



# C.V.O. CA'S

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## NEWS & VIEWS

*From President's Desk...*



**Dear Professional Colleagues and Readers,**

One small African country, if very much in the news off late. Sudan, whose capital city is Khartoum, has always had a disturbed past. Power fight within the military and para-military force has intensified and has resulted in disturbance within the country.

According to the Indian Ministry of External Affairs, there are around 20,000 Indians living in Sudan. This includes Indian nationals working in various sectors such as oil and gas, construction, engineering, healthcare, education, and IT, as well as Indian business owners and their families. These families are stuck in the struggle of the country and facing acute shortages of basics necessity. Indian government considering the situation has launched a military operation to evacuate Indians from Sudan. I was wondering, why Indians travel to such a small country. There are several reasons:

**Employment:** Many Indians go to Sudan to work in various sectors such as oil and gas, construction, engineering, healthcare, education, and IT.

**Education:** Some Indians go to Sudan to pursue higher education in universities and colleges located in the country.

**Trade:** India has long-standing economic ties with Sudan and is one of the major trading partners of the country. Many Indian traders and businessmen travel to Sudan to explore business opportunities and expand their businesses.

**Diplomatic relations:** India maintains diplomatic relations with Sudan, and there are Indian diplomatic missions located in the country. Indian diplomats and officials travel to Sudan for official purposes.

Over the years, the number of Indians going to Sudan has decreased in recent years due to the political and economic instability in the country.

It's worth noting that the number of Indians going to Sudan has decreased in recent years due to the political and economic instability in the country. However, there is still a significant Indian community in Sudan, especially in the capital city of Khartoum.

In addition, there were concerns about the use of excessive force by the Indian Army during the operation. Some human rights groups raised concerns about the possibility of human rights violations, including the mistreatment of suspects and the use of torture to extract information.

We are sure the Indian military will complete the task and will safely ensure the Indian diaspora returns safe and secure.

**Further, I would like to take this as an opportunity to announce certain upcoming events:**

11 families of our association will be traveling to Association's first-ever International picnic to Jordan. I am hopeful, that everyone will enjoy the warm welcome of Jordanian. I am sure members will enjoy the sand dunes of Wadi Rum and the lost city of Petra.

**Events in retrospect:**

By the time you must be reading this, we would have concluded Ramat-ji-Ramjat. The program was received very well. 500+ members along with their families took part in the program with never seen before enthusiasm. Participants were grouped into 8 zones and they fought for the title. The games were a mix and match of outdoor games and indoor games and the entire CVO family enjoyed them.

*Thank you all..... Always in Gratitude*

  
CA Amit Chheda

May 1, 2023

# GST

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## INDIA'S ULTIMATE CHALLENGE



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FROM THE DESK OF CHAIRMAN

India has recently achieved yet another numero-uno position, i.e. as per the State of World Population 2023 published by the United Nations revealed that India's population has overtaken China's, and as such became the most populous country in the world. We knew this was coming and was only matter of time, and definitely the feat achieved earlier than expected. With the milestone, however, comes many challenges to be dealt with.

India is land of many resources. Yet to cater to over 1.35 billion population, resources are ought to be scarce and limited. Though this is a social concern, the State has a role to play.

The most important challenge is how to control the population growth. Our Prime Minister Shri Narendra Modi has already called for population control in his Independence Day speech a couple of years ago. State's role is seen to create conditions, which could implicitly or explicitly influence individuals' behaviour towards the desired goal of smaller families, like enhanced girl education, influencing age at which girls get married, strict implementation of laws against child marriages, incentivising small size of families, better employment opportunities for women, etc.

Another big challenge is to feed such a large population, of which big part is below poverty line. Employment generation for such a huge population, which is very young, is a daunting task and it remains to be seen how the government effectively deals with it.

On the one hand, high population growth can explain the country's poverty and low standards of living, on the other, it is touted as a demographic dividend that can spur economic growth.

Rapid population growth makes eradicating poverty, combating hunger and malnutrition, and widening the coverage of health and education systems daunting challenges.

Though there is a silver lining that India's population surge is stabilising, ultimately, challenge for India lies in how it can effectively chart a unique path in ensuring sustainable and equitable development for its billion-plus people.

*Thank you all.... Always in Gratitude*

*CA Ketan Rambhia*



## GST ANALYSIS - PROJECT MANAGEMENT CONSULTANCY SERVICES



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### 1. What is Project Management Consultancy (PMC) Services?

- 1.1. Project management consultants provide their professional expertise, advice and guidance to their clients to help plan, manage, execute and ultimately, successfully deliver projects. As a result of their expertise & methodologies, their clients benefit in terms of enhancement in the overall process, increased efficiency and very importantly, deliver projects on time within budget and scope assigned.
- 1.2. The first question that comes up is what kind of projects do they handle? The answer is literally 'any type' of projects. The projects could be a feasibility study for setting up an industry in a particular area or it could be as huge as design, plan, coordinate and execute the activities leading to the construction of a huge oil rig in the middle of the ocean! The project scope could be improvement of efficiency of a single plant in the industry or it could be an environmental impact assessment of construction of a new highway corridor planned in the country. Some projects may be a desk job of designing structures / strategies, while some other may involve suggesting a better process for increasing output, decreasing cost, improving efficiency and so on.
- 1.3. Who are these Project Management Consultants? Once again, there might not be an “one-size fits all” type of an answer to decide the qualification background for these consultants. Designing activity may require an architect, financial impact analysis may require a Chartered Accountant, supervising / managing construction related activities may require an engineer and implementation of a new software may require someone with Information technology background. In many cases, the team is a mixture of professionals of different background, working together on the project.

### 2. Distinguishing PMC from EPC projects

- 2.1. EPC project is acronym for Engineering, Procurement and Construction projects. The EPC contractor is the one that executes construction-related projects whereas PMC, on the other hand, is a type of consulting / managing service. In most construction-related projects, PMC shall oversee EPC contractors' work to ensure they meet the project guidelines and when there are multiple EPC contractors involved, then PMC services also include better coordination between all of them.

### 3. GST Background for PMC services

- 3.1. Under GST, the scope of “supply” covers all forms of goods and services. Hence, there has never been any debate regarding the regarding applicability of GST on PMC services. Most of the PMC services are classified under “HSN 9983 - Other professional, technical and business services,” which inter-alia includes, management consulting, information technology services, architectural services, engineering services, scientific and other technical services within its scope.
- 3.2. In terms of Sr. No. 21(c) of the notification no. 11/2017 – CT (Rate) dated 28.06.2017 (as updated), the general rate applicable for PMC services is 18%.

- 3.3. Many a times such PMC services are also availed by Central and State Governments, local agencies, government bodies and so on for various development activities of the nation. Hence, the most common (read: “debated”) exemption available under notification no. 12/2017 – CT (Rate) dated

SN	Description of services
3	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

- 3.4. The input tax credit (ITC) provisions of Sections 16 and 17 of the CGST Act, 2017 along with relevant rules are applicable to PMC services as well with no special / specific provision enacted for the same in the GST Law.

#### 4. Analysis of key issues plaguing PMC services

In this article, the key focus of discussion shall be centered around the following GST related issues prevalent in PMC service sector, namely,

- Determination of Place of Supply
- Eligibility for claiming exemption of entry no. 3
  - Services to Central Government, State Government or Local Authority
  - Services is in relation to any function entrusted to a Panchayat or a Municipality

##### 4.1. Determination of Place of Supply

4.1.1. Under GST, the concept of “Place of Supply” is relevant because in conjunction with “location of supplier of services,” it helps in determining what tax (IGST or CGST + SGST) is to be levied and in case of levy of IGST, the State / UT should also be identified so that such tax revenue flow to such State / UT.

