

**NASSCOM<sup>®</sup>**

**ISSUES FACED BY E-COMMERCE SECTOR UNDER  
GOODS & SERVICES TAX (GST)**

**April 2021**

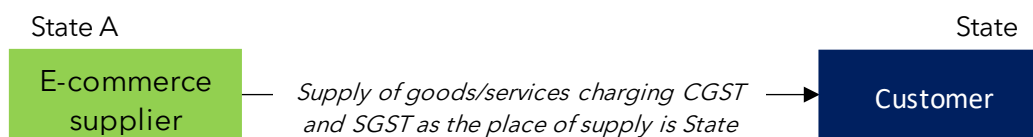
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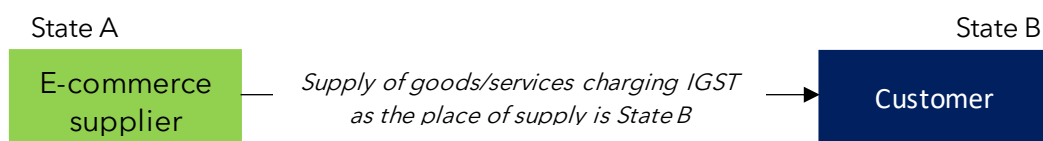
## I. INTRODUCTION

- E-commerce sector is on a growth trajectory and has a cascading effect on all sectors of the economy with the potential to reshape the Indian economy as we move forward into the next decade.
- Tax compliance is an important aspect for realising the full economic benefits of any Industry. For e-commerce, determination of place of supply has been a point of deliberation. In this context, the GST Council Secretariat, on December 18, 2020 vide reference number F.No.25/Committees-1/GST Council-Pt-1/5057/18-12-2020, constituted a committee of officers to suggest measures for monitoring of business run through online platform for tax compliance. The terms of reference of the committee cover:
  - Compliance and disclosure made by the e-commerce suppliers of goods and services with regard to tax revenue that accrues to consumption state;
  - Plan of action to improve compliance as well to avoid interstate disputes; and
  - Any other related matter to ensure law is complied fully by e-commerce suppliers.
- With regard to tax revenues that accrue to the consumption state, we would like to highlight that the compliances undertaken, and disclosures made by e-commerce suppliers of goods and services, are already in place as the e-commerce industry has a robust mechanism that allows the tax type being paid/disclosed correctly.
- The mechanism has been discussed below in the flow chart as well:

### Flow chart 1 - Intra-state supplies



### Flow chart 2 - Inter-state supplies



- This is also supported by the fact that Tax Collection at Source (**TCS**) returns filed, and e-waybills generated by e-commerce participants (the marketplace, transporters and sellers) adds a reconciliation point for discharge of taxes to the correct consuming states.
- In addition, the ethos of e-commerce marketplaces is to ensure timely and correct delivery of supplies to the intended recipient which is dependent solely on the address of delivery. Accordingly, the place of supply determination on the invoice is absolutely robust and specifically, the PIN code of delivery is used to populate the State of consumption while generating invoice for supply and at the time of filing TCS return in Form GSTR-8.

- As the Committee has been set up to resolve issues relating to e-commerce industry, we humbly request the Committee to consider the issues highlighted by us in this document which are hampering day-to-day operations and impacting compliance processes of e-commerce industry. These changes will address disparity and will simply compliances by embracing the e-commerce model. In short, the positive impact of these on revenue reporting & augmentation is significant and we request that these be kindly addressed.

## II. ISSUES REQUIRING URGENT INTERVENTION OF THE GOVERNMENT

### 1. PARITY BETWEEN ONLINE AND OFFLINE SELLERS INSOFAR AS THRESHOLD FOR REGISTRATION IS CONCERNED, I.E., SMALL SELLERS ARE REQUIRED TO TAKE MANDATORY REGISTRATION FOR ALL TURNOVER (ONLINE AND OFFLINE) ON MAKING A SINGLE SALE ONLINE

- Every supplier supplying goods through E-commerce Operator (**ECO**) is required to mandatorily obtain GST registration, irrespective of the turnover.
- While physical suppliers of goods and services have a turnover based exemption threshold of INR 40 lakhs and INR 20 lakhs respectively, the said benefit is not available to supplier of goods selling goods through e-commerce operator. This results in increased compliance burden for such sellers.
- Moreover, most suppliers sell offline as well as online. For a supplier who would otherwise be exempt, the exemption is lost on making first online supply. This places such suppliers at a disadvantage in comparison to peers selling offline within threshold of INR 40 lakhs.
- While small service providers are benefitted from the exemption granted vide Notification no 65/2017, mandatory registration requirement is becoming a barrier for sellers of goods. To illustrate, a seller engaged in online sales of goods of INR 10,000 and off-line sales of INR 10,00,000 is mandatorily required to register under GST due to online sales made by him. This puts such seller at a competitive disadvantage from an operational perspective as compared to competitors who undertake sales offline with revenue up to INR 20,00,000.
- Additionally, the requirement to obtain GST registration mandatorily in multiple states increases routine compliance & operation costs for such sellers, which negatively hit their margins. This adversely impacts small businesses.
- Online marketplaces, in fact, provide an excellent channel to assist small sellers by making sales of their goods to customers across the country effortlessly. The mandatory registration requirement proves to be a disadvantage to sellers and drives away small sellers from wanting to register online.

