in each state from where it is making a taxable supply of goods and/or services.

Tax Collection at Source (TCS): The e-commerce operator is required to collect an amount at the rate of one percent (0.5% CGST + 0.5% SGST) of the net value of taxable supplies made through it, where the consideration is collected by such operator. The amount so collected is called as TCS.

TCS is required to be deducted in each state and deposited accordingly. This brings in significant compliance challenges to sellers and may discourage sales through online portals. The key purpose of this particular provision is to encourage compliances under GST and provide a mechanism for the Government to track suppliers who sell through e-commerce operators.

No benefit of composition scheme: Sellers who are supplying goods and/or services through an e-commerce operator are not allowed to opt for composition scheme under the GST regime.

Matching Concept and Increase in Compliances: The e-commerce operator is required to report all supplies made by the seller and the TCS collected on a monthly basis. TCS collected by the e-commerce operator from the vendors can be set-off against the overall GST liability of such vendors.

The sales reported by the e-commerce operator will have to match with the sales declared by the supplier himself at the end of every month, and difference, if any, will be added to the turnover of the supplier and consequently be liable to discharge GST on such additional turnover.

Efficiency of elaborate GST provisions depends upon the efficacy of GSTN, more so for the e-commerce sector as "the Internet economy does not pit the big against the small. It's about the swift against the slow". However, undertaking compliances on GSTN has not been a smooth walk in the first 75 days of GST implementation.

GSTN Challenges

Under the GST regime, much like e-commerce sector, revenue and disclosures are dependent upon efficient functioning of GSTN. GSTN is also part of the Digital India scheme of the Government of India to boost technology-driven growth and reduce corruption.

GSTN in its initial face has faced much criticism from certain quarters for errors in filling returns and uploading of information. On September 12, 2017, a Group of Ministers (GoM) was constituted to monitor and resolve the IT challenges faced in the implementation of GST. GSTN crashed on September 4 and September 9, owing to unforeseen data/invoices uploads. Infosys, the blackened service provider of GSTN, blamed one unnamed large bank that uploaded a massive number of invoices in a way the system was not designed to accept.

Government has been frequently extending the deadline for submission of returns, acknowledging the technical glitches faced by the taxpayers in the wake of new system.

In Summary

The economic leverage hoped by taxpayers in the long run is keeping them optimistic about the new regime. The large corporate houses have more or less equipped themselves to be GST ready and small taxpayers are coping up.

Digital India is the most celebrated agenda of the Government of India; however, it has ended up in creation of additional trade barriers for e-commerce operators under GST. In this regard, it is yet to be seen whether GST is able to keep harmonious balance between offline and online vendors including e-commerce operators and help them to achieve organized and all-inclusive growth.

The onus to discharge GST has shifted to the e-commerce operator and they are faced with the difficulties of classification of supply and disclosures. Further, increased cost of compliance in each state is a huge deterrent for small scale e-commerce operators.

All these issues pertaining to GST implementation are being brushed aside as teething problems by the optimist and criticized by the skeptics. Nevertheless, GST is now and here for good, so the best recourse is to accept, learn, move on and make the most of it.

GST and e-commerce trade both have the potential to disrupt the market in the most positive way, given that the attitude of the stakeholders is towards acceptance and adaptability.

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