4.1.2. Location of supplier of service in such PMC services is generally available because of established place of business for which GST registration has been obtained would be available in almost all cases.

4.1.3. As a thumb rule, PMC services would be covered by the general rule, wherein the place of supply shall be the location of recipient as provided under Section 12(2) or 13(2) of the IGST Act 2017, as applicable. However, the real challenge comes when the services provided / to be provided relate to immovable property.

4.1.4. The relevant extract of the provision relating to place of supply are reproduced hereunder:

When supplier and recipient are located in India	When either supplier or recipient is outside India
Section 12(3) of the IGST Act, 2017	Section 13(4) of the IGST Act, 2017
<p>The place of supply of services,</p> <p>(a) <u>directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work,</u></p> <p>(b) ....</p> <p>(c) ....</p> <p>(d) any services ancillary to the services referred to in clauses (a), (b) and (c)</p> <p><u>shall be the location at which the immovable property....is located or intended to be located.</u></p>	<p>The place of supply of services supplied <u>directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located</u></p>

- 4.1.5. Key emphasis is placed on two phrases used in the above provisions viz., “directly related to” and “immoveable property.”
- 4.1.6. Thus, if the PMC services are directly in relation to an immoveable property, then the place of supply shall be location / intended location of the immoveable property and in all other cases, it shall be location of the recipient.
- 4.1.7. Hence, these provisions are triggered only when there is a direct connection with the immoveable property in question. They do not apply if the PMC service only has an indirect connection with the immoveable property or the immoveable property is only an incidental component to a larger spectrum of services offered.
- 4.1.8. Thus, for PMC services in connection with an immoveable property, it first becomes important to identify whether the said immovable property is central to / essential for the services being supplied or not? If yes, then immoveable property location shall be the place of supply and if not, then the general rule shall apply.
- 4.1.9. Further there cannot be straight jacket formula in such PMC services because, the scope of services varies from contract to contract. Some feasibility study assignments may be generic, whereas some feasibility study assignments may be so specific that it may entail physical counting of trees being intended to be cut down or determining the average number of heavy vehicles that ply a specific road during a month or soil testing of that region.
- 4.1.10. For example, let's say, a foreign investor is interested to set up a particular type of manufacturing plant in a specific state / region of India and for that, they have appointed M/s. ABC (in India) to prepare the feasibility report in this regard wherein the scope of service inter alia, includes land

acquisition study, labour availability and labour cost in that region, government subsidies in that region, cost of setting up of manufacturing plant, reviewing the disasters, their frequency and their impacts in such region and so on. In such a case, intended location of the manufacturing plant (i.e., the immovable property) is a constituent element of the project and hence, such PMC services in form of feasibility report provided by M/s. ABC shall be not be treated as export of PMC services because the place of supply shall be the intended location of the manufacturing plant in India, and accordingly, GST would be levied for such services to the foreign investor.

4.1.11. Some examples of services directly related to immovable property can include:

- Drawing up of plans for a building or parts thereof for a particular area / plot
- Assessment of the environmental impact of a particular proposed project such as construction of underground metro line
- Surveying and assessment of the risk and integrity of an immovable property such as building, bridge and so on
- On-site supervision / management for construction activity

4.1.12. Some examples of services NOT directly related to immovable property can include:

- Drawing up of plans for a building or parts thereof not designated for a particular area / plot
- Desk job of analyzing the improved efficiency on account of new proposed process in a manufacturing plant
- Strategizing ways for reducing overheads for a Corporate Office

4.1.13. One may find the Irish Tax and Custom's VAT treatment of services connected with immovable property<sup>1</sup> an interesting read in this regard where the Irish Government has explained their view w.r.t. services directly in relation to immovable property.

4.1.14. From the above discussion, whenever any immovable property is involved in the provision of PMC services, it is pertinent to dwell into a number of questions to ascertain whether the immovable property is a fundamental part of the service or not to determine the correct nature of tax to be levied.

## 4.2. Exemption Conundrum

4.2.1. In the recent past, there have been so many rulings by authority for advance ruling (AAR) from so many different states that discuss the eligibility of exemption pertaining to Entry 3 (highlighted supra) of notification no 12/2017 – CT (Rate) dated 28.06.2017 (as updated).

4.2.2. To claim exemption under Entry 3 of the said notification, following three conditions should be satisfied:

- a. The activity should be in the nature of pure services
- b. Services should be provided to Central Government, State Government or Local Authorities

<sup>1</sup><https://www.revenue.ie/en/tax-professionals/tdm/value-added-tax/part03-taxable-transactions-goods-ica-services/Services/services-connected-with-immovable-property.pdf>

c. The activity should be in relation to any function entrusted to a Panchayat under article 243G of the Constitution of India or to a Municipality under article 243W of the Constitution of India

4.2.3. Earlier, exemption was eligible under Entry 3 of the exemption notification, when the services were provided to “governmental authority” and “governmental entity” as well. However, vide notification no. 16/2021 – Central Tax (Rate) dated 18.11.2021 made effective from 01.01.2022, the scope of the exemption entry was trimmed down by excluding “governmental authority” and “governmental entity.”

4.2.4. For PMC services, challenge is not satisfying condition regarding pure service, but the major challenge is satisfying the next two condition, which also have been bone of contention in most of the AARs till now and part of both the exemption entries.

➔ Whether the PMC service are provided to Central Government, State Government or Local Authorities?

4.2.5. PMC services would be eligible for exemption only if such services are provided to Central Government, State Government or Local Authorities. Hence, it is important to understand the coverage of these three terms to explore the scope of the exemption.

4.2.6. The terms, “Central Government” and “State Government” have not been defined in the GST law. Hence, we refer to the General Clauses Act, 1897 which define them as under:

(relevant extract)

2. (8) “Central Government” shall,

(a)...

(b) *in relation to anything done or to be done after the commencement of the Constitution, mean the President.*

....

2. (60) “State Government”, –

(a)...

(b)...

(c) *as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union territory, the Central Government.*

4.2.7. Hence, while referring to Central Government, “President” would include all officers subordinate to the President while exercising the executive powers vested in the President and in the name of President<sup>2</sup>. Hence, any contract which is awarded to any Project management consultant in the name of the President of India would be considered as service provided to Central Government. Similarly, the same analogy would apply in the case of State Government and the Governor of the respective State.

<sup>2</sup>In re: VPSSR Facilities [2018 (13) G.S.T.L. 116 (A.A.R. - GST)]



4.2.8. On the other hand, “Local Authority” has been defined under the CGST Act, 2017 as under:

2. (69) “local authority” means—

(a) a “Panchayat” as defined in clause (d) of article 243 of the Constitution;

(b) a “Municipality” as defined in clause (e) of article 243P of the Constitution;

(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under article 371 and article 371J of the Constitution; or

(g) a Regional Council constituted under article 371A of the Constitution;

4.2.9. While all terms are well defined in the above definition, there is one clause that can cause some interpretation issues and that is “any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund”

4.2.10. The above entry was recently put to test in the recent rulings by AARs in the state of Karnataka<sup>3</sup> while interpreting whether “Bengaluru Water Supply and Sewerage Board (BWSSB)” is a local authority or not. The Karnataka AAR in both rulings held that such entity is not a local authority.