#### Recommendation:

- The benefit of turnover threshold should be introduced even for suppliers of goods selling through e-commerce platform for intra-state sales by issuing a notification (similar to Notification no 65/2017-Central Tax dated November 15, 2017) in the following manner:

*'In exercise of the powers conferred by sub-section (2) of section 23 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby specifies the persons making supplies of goods, through an electronic commerce operator who is required to collect tax at source under section 52 of the said Act, making only intra-State supplies and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of twenty lakh rupees in a financial year, as the category of persons exempted from obtaining registration under the said Act:*

*Provided that the aggregate value of such supplies, to be computed on all India basis, should not exceed an amount of ten lakh rupees in case of "special category States" as specified in the first proviso to sub-section (1) of section 22 of the said Act, read with clause (iii) of the Explanation to the said section.'*

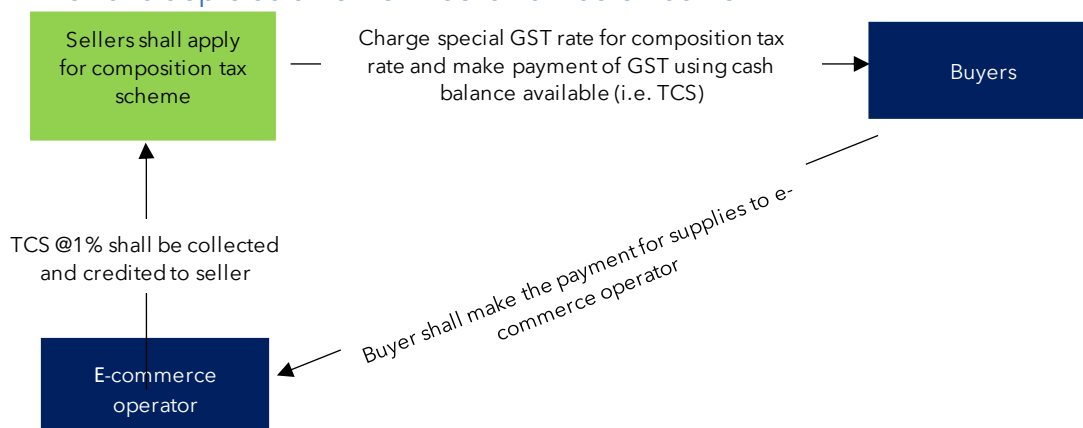
- Alternatively, a Removal of Difficulty order (**ROD**) may be issued in terms of S.172 of Central Goods and Services Tax Act, 2017 (**CGST Act**) dispensing the requirement of mandatory registration under S. 24(ix) of CGST Act for suppliers making supply through e-commerce operators who are liable to deduct TCS under S.52. Draft ROD is provided at **Annexure 1** to this document. The said mechanism of issuing ROD has been used by the Central Board of Indirect Taxes and Customs (**CBIC**) earlier to provide relaxations where hardships were being caused to genuine taxpayers. A few instances where RODs have been issued in the past are provided below for reference:
  - Order No. 2/2018 - Central Tax dated 31st December 2018 issued to extend time period of availment of ITC with respect to invoices dated FY 17-18 from September 2018 to March 2019.
  - Order No. 6/2019 - Central Tax dated 28th June 2019 and Order No.10/2019 - Central Tax dated 26th December 2019 for extension of date of filing of GSTR 9 & 9C.
  - Order No. 01/2020-Central Tax dated 25th June 2020 extended the time limit for filing an application for revocation of cancellation of registration for specified taxpayers whereby taxpayers fulfilled all the requirements for revocation of cancellation of registration however were not able to apply as time period for the same had elapsed.
- For compliance with the 'intra-state' rule set, appropriate responsibility can be fixed on the e-commerce operators.
- From a reporting perspective, ECO can submit monthly reports of sales made by unregistered dealers on the e-commerce marketplace, for easy tracking by authorities.
- Moreover, a Permanent Account Number (**PAN**) based or Aadhaar based authentication can be introduced for unregistered persons to make supplies through e-commerce platforms.
- In addition, PAN may be made mandatory for onboarding for such unregistered sellers and a PAN based reporting may be introduced in the hands of the ECOs. This will enable the Authorities to track the PAN based turnover of a particular seller across multiple ECOs.

## **2. ALLOWING COMPOSITION DEALERS TO SELL THROUGH E-COMMERCE MARKETPLACES WITH SECTION 52 TCS COMPLIANCE, WITHOUT HAVING TO TAKE MANDATORY REGULAR SCHEME REGISTRATION**

- Currently, every supplier (including small and mid-size sellers supplying goods through an e-commerce operator), is required to mandatorily obtain GST registration.
- The composition scheme available as per S.10 of CGST Act cannot be opted by sellers selling on e-commerce platforms, by virtue of exception carved out under S.10(2)(d).
- As a result, there is lack of parity for online and offline sellers and it discourages small sellers from operating on e-commerce platforms.

### **Recommendation:**

- Composition scheme should be allowed for small and mid-size sellers operating through online marketplaces with TCS of 1% still being complied with by e-commerce operator.
- Whenever supplier supplies goods/services through e-commerce operator, TCS collected by e-commerce operator would be credited to electronic cash ledger of the supplier selling goods/services.
- Given that composition sellers are required to remit taxes in cash only, supplier of goods/ service 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 seller.
- 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.
- We have depicted a flow of mechanism below as well:



- While retaining the restriction on inter-state sales for composition dealers, the composition dealer's return should be amended to allow disclosure of sales made through e-commerce platforms. Similarly, e-commerce operator should be allowed to declare sales made by composition dealers as well. This will allow for easy reconciliation.

