

E-COMMERCE: IT'S NOT ALL MELODY

Author:- DEERGH AIREN AND SANJANA ROY¹

E-commerce provided respite to many people who got tired after doing shopping on a sweltering summer day. These e-commerce sites provide a wide range of products into one's house and the delivery is just a click away. However, e-commerce sites are not as perfect as it seems, there are several glitches than meets the common eye. For instance, there are tax evasions, Intellectual property infringements and unauthorized sales. This article will deal with some of these issues and provide a way out about how these sites could be regulated and managed.

Key words – e-commerce, business to business e-commerce, business to consumer e-commerce, value added tax, sales tax, service tax, unauthorized sellers, consumer protection.

The world has witnessed that the human race always embraces something which satisfies its' requirements, and the newest addition to the list is electronic commerce. In today's time, when the world is moving at a very fast pace, where people do not have the time to spend hours at the marketplace, when technology plays a formidable role, e-commerce sites have proved to be a boon for the people. This phenomenon involves a broad class of activities which are generally understood to be associated with the use of a computer and the Internet to trade goods and services in a new, direct and electronic manner.ⁱ Its rapid expansion augmented by its trans-jurisdictional character has created new challenges for those seeking to ensure its continued vitality while simultaneously protecting the interests of its users.ⁱⁱ

The e-commerce system works on the basis of two business models, they are:

Business-to-business (B2B) is a form of e-commerce in which participants are organizations. The business-to-consumer (B2C) is a form of e-commerce in which customers deal directly with organization, avoiding any intermediaries.ⁱⁱⁱ

In case of B2B commerce, transactions take place between manufacturers and whole seller's or whole seller's and retailers. In this case, there is 100% FDI allowance which means companies like Walmart can easily invest in Indian sector i.e. they can supply products to retailers. The situation is the same in case of B2B e-commerce transactions where 100% FDI is allowed. On the other hand, in case of B2C transactions, the government allows 100% FDI in single brand retailing but in B2C e-commerce transactions 100% FDI is not allowed in both single brand retailing as well as multi brand retailing.

Since the Internet became a staple of modern life just before the turn of the millennium, it has had the power to be a force for economic change.^{iv} Being a platform, where multiple commercial transactions takes place between different players of market to earn profit, but the reality is that, many of these transactions escape taxation by state and local governments, costing states billions in potential revenue.^v Though the e-commerce sector is buzzing with deals and sales, but when it comes to taxation policy, the sector does not sizzle, especially on the budget day.

¹ NAME OF INSTITUTION: HIDAYATULLAH NATIONAL LAW UNIVERSITY, RAIPUR YEAR OF STUDY – 4TH YEAR
POSTAL ADDRESS – HNLU RAIPUR, POST-UPARWARA, VILLAGE- ABHANPUR, NEW RAIPUR-492002 (C.G.).

The business sector in India has been abuzz with demands of exempting the e-commerce sector from the throes of direct taxation; however this exemption if granted would create a horizontal inequity as the brick and mortar retailers who claim to be in an already disadvantageous position would be pushed more towards the bottom line.

When it comes to indirect taxes for e-commerce companies, there are basically three types of taxes to be considered and they are Value Added Tax (VAT), Central Sales Tax (CST) and Service Tax. VAT is levied by the state government while service tax and CST is charged by the Central government. The indirect tax laws have not been able to identify the evolving business models and hence, have become a hindrance in the operation of market place or service model. While talking about the real challenges, the entire e-commerce sector faces great ambiguity while categorizing their offerings as goods or services for charging VAT, CST, or Service Tax. It becomes tricky to assess whether the transaction is carried for sales of goods which includes VAT/CST or a provision for providing service covered under service tax. Both VAT and service tax exercises right over all digital transactions, thereby leading to continual dispute and litigation issues.

HOW THESE INDIRECT TAXES WORK ON DIFFERENT E COMMERCE MODELS?

In the *inventory model*, where the e-commerce company directly sells its products to the buyers, the VAT/CST is levied by the state where the sellers and the buyers are present and by the exporting state in case of cross-border transactions.

But in a situation, where the seller is registered in West Bengal, has his warehouse in Uttar Pradesh, and sells ropes in Maharashtra, he would be taxed according to the VAT rate prevailing in the exporting state i.e. Uttar Pradesh. So, the seller would set up his warehouse in Uttar Pradesh rather than West Bengal since the VAT rate in Uttar Pradesh is 4% compared to West Bengal's 5% and hence would cause a loss to the state of 1% which is though not illegal but certainly not encouraging.

In case of *marketplace* model, e-commerce companies provide a platform for sellers to sell their products and buyers to buy products of their choice, and thereby earning commission on the transaction. E-commerce sites basically acts as a service provider, therefore are liable to pay service tax to the Central Government but there are instances in which clear lacunae in law is visible as it could not cope up with the complexities present in business carried out by e-commerce sites.

For instance, Amazon in India operates under the URL www.amazon.in and claims that it is a facilitator that provides services to the sellers to store their goods. The sellers can use the logistics provided by Amazon for delivering the goods to the buyers. In this circumstance, the contention of Amazon is that they are merely service providers as they are not actually dealing with the goods of the sellers. The Government of Karnataka however had challenged 'Fulfilled by Amazon' program where Amazon provides state of the art technologies to the sellers. The government has rebutted by saying that the definition of dealer as given in section 2(12) of the Karnataka VAT Tax Act, 2005 includes Amazon within its ambit.

The term dealer is defined under Section 2(12) of the Karnataka Value Added Tax Act, 2005 as under:

'Dealer' means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, and includes- (c) a commission agent, a broker or del credere agent or an auctioneer or any other mercantile agent by whatever

name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal;

Thus, Amazon would definitely come within the definition of dealer as they earn commission by distributing the goods to the buyers, however if Amazon is proved to be a dealer then they have to stop operations in India as they are not permitted to buy goods directly from the retailers under the Foreign Direct Investment Guidelines.