4.2.11. The BWSSB came out with a clarification letter on 08.09.2022 bearing reference no. BWSSB / FA & CAO / AC-Acts / AS / GST-Advance-Ruling-Appeal / 151 / 2022-23 that it does not agree with interpretation pronounced by the AAR in the case of Hume Pipe Company Ltd. In the same letter which is address to all the contractors of BWSSB, it referred to the decision of Union of India & Ors vs. R. C. Jain and Ors<sup>4</sup>, and clarified that it believes that BWSSB is a “local authority.”

4.2.12. It is quite comical to note that GST registration of BWSSB recognizes them as “local authority” based on their constitution on the GSTN portal, but the AAR rulings do not!

4.2.13. While analyzing this operative part of definition of “local authority,” one must refer to the statute that governs the formation, constitution, functioning, powers, and responsibilities to determine whether such entity is entitled to or entrusted by CG or SG with control or management of a municipal or local fund. Other additional indicators also include constitution under Permanent Account Number (PAN) & GST registration.

4.2.14. Once the Tribunals are established under GST, there will be more stability w.r.t. interpretation to be adopted, especially for “local authorities.”

➔ Whether the activity is in relation to any function entrusted to a Panchayat under article 243G of the Constitution of India or to a Municipality under article 243W of the Constitution of India<sup>5</sup>?

4.2.15. Articles 243G and 243W of Constitution of India empowers the State Government to endow the Municipalities and Panchayats with powers to function as institutions of self-government. The said articles also list down specific functions which are entrusted to Municipalities and Panchayats.

<sup>3</sup>Suez India Pvt Ltd [KAR ADRG 08/2023 dtd 17.02.23] & Hume Pipe Company Ltd [KAR ADRG 23/2022 dtd 12.08.22]

<sup>4</sup>Union of India & Ors vs. R. C. Jain and Ors [AIR 1981 SC 951]

<sup>5</sup>[https://iddashboard.legislative.gov.in/sites/default/files/COI\\_English.pdf](https://iddashboard.legislative.gov.in/sites/default/files/COI_English.pdf)

- 4.2.16. Hence, if the services are provided within a Municipal or Panchayat area for any activities in relation to functions mentioned under article 243G and 243W, then this condition would be satisfied for claim of exemption. Therefore, it becomes important to understand the scope of the phrase “in relation to” used in the exemption entry.
- 4.2.17. Under legal parlance, the phrase “in relation to” is used to widen the scope of any following sentence. In the case of Doypack Systems (P) Ltd vs. UoI [1988 (36) E.L.T. 201 (S.C.)], the Hon'ble Supreme Court has explained that the expression “in relation to” is a very broad expression, which pre-supposes another subject matter. The Court highlighted that these are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context. “Relating to” has been held to be equivalent to or synonymous with as to “concerning with” and “pertaining to.” The expression “pertaining to” is an expression of expansion and not of contraction.
- 4.2.18. The phrase “in relation to” therefore, widens the applicability of exemption. It means that if the services are indirectly related to a function of Municipality or a Panchayat as listed above and provided to a Central Government, State Government or a Local Authority, then such services would be eligible for exemption under GST.
- 4.2.19. In this context, it would be relevant to refer the following ruling given by AAR in the case of VPSSR Facilities [2018 (13) G.S.T.L. 116 (A.A.R. - GST)]. In this case, VPSSR Facilities (applicant) had undertaken contract for railway station sanitation and/or cleaning, train cleaning & railway premises for Northern Railways. The applicant had sought clarification whether exemption under Entry 3 to Notification No. 12/2017-Central Tax (Rate) will be applicable to their contract or not. The relevant extract of the ruling is reproduced below:
- “38....It is observed that contracts by Northern Railway to the applicant have been awarded in the name of the President of India. Hence, it is held that Northern Railway is covered in the said Notification as 'Central Government.'*
- .....
- 43. The Railways cannot be called a Municipality under Articles 243P and 243Q of the Constitution of India. Further, the functions of Railways i.e., transport of goods or passengers are not covered in Schedule XII of the Constitution which covers the constitutional functions of Municipalities. The cleaning services supplied to Railways i.e., cleaning of locomotives, railway stations, railway lines provided by the applicant cannot be said to be covered in Clause (6) of Schedule XII of the Constitution which covers 'public health, sanitation conservancy and solid waste management' functions of the Municipalities. The Municipalities are constitutionally entrusted with such functions in relation to urban areas but they are not entrusted with such functions in relation to Railway properties.”*
- 4.2.20. As per Section 103 of the CGST Act 2017, the advance ruling is applicable only to the applicant who has sought the ruling. But it is important to draw reference to the principles highlighted by the ruling in interpretation of law.
- 4.2.21. In this case of VPSSR Facilities, the AAR has made stark observations for interpreting the exemption entry. It has stated that though Northern Railways qualifies as Central Government, it is vital to look at the functions vis-à-vis Municipal bodies. The exemption is given for activities pertaining to functions entrusted to a Municipality or a Panchayat. The activity must be integral to such functions. If a service is provided to any Government or local authority but the activities are not related to functions entrusted to a Municipality or a Panchayat, then the exemption under the GST law cannot be availed.

- 4.2.22. Hence, the exemption will be available only for those PMC services which are fundamental to the functions of a Municipality or a Panchayat. It means that all services provided to Central Government, State Government or Local Authorities, do not automatically qualify for exemption. It is equally important to equate the said function (for which PMC services are provided) with the functions entrusted to a Municipality or a Panchayat.
- 4.2.23. To further drive home the point, illustratively, following PMC services have been ruled by AAR as services in relation to functions entrusted to a Municipality or a Panchayat:
- a. Imparting Management Consultant and Detailed Project Report services for the water related projects at Chennai<sup>6</sup>
  - b. PMC services under the Atal Mission for Rejuvenation and Urban Transformation & Pradhan Mantri Awas Yojna<sup>7</sup>
  - c. PMC services for Andhra Pradesh Panchayat Raj Engineering Department for Andhra Pradesh Rural Road Project<sup>8</sup>
  - d. PMC services for project management and quality assurance for the work of Rejuvenation and development of Lake to Forest Department<sup>9</sup>

## 5. Conclusion

- 5.1. Given the nature of PMC services, no two contracts will be the same and hence, it is always important to independently review the scope of PMC service to identify key elements which aid in deciding the applicable place of supply provisions.
- 5.2. Similarly, even though exemption entry of pure services has been pruned, the task to determine the actual recipient of PMC services (Central Government, State Government or local authority) and whether services rendered are in fact relate to function entrusted to a Panchayat or Municipality (Article 243G and 243W of the Constitution of India) will continue to drive maximum litigations for PMC services in the days to come.

<sup>6</sup>In re: Tamil Nadu Water Investment Company Limited [2019 (21) G.S.T.L. 342 (A.A.R. – GST – TN)]

<sup>7</sup>In re: Egis India Consulting Engineers P. Ltd (Madhu Garg) [2018 (16) G.S.T.L. 171 (A.A.R. - GST)]

<sup>8</sup>In re: Consulting Engineers Group Ltd [2020 (39) G.S.T.L. 155 (A.A.R. - GST - A.P.)]

<sup>9</sup>In re: Vimos Technocrats Pvt. Ltd [2020 (42) G.S.T.L. 263 (A.A.R. - GST - Kar.)]