### **3. ALLOWING SELLERS TO REGISTER E-COMMERCE OPERATOR'S WAREHOUSE AS ADDITIONAL PLACE OF BUSINESS IN DIFFERENT STATES**

- The supplier is required to have a physical presence and obtain Principal Place of Business (**PPoB**) registration in every state from where taxable supplies are made. This leads to challenge for e-commerce sellers, especially small and medium business, to scale and sell across states as it involves:
  - Significant rental costs, which is a big financial burden for small sellers.
  - Increased routine compliance & operation costs involving return filing, record keeping, assessments/ audits, etc. which negatively impacts margins and acts as a deterrent for sellers (on e-commerce platform) operating in multiple states.
  - In light of COVID-19 lockdown when e-commerce business was the only feasible way for customers to access products by not stepping out, multiple small business owners were still unable to set up warehouses due to practical delays in obtaining registrations in various states.

#### **Recommendation:**

- Online sellers, who intend to store goods in warehouses associated with marketplaces, can be present in multiple states without having PPoB in all such states. Such sellers, can instead, operate from a single home state PPoB registration. Moreover, given that marketplaces handle inventory and sales of such sellers, it becomes feasible for such sellers to operate without having to physically and formally registering a place of business.
- Thus, in e-commerce eco-system, seller of goods should be allowed to register e-commerce operator's warehouse across States, basis the PPoB registration in the home State, without being physically present with manpower and/ or inventory. PPoB of the seller in their home state should in itself suffice.
- Basis the above home state PPoB, sellers can register e-commerce operator's warehouse as an Additional Place of Business (**APoB**) and conduct business.
- Dispensation of physical PPoB requirement in other states would help in cutting down administrative efforts involved in getting registration and physical verifications. Implementation of the above option will be a revenue neutral exercise for the government, while effectively monitoring control (through assessment / audit).
- In addition to above, this move will benefit the government in the following ways:
  - Where sellers will take a registration linked to home State PPoB, and store goods in marketplace warehouses as APoBs, State Governments would receive revenue in the tax period in which such goods are received in the warehouses, as against when ultimate sale is made to customers. Moreover, IGST settlement takes time as against SGST and CGST and ease in compliance will be favourable to the revenue.
  - Dealers would continue to be registered in each state. Hence, states would still have the power to audit sellers as well as mandating record maintenance, return filings, etc. by these sellers, thereby treating them as regular assesseees.



- Aadhaar based verification, introduced for all taxpayers seeking new / additional registration, will ensure that authorities have adequate supervision and control.
- An address for communication will be available, ie, the e-commerce operator's warehouse which is added as an APoB.
- Also, marketplaces may include seller verification at the point of entry into the system and report the same to the Government, which will enable verification by the government.

#### **4. SIMPLIFICATION OF REGISTRATION OF APoB FOR SELLERS SUPPLYING THROUGH E-COMMERCE MARKETPLACE**

- GST laws require a supplier to obtain registration for each place of business from where the supplier makes taxable supplies. In e-commerce eco-system, a seller listed on e-commerce platform may be undertaking taxable supplies from various warehouses that are owned and/ or operated by e-commerce operator. Since supplies are made from these warehouses, sellers are required to add these warehouses as “additional places of business” under their existing registration.
- This is done by a process of amendment of “core fields” to the original registration. The following steps have to be followed for the same:
  - A. Filing application for additional place of business by providing the following documents.
    - a) Rent/Lease Agreement;
    - b) Electricity Bill;
    - c) Recent property tax payment receipt;
    - d) No-Objection Certificate (**NOC**) from landlord;
    - e) NOC from e-commerce operator who owns the warehouse; and
    - f) Copy of the service agreement with the e-commerce operator
  - B. Thereafter, in case the jurisdictional officer has any queries, further responses have to be provided to the officer for closure. Once all outstanding items have been clarified, the additional place of business registration is approved by the officer.
- While the registration process is entirely digitised and is on an online platform, there is a lag of about 3-4 weeks between the time of filing the application for additional place of business until the date the amendment is granted by the authorities.
- Tax officials generally do not understand the model under which warehouse operates and often raise queries on the rental agreement being entered into with the e-commerce operator and not the property owner.
- As a result, sellers have to hire tax consultants who clear these queries by making a physical representation at the tax office. Sellers incur professional charges of a chartered accountant which also consumes a lot of time and significant effort to get clearance from tax office. This increases compliance burden as well as cost in the hands of the sellers, which may impact the margins earned by them.

#### **Recommendation**

- Unlike the erstwhile Value Added Tax (**VAT**)/ Service Tax (**ST**) regime, GST law provides for TCS by e-commerce operators in respect of taxable supplies made through it by sellers. This requires the e-commerce operator to register in each of the states in which sellers are located to be able to remit and report TCS in the respective states and file GSTR-8.