The future lies in the hybrid marketplace-led model where the seller is also selling his own labels as well as provides a platform for merchants and sellers to sell their products. If a seller has to make available large merchandise to his buyers, it has to adopt a marketplace-led model.

Another facet of the problem is that due to the restrictions of direct retail in India, the marketplace models often offers steep discounts to the sellers registered on their sites, which are often termed as 'promotional expenses'. The discounts offered by e-commerce firms are indispensable, as the shoppers have taken to online shopping in a big way, mostly because of the lucrative discounts offered by e-commerce firms.^{vi} For most of the e-commerce sites, the discounts are funded by them to the seller and the debit note sent by them also contains the service tax that the seller collects from Amazon and then deposits to the Central Government. In effect, the amount is treated under Central tax laws rather than state tax laws. So, if the actual cost price of any product is Rs. 100, the seller would sell the product to the customer at Rs. 60, and the discount offered by the seller would be refunded to them by the e-commerce site. Now, sales tax is collected on the original cost of the product and the customer would pay sales tax on the Rs. 60 purchase which is much lower than the original cost of the product, and which will directly affect the state exchequer. This poses a problem for the tax authorities and is a cause of major concern for them.

Following a mixed approach there is another type of model that is hybrid model, in a hybrid model seller sells their own labels as well as provides a platform for merchants and sellers to sell their products. Example being Myntra, which provides a platform for merchants and sellers to sell their products through the Myntra website. This strategic move aims at increasing the profit margins and expanding its reach to smaller Indian cities and towns. In this type of trades, the companies being a facilitator also have to pay service tax on its commission income and the seller has to pay VAT/CST on the sales of goods. But in a scenario, when the seller and warehouse are located at different states, additional VAT is demanded but the state in which the warehouse of the ecommerce company is situated leading to either loss to the state where the warehouse is situated or double taxation on the part of the e-commerce company.

UNAUTHORIZED DEALERS: COMPANY BRAND NAME TARNISHED?

E-commerce sites list a lot of products of different brands on their sites at hefty discounts. At times companies have specific contracts with these sites, thereby allowing these sites to sell their products, the most recent example being that of Moto G authorizing Flipkart to be the site where the first model would be launched. However in most of the instances the companies have dealers who sell products on these sites, sometimes these sellers are authorized by the companies and sometimes they are not. The problem arises when these companies refuse to recognize their brand products when sold by these sites in absence of contract. Major contention of the companies of not recognizing these products is the hefty discounts provided by these sites on their branded products which ultimately degrade the brand value of these companies in the market.

This set up creates problem for both consumers as well as manufacturers as consumers though get products on discounts on these sites but cannot avail the facilities provided by these companies in case of servicing, defect, warranty etc and in such condition consumers are left with no remedy as laws like Consumer Protection Act, 1986 which are solely made to address consumers' grievances does not come to their rescue in absence of any provision in this area as they provide remedy in case when products are spurious,^{vii} and thinking from the companies perspective their brand name is affected, other authorized dealers who are not in online business complains about the loss in revenue, and the major effect being companies cannot directly sue these online portals on the basis of infringement of trademarks as they are not making any change in the quality of product or are not selling under their own names.

CAN THIS BE RESOLVED?

The e-commerce industry which serves as the lifeline for many has a very different mechanism than the brick and mortar retailers against whom they are mostly heavily pitted. Everyone from the venture capital funds to the customers is full of praises, but the tax authorities are not enthused with them. In Karnataka, Amazon was accused of tax evasion, when the Karnataka Government by bringing the reference to the definition of dealer under the Karnataka VAT Act, 2003 sought to make Amazon liable for paying VAT. However, the states do not have a uniform legislation for taxing the e-commerce companies. For, example, in Delhi, the Delhi VAT Act, 2004 by section 2(1)(j) does not include those persons as dealers who also supply or distribute products, unlike Karnataka. So, the states in order to remove the ambiguities and for the convenience of the e-commerce companies, should bring an uniform law regarding the ambit of the applicability of the VAT, even though they may have varying rates of interest.

Another feature of E-commerce companies is that they fix the price of the commodities by negotiating and discussing with the sellers who are registered on their sites. The companies normally refund the discount to these sellers, this internal mechanism often hurts the offline retailers who cannot afford such refund due to their huge overhead costs, so the government should come up with a directive by which the e-commerce companies could not fix the price below the price decided by a body formed for the purpose of regulating these e-commerce companies as the Companies Act, 2013 might prove insufficient to regulate this booming industry.

Along with protecting the right of the sellers and brick mortar retailers, there should be an addition to the existing Consumer Protection Act, 1986 for offering relief to consumers when they are denied warranty by the companies in spite of purchasing authentic products from the e-commerce companies.

CONCLUSION

E-commerce sites are proved to be a mixed blessing for the economy. As its vast potential which it contributes for the growth of economy cannot be neglected as on one hand it gives opportunity to all stratas of people to access the market. It also promotes socio-cultural development through gender empowerment and expansion of education. E-commerce generally stimulates entrepreneurship which creates avenues for the fairer sex, so that they can apply their skills and contribute to household income. Thus e-commerce has the potential to uplift many developing economies that are struggling to develop.

On the other hand due to its mushrooming growth in the lack of regulated environment of legislation can hamper the existing business model of the economy. So, the need of the hour is to let them grow but in a regulated environment without hampering the interest of any of the players in the market.

Notes

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^{vii} Section 2(1)(oo) of Consumer Protection Act, 1986.