## IMPACT OF GST ON E-COMMERCE INDUSTRY – A COMPLETE GUIDE



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E-commerce has become a highly lucrative form of business. But there are several red flags when it comes to e-commerce platforms fitting into the traditional format of business given the hybrid model of their operations. There is a lack of clarity whether the platform is a seller or a service provider. There are questions as to who is responsible for the collection of taxes. In this article, we will discuss the impact of GST on the e-commerce industry.

### E-Commerce Industry

E-commerce i.e. Electronic commerce which simply means supply of goods and services through electronic mode over the internet moreover, in legal term Electronic Commerce has been defined in Sec. 2(44) of the CGST Act, 2017 to mean the supply of goods or services or both, including digital products over digital or electronic network.

E-commerce Operator (ECO) i.e. Electronic commerce operator is a person providing any information or any other services incidental to or in connection with such supply of goods and services through electronic platform would be considered as an Operator moreover, in legal term Electronic Commerce Operator has been defined in Sec. 2(45) of the CGST Act, 2017 to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Every E-commerce transaction involves below 3 parties:

- Seller
- Buyer
- ECO i.e. E-commerce Operator

### **FAQ Who is considered As E-Commerce Operator?**

- As per the above definition someone who is providing a platform for others to sell goods or services is taken into account an e-commerce operator. Main examples of such operators selling goods are Amazon, Flipkart, Snapdeal and operators selling services are Uber, Ola, Swiggy, Urban Clap.
- A person selling goods or services through his personal website isn't an e-commerce operator and so below provisions don't apply to them. Such a suppliers is required to charge GST and file returns.

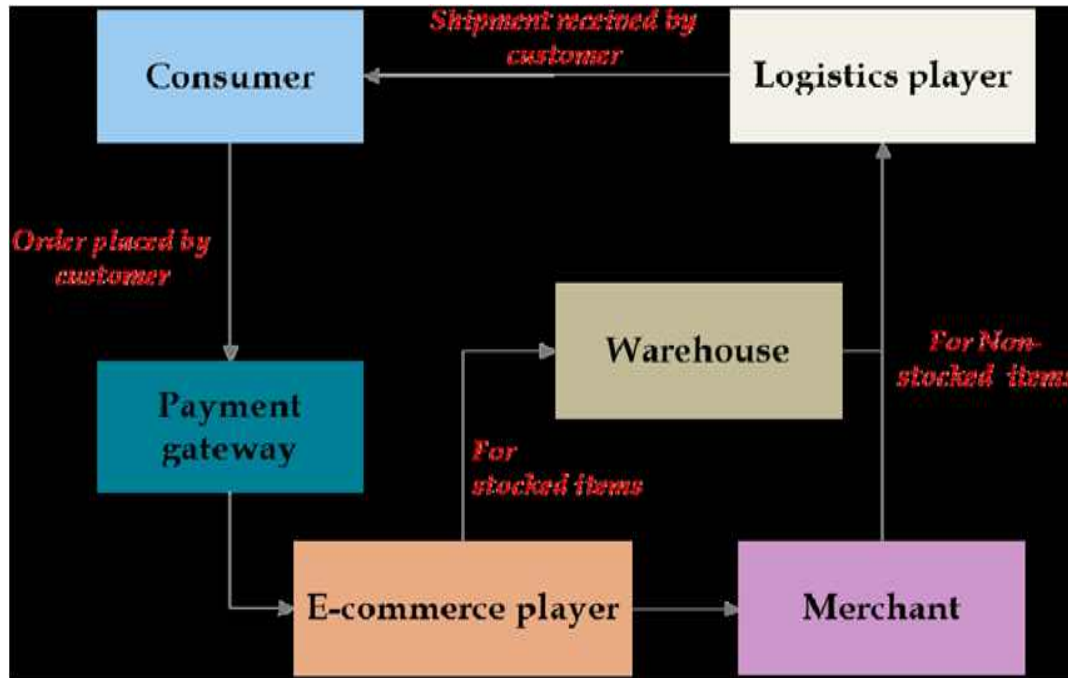
### Types of Business Models in the E-Commerce Industry

GST on e-Commerce Industry – There are two main kinds of models in the e-commerce industry.

- The Inventory Model
- The Aggregator Model

*Let us take a look at both of these models in depth.*

## Inventory Model



In this model E-Commerce Operator (ECO) purchases / manufactures the goods and sells them on the E-Commerce platform. He provides his services on the E-Commerce platform.

In this model, the ECO will either purchase from supplier or manufacture on its own. In Case of Purchase, the supplier will sell the goods or services first to the E-Commerce operator and the E-Commerce operator will further sell the goods/services to the Customer.

Invoicing will be done as follows in these cases:

- **Invoice No.1: Supplier to E-Commerce Operator:**

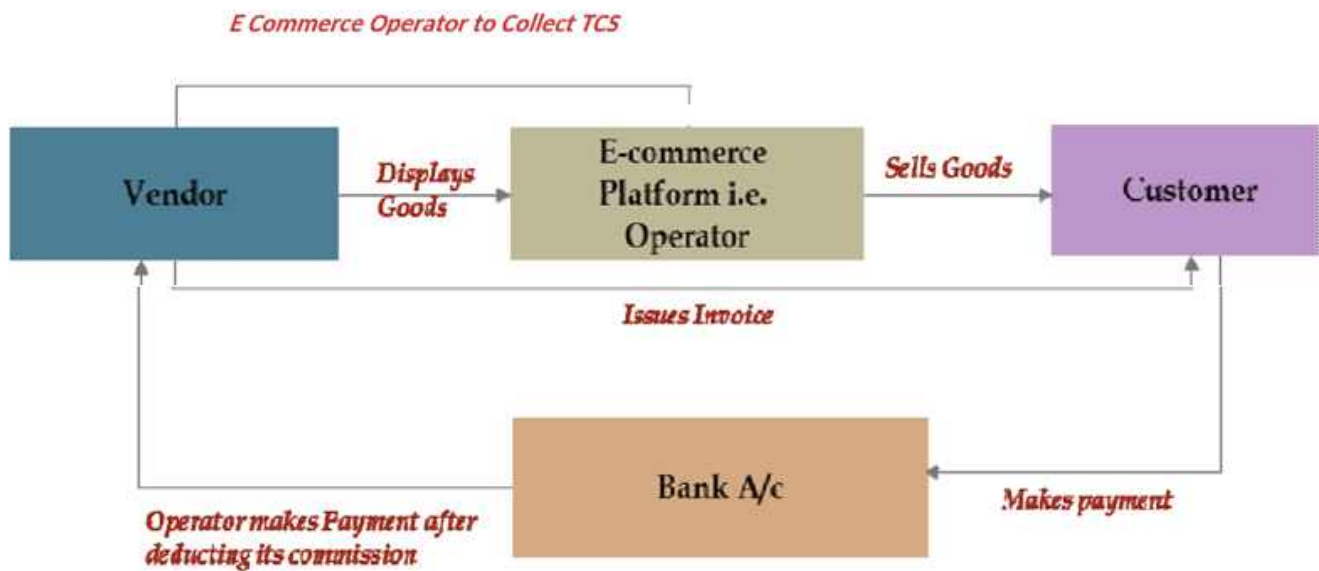
Invoice will be raised by the supplier to the E-Commerce operator with their GSTN numbers. The seller in the invoice will be the Supplier and the customer in the invoice will be the E-Commerce operator.