- Additionally, ECO is already responsible for providing visibility on all business-related activities carried out by the seller on the platform. Thus, we suggest the following cumulative recommendations:
  - **Recommendation 1** - ECO, on obtaining authorisation from sellers, (currently registered in different states due to TCS requirements) should be enabled with the option of intimating addition/deletion of APoB of sellers operating on the marketplace.
  - **Recommendation 2** - In other cases, GST Rules could be modified to state that a prescribed format of self-declaration by e-commerce platform (who are registered under GST as ECO and who will have to state their ECO GSTN number) shall be deemed to be full proof of additional place of business on behalf of the seller.
- From Government's system standpoint, suitable API's should be enabled for e-commerce operators or GST Suvidha Provider (**GSP**) to support APoB amendment.
- These recommendations will help in improving ease of doing business and achieve the following goals:
  - Timely reporting of amendments in APoB resulting in accurate information being provided to GST authorities in a timely manner and better control for GST authorities;
  - Simplified approval/notification process for jurisdictional GST officers handling multiple seller amendment requests including managing documentation/e-commerce business model related questions etc.
  - Simplified registration process and reduced costs for sellers and administrative costs for the government
- This can be done by inserting a new Rule in Chapter III of CGST Rules to enable e-commerce platforms (who are already registered under) to undertake reporting/ amendment process, on behalf of sellers on such e-commerce platforms in a state, by obtaining authorisation from the sellers.

## 5. NO CANCELLATION OF REGISTRATION FOR WANT OF TRADITIONAL SET-UP

- Due to technological advancements, businesses are being conducted virtually. With age-old practices of operating a physical premise with substantial manpower becoming redundant, business without a typical premise / manpower are viewed in a different manner.
- While there has been a paradigm shift in ways of doing business, GST officers across the country have been issuing notices for 'suspension and cancellation of registrations' to companies conducting business with rotational / minimal manpower as well as to businesses operating in shared spaces / co-working areas etc.
- GST officials [under the garb of S.71 of CGST Act undertake surprise physical verification of such PPOB and cancel registrations arbitrarily (many a times, without even affording an opportunity of hearing) asserting that no business is being conducted by taxpayer basis the following:
  - Location and size of the PPOB not commensurate with level of company business;
  - Companies functioning with limited / minimal manpower of one or two employees;
  - No presence of company's directors at the time of inspection;
  - No physical copies of accounts and records maintained in the premises;
  - PPOB is in a co-working space;
  - Multiple PPOBs registered in the same location, etc.
- This is notwithstanding the fact that the company may have APoB already registered under GST in such states.
- This leads to stoppage of operations, causing undue hardship to businesses who have resorted to virtual mode of conducting business for reducing cost of doing business. Such arbitrary cancellation of registration is against the motto of "ease of doing business", especially when GST law does not prevent companies from operating out of spaces with minimal infrastructure / manpower, for the purposes of registration.
- GST law does not mandate businesses to operate from a premise of a specific kind or to mandatorily deploy certain amount of manpower to obtain registration in a particular state. Registrations however are being indiscriminately suspended or cancelled despite the following:
  - S. 22 of CGST Act merely requires a registered person to obtain registration for place of business in each such state from where supplies are effected;
  - Place of business has been defined to inter alia include place from where "business is ordinarily carried out";
  - S.35(1) of CGST Act provides that every registered person shall keep and maintain, at his principal place of business, a true and correct account of prescribed particulars (stock of goods etc.);
  - Rule 18 of Central Goods and Services Tax Rules, 2017 (**CGST Rules**) provides that every registered person shall display his certificate of registration in a prominent location at his principal place of business and at every additional place/s of business.

- Various rulings / judgments on the subject have clarified / ruled the following.
  - There cannot be any condition prescribed regarding nature of office space for obtaining registration under applicable laws.<sup>1</sup>
  - The Allahabad High Court recently quashed arbitrary order for cancellation issued and criticised the callous order of the department in exercising quasi adjudicatory functions.<sup>2</sup>
  - The High Courts have recently held that non-availability of any person at business premises, when messenger goes for affixation of show cause notice, cannot be the sole basis to presume that the business was lying closed and liable for cancellation.<sup>3</sup>
- Moreover, Aadhaar based verification is already in place and the objective of Central Board of Indirect Taxes and Customs (**CBIC**) is to curb fly-by-night operators and bogus billing, despite which verified and genuine businesses are being adversely impacted due to arbitrary cancellation of registrations.<sup>4</sup>

### **Recommendation:**

- A **Circular should be issued** to clarify the following:
  - Acceptance of any 'nature' of valid business premise (including small spaces with minimum /rotational manpower), as long as GST regulations regarding display of GST registration certificate, GSTIN and maintenance of records are complied with.
  - Acceptance of co-working space as a valid business premise.
  - There should be no insistence on minimum manpower to be deployed at PPOB.
  - There should be no insistence on presence of directors at the time of physical verification/ assessments. The presence of authorised signatory should suffice.
  - Even if the representatives / employees are not available at the time of departmental visit, taxpayers should be allowed time to furnish records / information, to substantiate that the business is being suitably carried out of such premises / PPOBs.
  - Business of the company as a whole (including APoB) / warehouse locations) should be considered to ascertain genuineness of operations, before arriving at any adverse conclusion on 'existence' of the company;
  - Taxpayers should also be given sufficient notice of being heard before any adverse action is taken;
  - Where all GST compliances appear to have been duly undertaken, in terms of filing of returns, tax payment etc., suspension or cancellation should not be resorted to.
- In order to ensure that there are checks and balances in place to arrest arbitrary exercise of power by officers in cancelling GST registrations, it is recommended that the power to cancel registrations be vested only with the Commissioner (while seeking inputs from jurisdictional

<sup>1</sup> M/S Spacelance Office Solutions Pvt. Ltd ((2019 (8) TMI 817 – AAR Kerala)) & Sri Sundha Metals v Commissioner of Commercial Taxes, Chennai and Another (MANU / TN / 2027 / 2012)

<sup>2</sup> Ansari Construction vs Additional Commissioner CGST (Appeals) And 2 Others(2020 (12) TMI 266 - Allahabad High Court)

<sup>3</sup> Great Sands Consulting Private Limited vs UOI (2020 (34) GSTL 604 (Bom.)) & Kashi Barta Bhandar v State of UP ((2018 (19) GSTL 403 (All.)))

<sup>4</sup> <https://www.cbic.gov.in/resources/htdocs-cbec/gst/GST-Update22082020.pdf>

officer). It is accordingly recommended that **S. 29 of CGST Act be amended** to this effect as follows:

*S.29(1): The **Commissioner**, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where.....*

*S.29(2): The **Commissioner** may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where, --*

*Proviso to S.29 (2) should be amended to read as:*

*Provided that the **Commissioner** shall not cancel the registration without giving the person an opportunity of being heard.*

*Provided that the **Commissioner** shall not cancel the registration without giving the person an opportunity of being heard.*

*Provided also that the **Commissioner** shall not cancel the registration where monthly/ quarterly returns as the case may be, required to be furnished under Section 37 has been duly furnished within the due dates prescribed.*

*Provided further that during pendency of the proceedings relating to cancellation of registration, **the Commissioner** may suspend the registration for such period and in such manner as may be prescribed.*

## **6. POWER TO CANCEL GST REGISTRATION IS NOW BROAD BASED**

- Rule 21 and 21A of CGST Rules have been amended to broaden the scope of cancellation of GST registration of taxpayers as follows:
  - Rule 21 was amended vide Notification No 94/2020-Central Tax to broaden the reasons/grounds for cancellation of registration to include:
    - availment of Input Tax Credit (**ITC**) in violation of S.16 of CGST Act or Rules made thereunder
    - furnishing details of outward supplies in FORM GSTR-1 under S.37 for one or more tax periods, which is in excess of outward supplies declared in return under S.39 for the said tax periods.
  - Rule 21A(2) was amended vide Notification No 94/2020-Central Tax to withdraw reasonable opportunity of being heard to the assessee, before suspension of registration.
- In respect of additional grounds provided in Rule 21, we wish to highlight that inclusion of such broad-based reasons eliciting cancellation of registration, are unwarranted.
- In respect of S.16 compliance, the registered persons do not have control on the compliance activities of its suppliers but have limited control on payment of consideration to its suppliers. The deposit of tax to government is the complete responsibility of the supplier. Any omission of tax payment by the vendor cannot jeopardise business of the purchaser, who would have transacted with such vendor in good faith.
- Additionally, difference between Form GSTR-1 and GSTR-3B being a reason for cancellation of registration, is also arbitrary, given that such differences could be genuine. The business community at large is very apprehensive that such reason could be invoked even in case of genuine taxpayers.
- Further, cancellation of registration without giving an opportunity of being heard is unjust and against the principles of natural justice as sudden cancellation would mean that taxpayers would be restricted from issuing invoices/e-invoices, e-way bills, receipt of e-invoices from its supplier etc. It is also against 'ease of doing business' as sudden interruption of business, including and especially in cases where taxpayers have a genuine reason, would be a deterrent to honest taxpayers.

### **Recommendation:**

- Where credit is availed based on a valid tax invoice, no cancellation should be resorted to. In other words, non-reporting of invoice by supplier should not be considered as a violation of S.16 to warrant cancellation.
- Accordingly, amendment to Rule 21 of CGST Rules vide Notification No 94/2020- Central Tax which inserted clause (e) and clause (f) **as reasons/grounds for cancellation of registration, should be retracted.**
- A reasonable opportunity of being heard should be provided to taxpayers (including but not limited to cases where registration is cancelled on account of PPOBs operating out of

minimal manpower/physical infrastructure) before cancellation of registration. Further, route of cancellation should be avoided where taxpayer can make prima facie case against the same. It is accordingly recommended that amendment to Rule 21A(2) of CGST Rules, vide Notification No 94/2020- Central Tax, should also be retracted.



## **7. ARBITRARY REQUESTS REGARDING ACCOUNTS AND RECORDS**

- S.35 of CGST Act read with Rule 56(15) and Rules 57 of CGST Rules provides for maintenance of accounts and records at PPOB in electronic form along with allowing mandatory access to authorities to physical and electronic records.
- Taxpayers, in many cases (in compliance with GST laws), maintain accounts and records in electronic form which can be accessed via laptops to reduce paperwork and spatial requirements.
- However, officials demand credentials to access /log in to the system hosting such electronic records and on certain occasions, have also insisted that servers hosting such electronic records also be available at such PPOB.
- Such demands reflect lack of understanding as the GST law clearly mandates that credentials (i.e. passwords) to access electronic records will be provided and not the entire system itself. Further, the law no-where mandates that servers hosting electronic records, be physically retained at PPOB as servers are usually maintained in one central location, access of which is enabled to all business premises through log in / access credentials.