- **Invoice No.2: E-Commerce operator to Customer:**

Invoice will be raised by the E-Commerce operator to the Customer for sales. The seller in the invoice will be the E-Commerce operator and the customer in the invoice will be the Ultimate consumer purchasing the goods or services.

In Case of own manufacturing, ECO will directly raise Invoice no.2 from the above example.

## Aggregator Model



This is the model adopted by most top e-commerce entities like Flipkart, Swiggy, Amazon, Urban clap, and most of the others. In this E-Commerce operator will just provide a platform where suppliers can register themselves and advertise their products to the customers. In this case, ECOs will charge a fee/commission from the supplier for its services.

- **Invoice No.1 – From Supplier to Customer:**

The invoice will be raised by the supplier to the customers directly. (This happens on Amazon and Flipkart) The seller on the invoice will be the supplier along with his GSTN number and the buyer on the invoice will be the Customer.

- **Invoice No.2 – From ECO to Suppliers:**

ECO will raise an invoice to its suppliers for collecting the fees and commission. The seller in the invoice will be the e-Commerce operator and the customer in the invoice will be the Supplier supplying the goods or services.

### Registrations

After understanding primary models of E-Commerce Industry, now let us understand registration requirements of said sector;

#### Section 24: Compulsory registration in certain cases (Relevant Part)

“Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,-

(iv) Persons who are required to pay tax under sub-section (5) of section 9,

(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,

(x) Every electronic commerce operator,

(xi) Every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person,”

**Section 9(5): Levy and Collection:**

“The Government may, on the recommendation 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 person 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.”*

In view of the above provision in the Act, the Central Government had issued the Notification No. 17/2017-Central Tax (Rate) wherein following services were notified:

- services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, omnibus or any other motor vehicle;
- 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.
- 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.
- Supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises

From the above it can be noted that, in case of Persons getting covered u/s 9(5) E-Commerce Aggregator are required to take up registration regardless of the threshold limit. However, the supplier making supplies through such aggregator would be allowed to take up advantage of threshold limit of GST registration. In all other cases Sec 24 mandates the supplier to compulsory acquire registration for supplies made through E-commerce operator.

Particulars	Examples Of E-Commerce operator	Registration requirement for seller	Person liable for GST collection
Supply of Goods	Amazon, Flipkart, Snapdeal	Yes, Seller Is Required to register	Seller
House Keeping Services, With Turnover Below Threshold Limit	Urban Clap	No, seller is Not Required to register	Operator
House Keeping Services, With Turnover Above Threshold Limit	Urban Clap	Yes, Seller Is Required to register	Service Provider
Other Service Including Food Aggregators, With Turnover Below Threshold Limit	Swiggy, Zomato	No, seller is Not Required to register	Operator
Other Service Including Food Aggregators, With Turnover Above Threshold Limit	Swiggy, Zomato	Yes, Seller Is Required to register	Service Provider

**FAQ1 Are e-commerce operators mandatorily required to take up GST registration?**

Yes, GST registration is mandatory for all e-commerce operators, irrespective of their turnover. Thus, before making any supplies as an ecommerce operator or within 30 days of making such supplies, the supplier shall apply for GST registration.

**FAQ2 Should the sellers be required to take up GST registration, even in case of using e-commerce platforms?**

Yes, suppliers supplying their product (other than those specified u/s 9(5)) using e-commerce platforms, are required to obtain GST registration irrespective of their sales turnover.



**FAQ3 Can e-commerce suppliers store their goods during a common warehouse?**

Yes, suppliers on an ecommerce platform can store their goods at a typical warehouse. However, before storing goods, the supplier is required to add the said warehouse of thee-commerce operator as a place of business on the GST portal.

**FAQ4 Who is susceptible to Collect And Pay GST - E-Commerce Operator Or E-Commerce Sellers?**

**Selling Goods** – The e-commerce seller is responsible for the collection of GST and pay to the govt.

**Selling services apart from mentioned in Section 9(5)** – The e-commerce seller is liable for collection of GST and pay to the govt.

**Selling services mentioned in Section 9(5)** – The e-commerce operator is susceptible to collect and pay GST to the govt.

**PLACE OF SUPPLY**

GST is a destination based tax, i.e., the goods/services will be taxed at the place where they are consumed/ used and not at the origin. So, the state where they are consumed will have the right to collect GST.

This makes the concept of the place of supply crucial under GST as all the provisions of GST revolves around it.

The Place of supply of goods under GST defines whether the transaction will be counted as intra-state or inter-state, and accordingly levy of SGST, CGST & IGST will be determined. Wrong determination of place of supply will result in tax collection by the wrong state. For example, inter-state supply is wrongly treated as intra-state supply and CGST & SGST filled instead of IGST. The only option is to pay IGST separately and claim a refund of CGST & SGST.

In very simple words, where you are selling from does not matter. Where your goods are going is relevant.

This would apply to all e-commerce platforms, sellers such as those who sell on Amazon.

Let us go through the provisions of the place of supply for goods:

**Example 1: Intra-state sales**

Mr. Raj of Mumbai, Maharashtra orders a mobile from Amazon. The seller Happy Mobiles is registered in Nagpur, Maharashtra.

The place of supply is Mumbai in Maharashtra. The location of the supplier is in Mumbai. Since the place of supply is in the same state as that of the location of the supplier, CGST & SGST will be charged.

**Example 2: Inter-State sales**

Mr Raj of Mumbai, Maharashtra orders a mobile from Amazon. The seller Mobile Junction is registered in Bangalore, Karnataka.

The place of supply here is in Mumbai, Maharashtra. Since the location of the supplier( i.e. Bangalore) is in a different State when compared with the place of supply (i.e. Mumbai) IGST will be charged.

Example 3: Send to a third party

Mr Raj of Mumbai, Maharashtra orders a mobile from Amazon to be delivered to his mother in Lucknow (UP) as a gift. M/s All Mobiles (online seller registered in Gujarat) processes the order and sends the mobile accordingly and Mr Raj is billed by Amazon.

It will be assumed that the buyer Mr Raj in Maharashtra has received the mobile even though it was actually delivered to his mother.

The place of supply here is in Mumbai, Maharashtra. Since the location of the supplier ( i.e. Gujrat) is in a different State when compared with the place of supply (i.e. Mumbai) IGST will be charged.

**TAX COLLECTED AT SOURCE ONE - COMMERCE OPERATOR**Section 52: Collection of tax at source

*“(1) Notwithstanding anything to the contrary contained in the Act, every electronic commerce operator (hereinafter referred to in this section as the “operator”), not being an agent, shall collect an amount calculated at such rate not exceeding **one percent**, as may be notified by the Government on the recommendations of the council, of the **net value** of taxable supplies made through it 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.”*

Tax Collected at Source (TCS) provides for mechanism, wherein the e-commerce operator is required to collect a specified percentage of payment to e-commerce supplier, when the supplier make supply of specified goods or service using its portal. The said amount of TCS collected must be remitted to government within 10<sup>th</sup> of next month, from the month in which the invoice is generated.

The supplier who has supplied the goods or services or both through the operator shall claim credit of such TCS, in his electronic cash ledger.

**FAQ1 What is the rate of GST TCS?**

TCS shall apply at the speed of 1% on the overall net value of the products or services supplied through the e-commerce operator.

For example, where the value of the products sold to a customer amounts to Rs.1lakh, the e-commerce operator is required to collect and deposit Rs.1000 from the payment to be made to the supplier, as Tax Collected at Source.

**FAQ2 What is the due date for remitting GST TCS?**

The e-commerce operator shall remit the GST TCS to the govt., within 10 days after the end of the relevant month.