### **Recommendation:**

- Mandatory requirement of physical maintenance of accounts and records at PPOB and the manner of such maintenance be amended to allow assesseees to produce records on demand, instead of constant physical retention. Accordingly, 2nd proviso to S.35 of CGST Act be amended as follows:

*Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form **which is accessible by the proper officer on demand within a reasonable time in such manner** as may be prescribed.*

- Further, Rule 57(3) of CGST Rules be amended as follows:

*Where the accounts and records are stored electronically by any registered person, he shall, on demand **within a reasonable time**, provide the details of such files, passwords of such files and explanation for codes used, where necessary, for access and any other information which is required for such access along with a sample copy in print form of the information stored in such files.*

## **8. EXCLUSION OF HOUSEKEEPING SERVICES FROM THE PURVIEW OF S. 9(5) OF CGST ACT**

- S. 9(5) of CGST Act read together with notification no 23/2017, mandates deduction of GST @ 5% on intra state supplies of certain services (electrician, plumber, carpenter, cleaning, pest control and disinfection services) offered on the ecommerce platforms.
- This tax is liable to be deducted and paid by online electronic commerce operators if such services are supplied through them. All provisions of the Act shall apply to such electronic commerce operators as if the operator is the supplier liable to pay the tax in relation to supply of such services.
- This leads to disparity in taxation treatment of offline versus online service providers.

### **Recommendation**

- Housekeeping service professionals in their offline roles, are not subjected to direct and indirect taxes as their earnings are below the taxable threshold. However, the same individuals with annual income below the taxable threshold are subjected to GST @ 5% when they provide services through the platform by virtue of the above provision. The online service providers also cannot avail any credit or take any benefit of taxes deducted from their income.
- This provision leads to reduced earnings and disincentivises these professionals from joining the formal economy and delivering services through online platforms.
- Hence, government should provide an exclusion of unregistered housekeeping service professionals operating on e-commerce platforms from the ambit of S.9(5). This will help remove the taxation disparity between offline and online service providers, encourage these small professionals to join the formal economy, improve their earnings and provide much needed relief at a time when overall demand is weak.

### III. OTHER ISSUES

#### 1. SALES/ SUPPLY RETURN OF GOODS POST TIME LIMIT PRESCRIBED UNDER S.34 OF CGST ACT

- Goods purchased in a financial year needs to be returned back to the seller before 30th September of next financial year to avail adjustment of GST liability {S.34(2) of CGST Act}
- Hence, if a credit note pertaining to a supply in a financial year is not issued before September of next financial year, the seller will not be able to adjust GST with respect to sales originally made. This will become an additional tax cost in the supply chain.
- In several industries such as textile, fashion, goods are usually returned to the brands after two sales cycle (say summer sale cycle and winter sale cycle). As a result, the unsold stock could be returned back beyond September of a particular year. Similarly, food products have an expiry date and unsold stock needs to be returned back to the manufacturers near expiry date.
- Further, IT products, consumer electronics etc. become obsolete over a period of time and can be recycled in an environmentally safe manner by the manufacturers. The manufacturers anyway, will pay GST at the time of sale when such goods are resold after re-processing, re-packaging or re-cycling.
- The current restriction under S.34(2) of CGST Act, results in double taxation and adds to cost of doing business.

#### Recommendation:

- Government has clarified one such situation in pharma industry vide [Circular No.72/46/2018-GST](#) dated October 26, 2018, where it was clarified that retailer/wholesaler has the option of returning expired products by treating the same as fresh supply back to the manufacturer by raising GST invoice. Relevant extract is as follows:  
*In case the person returning the time expired goods is a registered person (other than a composition taxpayer), he may, at his option, return the said goods by treating it as a fresh supply and thereby issuing an invoice for the same (hereinafter referred to as the, "return supply"). The value of the said goods as shown in the invoice on the basis of which the goods were supplied earlier may be taken as the value of such return supply. The wholesaler or manufacturer, as the case may be, who is the recipient of such return supply, shall be eligible to avail Input Tax Credit (hereinafter referred to as "ITC") of the tax levied on the said return supply subject to the fulfilment of the conditions specified in Section 16 of the CGST Act.*
- Further, Para 3 of the Circular clarifies as follows  
*It may be noted that though this circular discusses the scenarios in relation to return of goods on account of expiry of the same, it may be applicable to such other scenarios where the goods are returned on account of reasons other than the one detailed above.*

- However, there is an ambiguity whether the circular applies only to return of time expired goods and similar transactions in the Pharma sector only or if it can apply to all cases.
- A general circular should be issued to specifically clarify that post September of next financial year, return of goods can be treated as “taxable supplies” between the parties notwithstanding the manner in which such returns are accounted in the books of accounts.

## **2. PURCHASE RETURN TO BE TREATED AS SUPPLY WHEN RETURNED FROM A WAREHOUSE OTHER THAN THE ORIGINAL BUYING WAREHOUSE**

- Suppliers registered across various states move their goods on stock transfer basis as per business needs in each such state. The goods would originally be procured from the brands / manufacturer by GSTN1 of the customer. Subsequently, GSTN 1 stock transfers such goods to GSTN2, which can again be stock transferred to GSTN3 of the customer.
- In such scenario where goods are to be returned to the brands / manufacturers, the goods would have to move directly from last warehouse (ie, GSTN3).
- The issue is relating to the documentation for return of such goods.