**FAQ3 How to claim the credit of TCS deducted by e-commerce operators?**

The supplier is eligible to claim the credit of TCS deducted by the e-commerce operators. The said amount of TCS collected can be used by the supplier to set off their GST liability while filing GSTR 3B.

**FAQ4 Will online travel agents be responsible for TCS?**

Yes, online travel agents supplying services using an ecommerce platform would be susceptible to TCS.

**GST Returns Filing**

- E-commerce suppliers/aggregators are required to file Form GSTR-1 and GSTR 3B monthly and GSTR-9 is to be filed annually.
- E-commerce operators are required to file their GST return in form GSTR 8 in monthly basis.
- Form GSTR 8 is one of the most important forms which need to be taken utmost care for an E-commerce operator.
- Form GSTR 8 is a statement that must be filed by E-commerce operators every month. It must contain the details of supplies made to customers through the taxpayer's E-commerce portal by both registered taxable persons and unregistered persons, customer's basic information, the amount of tax collected at source (TCS) (to be counted at 1%), tax payable, and tax paid.

**Impact of GST on e-Commerce Industry****1. Increased Compliance Burden:**

One of the significant impacts of GST on the e-commerce industry is the increased compliance burden. E-commerce companies are required to comply with various GST registration regulations, including registering for GST, filing GST return, and collecting and remitting GST on behalf of sellers. The increased compliance burden has led to increased costs for e-commerce companies, particularly smaller players.

**2. Uniform Tax Structure:**

The introduction of GST has led to a uniform tax structure across the country, which has benefitted e-commerce companies. Earlier, different states had different tax rates, which made it difficult for e-commerce companies to calculate and collect taxes. The uniform tax structure has made it easier for e-commerce companies to operate across the country and has reduced the complexity of tax calculations.

**3. Impact on Tier II and Tier III Suppliers:**

The introduction of GST has had a significant impact on small and medium-sized enterprises primarily suppliers from Tier II and Tier III cities which were earlier making supplies through e-commerce platforms. Such Suppliers selling through e-commerce platforms are required to register for GST and comply with GST regulations. The compliance burden and increased costs have made it challenging for such small and medium-sized enterprises to operate in the e-commerce industry, leading to a decline in the number of small and medium-sized enterprises selling through e-commerce platforms.

#### 4. Impact on Prices:

The impact of GST on prices in the e-commerce industry has been mixed. While the introduction of GST has led to a reduction in the prices of some goods, the prices of other goods have increased due to the increased compliance burden and costs for e-commerce companies. The impact on prices varies depending on the product and the e-commerce company.

#### Concluding Remarks:

In conclusion, although it's not easy to conclude such a vast topic but in my opinion GST is one of the biggest fiscal reforms that our country has witnessed. It is a unified taxation system in a federal country like India.

Though the compliance under GST has increased for the E-commerce industry, still it improves the market for the local suppliers as they can sell in any state with same tax rates, this will promote more sellers to go online and provide best services to the customers.

In simple terms it can be understood that the State will be able to make revenue from this sector, but some practical implications are there, but overall implementation of GST on e-commerce is appreciable.



## COMPOSITION TAX UNDER GST REGIME



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### Background

Government in its endeavor to reduce compliance burden on small and medium businesses have continued the saga of composition levy from the erstwhile VAT and Service Tax era to the GST era.

In GST regime, opting for composition scheme reduces compliances burden on these businesses whereby they are not required to collect tax, not required to issue tax invoices, relief from monthly compliances etc.

### Flow of this article

We have attempted to capsulate the basic law (such as Eligibility, limits etc.) governing composition scheme in the table below for quick reference. Later on we have attempted to cover certain specific practical scenarios which could arise on day to day basis or certain areas which would need caution while planning and advising

	Composition Scheme u/s. 10(1)	Composition Scheme u/s. 10 (2A)
Who all are covered	<ul style="list-style-type: none"> <li>Manufacturer of Goods (except specified goods)</li> <li>Supply of food as a part of service or otherwise (Mainly restaurant and catering service)</li> <li>Other Supplier of Goods</li> </ul> <p>(Kindly note that for the purpose of easy reference this shall be termed as 'GOODS COMPOSITION')</p>	<ul style="list-style-type: none"> <li>Suppliers who are not eligible u/s. 10(1)</li> </ul> <p>(Kindly note that for the purpose of easy reference this shall be termed as 'SERVICES COMPOSITION')</p>
Legal references (Rules- Notifications)	<p>Sec.10(1) &amp; 10(2) of CGST Act Rule 3 to 7, 62 of CGST Rules</p> <p>Notif.No. 14/2019 CT dated 7.3.2019 as amended Notif. No. 21/2019 CT dated 23.4.2019 as amended</p>	<p>Sec.10(2A) of CGST Act Rule 3 to 7, 62 of CGST Rules</p> <p>Notif.No. 2/2019 CT(R) dated 7.3.2019 as amended Notif.No.21/2019 CT dated 23.4.2019 as amended</p>

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Who can opt	Taxpayers whose aggregate turnover in <b>preceding</b> financial year does not exceed <b>1.5 Crore</b> For supplies from specified states, this Limit is of <b>Rs75 Lakh</b>	Taxpayers whose aggregate turnover in <b>preceding</b> financial year does not exceed <b>50 Lakh</b>  No Separate limit for specified states in case of "Services"								
What shall be included & excluded in turnover	<table border="1"> <thead> <tr> <th>Includes</th> <th>Excludes</th> </tr> </thead> <tbody> <tr> <td>Taxable Supplies</td> <td>Inward supplies on which tax is payable under RCM</td> </tr> <tr> <td>Exempt Supplies</td> <td>Exempt supply by way of interest on deposits / loans / advances</td> </tr> <tr> <td>Outward supplies on which tax is payable by the recipient under RCM</td> <td></td> </tr> </tbody> </table>		Includes	Excludes	Taxable Supplies	Inward supplies on which tax is payable under RCM	Exempt Supplies	Exempt supply by way of interest on deposits / loans / advances	Outward supplies on which tax is payable by the recipient under RCM	
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Outward supplies on which tax is payable by the recipient under RCM										

	Composition Scheme u/s. 10(1)	Composition Scheme u/s. 10 (2A)						
Who all Who CANNOT opt for covered	<ul style="list-style-type: none"> <li>• Inter-state supply of goods</li> <li>• Non-GST goods (Liquor, Petrol, Crude, etc)</li> <li>• Manufacturer of specified goods (Notfn. No.14/2019-CT dated 7.3.2019 as amended)</li> </ul>	<ul style="list-style-type: none"> <li>• Inter-state supply of services</li> </ul>						
Rates of Taxes	<table border="1"> <tr> <td>Manufacturer</td> <td>2%</td> </tr> <tr> <td>Supply of Food</td> <td>5%</td> </tr> <tr> <td>Other Supplier of Goods</td> <td>1%</td> </tr> </table>	Manufacturer	2%	Supply of Food	5%	Other Supplier of Goods	1%	6%
Manufacturer	2%							
Supply of Food	5%							
Other Supplier of Goods	1%							
Partial Supplies	<p>Partial supply of service allowed.</p> <p>Value of such partial supply of services shall not exceed 10% of <b>preceding year's turnover</b> or 5 Lakhs, whichever is higher</p>	<p>Partial supplies of goods allowed.</p> <p>No limit prescribed.</p>						
Supply through E-Commerce Operator	<p><b>As of now NOT allowed.</b></p> <p><b>(Amendment made to allow this in Finance Act 2023, but effective date not yet notified)</b></p>	NOT ALLOWED						
When to Opt	<table border="1"> <tr> <td>New registration</td> <td>At the time of registration itself</td> </tr> <tr> <td>Shift from Regular to Composition</td> <td>To be opted prior to the commencement of the financial year</td> </tr> <tr> <td></td> <td>Opt in during the year is not allowed.</td> </tr> </table>	New registration	At the time of registration itself	Shift from Regular to Composition	To be opted prior to the commencement of the financial year		Opt in during the year is not allowed.	
New registration	At the time of registration itself							
Shift from Regular to Composition	To be opted prior to the commencement of the financial year							
	Opt in during the year is not allowed.							
General provisions	<ul style="list-style-type: none"> <li>• Not allowed to collect tax</li> <li>• Cannot raise "Tax Invoice". Instead has to raise "Bill of supply"</li> <li>• Bill of supply to mention as "Composition dealer not allowed to collect Tax"</li> <li>• To prominently display at POB, as "Composition Taxable person"</li> </ul>							