### **Recommendation:**

- Suitable clarification be issued prescribing the procedure to be followed in such situations
  - Should the documentation be that of sales returns where each of the GSTN through which goods are moved are required to issue a credit note, while logistically the goods move back from the last warehouse to the Brand / Manufacturer; or
  - Should such return of goods from the last warehouse be treated as a separate supply for GST purposes, notwithstanding the fact that for accounting purposes the transaction would be recorded as purchase returns and sales returns, respectively.

### **3. CLARIFICATION IN RESPECT OF REGISTRATION REQUIREMENT IN CASE OF TEMPORARY STORAGE BY DELIVERY PARTNERS IN DIFFERENT STATE WHERE SELLER IS NOT REGISTERED AND SUBSEQUENT SUPPLY THEREOF**

- ECOs have numerous small players and Micro, Small and Medium Enterprises (**MSMEs**) who are enlisted on their portals. These sellers are generally registered in single state.
- When goods are supplied by these small suppliers to different States, it might so happen that the order is either cancelled when the goods are in transit or returned by the customer.
- E-commerce operators are presently not able to store the said goods temporarily in their local warehouse (the State where the goods have been returned) for subsequent supply to any new customer in the same zone/area.
- GST registration is required to be taken for place where business is carried out, including go-downs and warehouses where goods are stored. These places of temporary storage of goods do not qualify as 'place of business' for suppliers. However, there has been no clarification in this regard with respect to relaxation in registration requirements for temporary storage of goods.
- Such goods presently need to be sent back to the seller and e-commerce sellers incur considerable amount of logistics costs as a result.

#### **Recommendation**

- Suitable clarification be issued prescribing that in cases where goods are stored by ECO in their warehouse on temporary basis, the same will qualify as place of business for the seller and no registration would be required to taken for supplies made thereof.

#### **4. SALES/ SUPPLY RETURNS TO THE NEAREST WAREHOUSE**

- In the various industries, sales returns can constitute up to 20%-30% of the total sales. It is a logistical nightmare to ensure that goods under sales return are sent back to the originating State, notwithstanding the high logistics costs.
- S.34 of CGST Act allows a supplier to issue credit note in cases where goods supplied are returned by the recipient. The section does not require that the goods should actually be returned back to the same warehouse from where it was originally sold.
- However, there is ambiguity on the procedure to be followed in cases where the returned goods are sent back to the nearest warehouse (rather than the original warehouse from where the goods were sold from).
- Further, there are cases where goods have to come back to the seller's point due to non-availability of the customer or upfront rejection. In such case, there shall not be any e-waybill requirement to bring back the goods to the seller's premises. Since, the return is not a supply, a delivery challan and waybill are currently required to bring back such goods. However, it is not practically possible to generate such document.

#### **Recommendation:**

- Given that law does not specifically restrict return of goods to any of the seller's warehouses (and not necessarily to place from where goods were originally shipped from), we recommend that a specific circular be issued confirming the above, to put to rest any debate or ambiguity around this.
- The following procedure can be prescribed in such cases:
  - The original GSTN (GSTN1) from where goods were supplied to issue a GST credit note adjusting the GST charged on the original supply (in terms of S. 34);
  - The goods would move to the nearest warehouse (GSTN2) as sales returns from the customer premise, under the e-waybill raised by GSTN1
  - The GSTN1 to issue a stock transfer invoice along with applicable GST to GSTN2, for receipt of the returned goods in such warehouse.
- This clarification would result in achieving ease of doing business and will substantially bring down logistics costs.
- Further, with regard to goods coming back due to non-availability of the customer or upfront rejection, requirement of e-waybill should be dispensed off.

## **5. TIME LIMIT UNDER S. 16(4) OF CGST ACT FOR RE-AVAILING CREDIT THAT WAS REVERSED**

- S.16(4) of CGST Act prescribes time limit to avail ITC to be the due date of furnishing of return for the month of September following the end of financial year to which such invoice pertains or furnishing the annual return, whichever is earlier.
- There could be scenarios where buyer return goods to suppliers. Pursuant to such returns, buyers will reverse ITC, given that they are not in possession of goods.
- There are cases where the supplier does not accept the goods that are returned for various business reasons and the communication to the buyer is made post the time limit prescribed in S.16(4). In such cases, the buyer takes back possession of the goods. Ideally, ITC could also be re-availed by such buyer.
- Given that credit is re-availed post the time limit prescribed in S.16(4), such re-availment by the buyer may be questioned.
- Rule 37(4) specifically provides that the time limit prescribed in S.16(4) would not be applicable in case of re-availment of ITC post payment of consideration by the buying dealer. It is not clear as to whether such exception is applicable for any situations where such re-availment is on account of payment of consideration for the supply or for any other re-availment cases.

### **Recommendation:**

- A specific amendment be made in S.16(4) of CGST Act to carve out an exception for non-applicability of the prescribed time limit in case of credit re-availment.
- Alternatively, a specific circular may be issued clarifying that non-applicability of time limit under S.16(4) as per Rule 37(4) would be applicable to any cases of credit re-availment.