### Certain Practical Points and Issues to be taken care

#### 1. Whether opted for Composition of goods or composition of services?

At present GST portal doesn't ask for any information as to whether composition u/s 10(1) is opted or section 10(2A). So here tax payer will himself need to keep record as to what has been opted. This is necessary because of difference in tax rates, turnover limits, restriction on rendering of partial services etc. So some sort of self-check would be necessary as composition scheme would lapse as soon as the prescribed turnover limit is crossed during the year.

#### 2. Composition turnover and threshold turnover

Currently, threshold turnover upto which one is exempted from registration is Rs 40,00,000 for goods and Rs 20,00,000 for services.

*During the first year of composition registration*, for the purpose of calculating composition turnover limit of Rs 1.5 Crore/75 lakh/50lakh, turnover made upto threshold will have to be included.

However, for the purpose of paying tax under composition, such threshold turnover has to be excluded.

#### 3. Turnover limit for a person having additional POB in specified states

Mr A has one office in Mumbai and another in Sikkim (Specified state). For the purpose of 10(1)-composition, what would be the turnover limit ? 1.5 Cr or 75 lakh ?.

First of all it should be noted that Mr A will have to opt for composition simultaneously for all the registration under same PAN. Rs.75 Lakhs being the lower limit the same shall apply on all India basis.

#### 4. Where tax payer registered under **any one** composition, tax rate on other partial supplies?

Registered under composition as & existing rate	Tax on other partial supplies being,		
	Services	Trading/ Manufacturing	Exempted goods or services
Manufacturer-1%	1%	1%	Taxable-@1%
Service of supplying food-5%	5%	5%	Taxable-@5%
Other than above two ( E.g:- trader) -1%	1%	1%	No Tax on exempted goods and exempted services.
Service composition-6%	6%	6%	Taxable @ 6%.



5. Composition scheme to lapse if turnover is crossed prescribed limit

Composition scheme will immediately lapse during the year at the time when turnover has crossed the specified limit of 1.5 Crore/75 lakh/50Lakh

6. Calculation of 10% of previous years turnover.

10(1)-goods composition allows tax payer to partially render services with a cap of 10% of **previous years turnover** or Rs. 5,00,000, whichever is higher. Here, previous year's turnover would be aggregate of goods **as well as services** turnover. Further, such services turnover would also include exempt services turnover.

7. For goods composition, extent of "service" allowed in first year

Assuming that Tax payer did not have any turnover in previous year, extent of value of services that would be allowed in first year would be upto Rs 5,00,000.

8. During the year, can one jump from 10(1)-composition to 10(2A) composition?

Having opted for goods composition during the year, tax payer may have exceeded the permissible limit of services (10% or Rs 5,00,000) that can be rendered. At this point of time, he becomes ineligible for Section 10(1)-good composition. However, he may still be eligible for service composition u/s 10(2A). Can he do so during the year? Legally this is possible since section 10(2A)-categorically invites such tax payer who becomes ineligible for 10(1). On practical side also, GST portal, while opting for composition, does not distinguish between 10(1) & 10(2A). So, one may straightway start paying tax @ 6% on entire turnover including that of goods turnover in the next compliance. One might need to add "service" in the GST profile if not added earlier.

9. Outdoor caterer & Composition

Supply of food or drink as a part of service is covered under 10(1)-Composition. Apart from restaurant, this would cover outdoor caterers also. Prescribed composition rate is 5%.

However, it should be noted that if outdoor caterer doesn't opt for composition, then too specific GST rate specified is 5% without ITC. While under composition, tax-payer will not be able to recover tax from its customer which he might be able to do so if he stays in normal regime. So before opting for composition here one should weigh this fact and take call.

10. Inward RCM & Composition tax payer

For a composition tax payer, RCM would continue to apply as normal, wherever applicable, on his inward supplies. For Eg:- Composition tax payer availing security services from "other than body corporate" supplier would be liable to pay GST on security services on RCM basis.

However, value of security services would NOT form part of his turnover.

11. Composition Tax-Manner of calculation

As mentioned earlier, composition tax payer is not allowed to collect tax. Special care should be taken while paying tax. E.g:- In case of service composition, where service value is Rs 10,00,000. Tax payable would be 6% on Rs 10,00,000. One CANNOT treat as Tax being included in Rs 10,00,000 and arrive at tax figure of 56,603.

12. ITC implications on shifting from regular to composition

- ITC availed for the goods held in stock, shall lapse
- ITC related to "regular tax regime" but not appearing in GSTR-2B till March, shall lapse

13. Can restaurant supplying liquor opt for composition?

Since liquor is non-GST goods, taxpayer is not eligible to opt for composition.



## REAL ISSUES OF REAL ESTATE



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### 1.0 Introduction:

Indirect taxes applicable in the real estate sector has always been a bone of contention, in spite of several attempts of Government to resolve the same. In fact, the issues mainly started with the Government's zeal to collect taxes on several aspects of real estate, many a times, illegally

### 2.0 Legal Issues:

Article 265 of Constitution of India provides that – “No tax shall be levied or collected except by authority of law”

#### 2.1 **The question is what is the authority of law?**

Typically, as a layman, one may have a tendency to presume that any law which is laid by the Government is the authority of law and the same needs to be followed religiously. Sometimes, even tax professionals also end up taking up such a stand and thereby advising clients to pay taxes even if they have serious doubts about validity of any law. One of the important aspects of any real estate transaction is – size. Most of the time, the amount involved in real estate transactions is huge. Therefore, even tax on such transaction can be a big chunk. In the zest of being safe on a taxation front, people end up taking a stand which can make the whole transaction an unviable one on a business front

#### 2.2 **Government is not an authority:**

It may be appreciated that the role of any Government is confined to implement or administer any law but not to impose any law. Depending upon the subject, the law-making powers are vested with the Parliament or State Legislature and not with the Government

This can be understood by looking in the case of *The Lord Krishna Sugar Mills vs The Union of India and others*<sup>1</sup>. It was held by the Supreme Court that unless the law is administered by Rules placed before the Parliament, any amount collected for non-fulfilment of targets of sugar exports, is without authority of law

#### 2.3 **Even State Legislature travelling beyond Constitution is not an authority:**

Similarly, in the case of indirect taxes, an attempt of State Government of Madras to impose sales tax on the goods portion involved in a works contract was held to be without authority of law by the Supreme Court, as the same was not as per the extant provisions of Constitution of India, even if such tax was imposed with an approval by the State Legislature. Please, refer *State of Madras vs. Gannon Dunkerly & Co. (Madras)*<sup>2</sup>

<sup>1</sup>1959 AIR 1124 (Supreme Court of India)

<sup>2</sup>1958 AIR 560 (Supreme Court of India)

## 2.4 Misuse/improper use of authority not permissible

In the past central/ state government have carried out various attempts to levy tax on several aspects of real estate and failed multiple times on various specific grounds as the same was without authority of law. A look at history provides us with multiple instances where, challenge by a taxpayer on a proper footing has saved him from an arbitrary levy of taxes. This can be understood by looking at following cases:

### In case of Magus Construction (P.) Ltd and V. Union of India and others<sup>3</sup>

In an attempt of the Service tax authorities to compel a builder to get themselves registered with Service tax authorities and pay taxes on the construction activities; the Builder challenged the same. Gauhati High Court held that an estate builder is constructing apartments for the purpose of sale and therefore services of construction are rendered to self, therefore, not taxable

### In case of Suresh Kumar Bansal vs Union of India & Others<sup>4</sup>

In this case it was held that if the Act is unworkable in the absence of necessary Rules, any assessment under the said Act cannot be enforced even if such an assessment order is made by an authority under the Act purportedly in accordance with the provisions of the Act.

## 3.0 Other indirect tax issues:

### 3.1 Value of land:

The sale of land is not exigible to GST. Consequently, the GST law provides for a standard abatement of 33% of the total contract/ agreement value towards value of land for taxable real estate transactions, irrespective of the actual value of land. At times, the actual value of land could be much more than just 33% of the total value charged. Recently, Gujarat high court in the case of Munjaal Manshi Bhat<sup>5</sup> held such deeming value mechanism to be ultra-vires.

### 3.2 Tax on rights emerging out of land:

Similarly, treating FSI or TDR as a taxable service by way of a backdoor of exemption notification or providing a deeming value of such FSI/TDR equivalent to value of unsold flats is also an arbitrary and a game stopper for the real estate industry.

### 3.3 Taxing in a taxing manner:

Creating a rate entry in the rate notification along with plethora of conditions, is another such example of step-motherly tax treatment to the real estate industry. The computation of tax becomes so difficult with concepts like 80% compulsory procurement from the registered persons, 100% compulsory procurement of cement from the registered persons, project wise accounting etc.

<sup>3</sup>2008 (11) S.T.R. 225 (Gau.) (Gauhati High Court)

<sup>4</sup>2016 (43) S.T.R. 3 (Del.) (Delhi High Court)

2017 (4) G.S.T.L. J128 (S.C.) (Pending)

<sup>5</sup>2022 (62) G.S.T.L. 262 (Guj.) (Gujarat High Court)

## **4.0 Practical Issues:**

### **4.1 Changes in law and the long-term nature of the contracts:**

Normally, the Contracts of real estate are long term in nature. They take a substantial period of time to complete. Commitments made in the contract are binding on the parties as per the Contract Act, 1872 even though some terms of the contract have been heavily impacted by subsequent changes in the law. Most of the times, amendments in the indirect tax laws do not provide any immunity to the contracts made in the past.

For example, at the time of contract made in 2009, there was no levy of service tax on sale of under-construction flats, then in the year 2010 service tax was introduced, subsequently, the rates of service tax underwent changes three times. In 2017, Service tax was replaced by GST law. The taxation system of GST underwent a sea change in 2019. Imagine the scene where such contract runs till 2020. Both parties to the contract may end up either litigating between both of them for the taxes, or one of the parties may suffer heavily due to such abrupt changes in the laws without providing sufficient safeguards or clarity on the ongoing contracts.

### **4.2 Changes in Partners and the long-drawn tax litigations**

Many a times developers jointly develop project for various reasons such as sharing of cost, requirement of expertise, etc. as the real estate project are long term it is very much possible that there can be change in partners or Joint Venture parties. In such a case, if some unfair tax demand has been raised and the same is being litigated, real estate partners undergo a tough time while parting their ways. Continuing partners run more risks in such a situation due to unreasonably long time taken by the Judiciary to give its final verdict.

### **4.3 Changes in the cost due to taxes and long-term contracts**

Abrupt and frequent changes in the tax laws can lead to a huge impact over the final cost of the real estate product. Imposition of new taxes, changes in rates of taxes, sudden withdrawal of exemptions or changes in set of mechanism (ITC), can lead to a huge impact on the price of the end product. Many a time, such unforeseen changes in the tax laws can lead to closure of even the most pragmatic business organizations.

### **4.4 Anti-logic provisions like anti-profiteering**

Copying the concept of anti-profiteering provisions from the foreign countries' GST laws was a good idea if the same would have been copied fully and sensibly. The way it has been implemented is beyond any horizons of sanity. Not even the members of the authority have any documented policy or procedure to determine if there is any element of anti-profiteering in any transaction. If at all there is any element of anti-profiteering, there is no set mechanism to arrive at the quantum thereof. There is no mechanism even to rectify any act of anti-profiteering. In a long-term contract, where there are number of changes in the law, it becomes very difficult to prove himself innocent.

## **5.0 Other legal issues:**

Changes in the land usage regulations, FSI and TDR provisions, local authority charges, height restrictions, multiple permissions, are few more to name out of many other issues.

## **6.0 Solutions:**

### **6.1 Drafting:**

Drafting agreements keeping in mind the possibility of various future amendments could be a key to avoid multiple issues. It may not be possible to predict all such amendments, however, with an experience of the past, one can provide suitable clauses to take care of future changes.

### **6.2 Structuring**

Structuring can help avoiding avoidable tax losses in an optimal manner. It can also help reducing tax burden or maximizing set-off or minimize compliance burden.

### **6.3 Keeping an eye on amendments**

Amendments in taxation law come frequently. Many a times many procedural changes or addition or removal of conditions are introduced through the amendments. Keeping updated about such amendments can help one remain compliant and avoid undue penalties and surprises.

### **6.4 Litigation**

Normally, any prudent businessman avoid litigation as far as possible. However, at times when the one is saddled with undue and unfair demands, litigation could be a good solution. Litigation with a proper planning and management, can help reduce possibilities of huge losses and probably even resultant shut downs.

### **6.5 Taking multiple views**

It is important to consider multiple views to take a pragmatic and balanced call. At times, taking input from different experts can help identify the best possible solution as against remaining dependent on just one advice.

### **6.6 Updating self with the updates:**

A good decision taken once upon a time, though based upon some good advice, may prove to be the worst if the basis of such decision has undergone a big change. In the light of multiple and mega changes in the laws, it could be a good idea to validate the old stands taken- at least once a year.

## **7.0 Conclusion:**

Real estate industry may have multiple challenges to survive and grow, however, many of such challenges can be well managed with the help of proper information, planning, implementation and review. Chartered Accountant or a tax advisor plays a very important role by assisting real estate clients in successfully managing their challenges.



## EVENTS IN RETROSPECT

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<b>Day &amp; Date</b>	<b>Committee</b>	<b>Program Name</b>	<b>Moderator / Speaker</b>	<b>Attendance / Views</b>
18th April 2023, Tuesday	Study Circle Committee	New Audit Form (10B) Applicable to Charitable Trusts	CA Rohan Dedhia DR Ghalla Memorial Hall	60 participants