## **6. REQUIREMENT OF SIGNATURE ON E-INVOICE**

- Rule 46(q) of CGST Rules requires every tax invoice to contain signature or digital signature of the supplier or his authorised representative.
- Further, fifth proviso to Rule 46 of CGST Rules as inserted by Notification no. 74/2018 -CGST dated December 31, 2018 states that signature or digital signature would not be required in case of issuance of an electronic invoice in accordance with provisions of the Information Technology Act, 2000. Relevant extract is provided below:  
*"Signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic invoice in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000)."*
- However, under the e-invoicing regime, an invoice under Rule 48(4) of CGST Rules is required to be prepared in FORM GST INV-01 after obtaining an invoice reference number. The format of FORM GST INV-01 does not contain a reference to a digital signature. Further, this Rule does not prescribe a relaxation, in any manner, the requirements contained in Rule 46. It only requires an Invoice reference number to be obtained and particulars contained in FORM GST INV-01 to be included in the invoice.
- Therefore, the requirement to sign an invoice is still there, even after introduction of e-invoice. This is leading to unnecessary compliance burden on the taxpayer.

### **Recommendation:**

- It is recommended that as the e-invoice has been introduced, the requirement of affixing signature or digital signature on the invoices may be down away with.

## **7. SIMPLIFYING REQUIREMENTS FOR MOVEMENT OF GOODS AND REMOVAL OF REQUIREMENT TO CARRY A PHYSICAL INVOICE**

- As per S. 31 of CGST Act, a tax invoice must be raised for every taxable supply made.
- Where a supplier is involved with movement of goods of consignment value exceeding INR 50,000, an e-way bill should be furnished along with the invoice.
- Where the consignment value is less than INR 50,000 and in other cases where no e-way bill is required, tax invoice has to mandatorily accompany the goods and the person in-charge of the conveyance should have a copy of the same.<sup>5</sup>
- Accordingly, the provisions mandate:
  - A transporter's copy of tax invoice to be generated by the supplier of goods; and
  - Person in-charge of the conveyance to carry copy of tax invoice during movement of goods.
- Further, the CGST Act, 2017 permits electronic records to be maintained which includes electronically generated invoices as well.
- However, the authorities, at the check posts or at the time of interception, demand a physical copy of the tax invoice.

### **Recommendation**

- In light of the Government's initiative to promote digital economy, a clarification should be issued that digital copy of the invoice will be sufficient for compliance with the rules which require carrying of invoice.
- Further, Government has taken significant steps for a "Go Green" environment. Even in tax compliances, Government has taken path-breaking steps under GST, income tax, etc. to provide for electronic filing of returns, e-assessments, etc. In light of this and keeping in mind Government's push towards a paperless digital economy, we recommend that Rule 55A and Rule 138A be amended to clarify that digital copies of invoices along with e-way bills would satisfy the provisions of GST laws.
- The above Rules can be amended by inserting a proviso or explanation to clarify that digital copies of invoice carried on a handheld device will also be sufficient compliance even where e-invoices are not raised. Should there be any concern on this, it could be examined that e-waybill be made optional for all values of shipments and that would absolve the seller from the requirement of a physical invoice.
- This will also mitigate the carbon impact of having printed invoices being a requirement to be carried along with shipments. This will also help in achieving dynamic rerouting of rejects helping sellers in saving cost of logistic operations.

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<sup>5</sup> Rule 55A of the CGST Rules, 2017

- On a separate note, the Government had constituted a committee in October 2019, proposed e-invoicing for B2B segment, which was rolled out from 01 October 2020, where paperless movement is allowed. We, therefore, request for considering extension of e-invoicing for B2C segment by exploring option of enabling this for selective industry. Eg: e-commerce industry where e-commerce operator's system support sellers in generating invoices on seller behalf.

## **ANNEXURE 1: DRAFT REMOVAL OF DIFFICULTY ORDER**

S.O.(E).--WHEREAS, clause (ix) of section 24 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this Order referred to as the said Act) provides that 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 shall be required to be registered under this Act.

AND WHEREAS, sub-section (2) of section 23 of the said Act provides that 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.

AND WHEREAS, Notification no 65/2017-Central Tax dated November 15, 2017 was issued by Government providing exemption to the persons making supplies of services other than supplies specified under subsection (5) of section 9 of the said Act through an electronic commerce operator who is required to collect tax at source under section 52 of the said Act, and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of twenty lakh rupees in a financial year, as the category of persons exempted from obtaining registration under the said Act.

AND WHEREAS, the small service providers are benefitted from the exemption granted vide Notification no 65/2017, mandatory registration requirement is becoming a barrier for supplier of goods and giving them competitive disadvantage from an operational perspective as compared to competitors who undertake sales offline with aggregate turnover not exceeding an amount of twenty lakh rupees in a financial year.

AND WHEREAS, due to the mandatory registration requirement, the small scale seller of goods wanting to register on online marketplaces and sale goods are facing difficulties in exhibition of goods and subsequently driving away small sellers from wanting to register online.

NOW, THEREFORE, in exercise of the powers conferred by section 172 of the Central Goods and Services Tax Act, 2017, the Central Government, on recommendations of the Council, hereby makes the following Order, to remove the difficulties, namely:--

1. Short title--This Order may be called the Central Goods and Services Tax (Second Removal of Difficulties) Order, 2021.-
2. In section 24 of the said Act, after the clause (ix) the following proviso shall be inserted, namely:-

“Provided that the persons making supplies of goods, other than supplies specified under subsection (5) of section 9 of the said Act through an electronic commerce operator who is required to collect tax at source under section 52 of the said Act, and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of twenty lakh rupees in a financial year, shall be excluded:

Provided that the aggregate value of such supplies, to be computed on all India basis, should not exceed an amount of ten lakh rupees in case of "special category States" as specified in sub-clause (g) of clause (4) of article 279A of the Constitution, other than the State of Jammu and Kashmir.