

GST for E-Commerce, Retail and FMCG

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AGENDA

Legal Provisions of E-Commerce

Issues in E-Commerce Sector

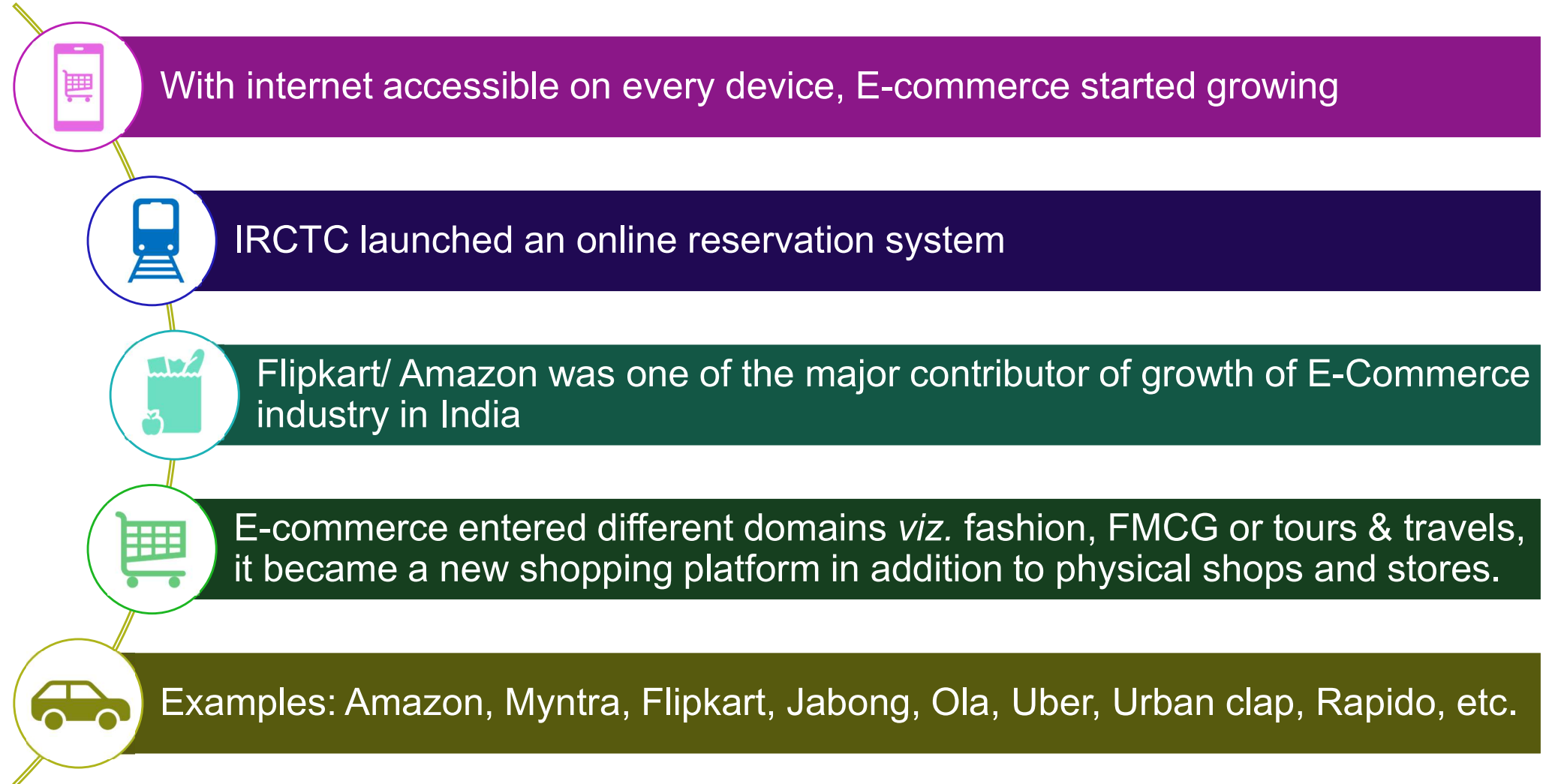
Applicable Legal Provisions to Retail and FMCG

Issues in FMCG and Retail Sector

Queries

E-COMMERCE

HISTORY OF E-COMMERCE INDUSTRY IN INDIA



LEGAL PROVISIONS

LEGAL PROVISIONS

Section 2 (44)

Definition of E-Commerce

Section 2 (45)

*Definition of Electronic
commerce operator*

Section 9 (5)

Charging Section

Section 52

TCS Provisions

Circular No.
167/23/2021 Dated
17 December 2021

Section 24

Compulsory Registration

DEFINITION AS PER CGST ACT, 2017

❖ Electronic Commerce:

As per section 2(44) of the CGST Act, 2017 'Electronic commerce' means, “*supply of goods or services or both including digital products over digital or electronic network*”

❖ Electronic Commerce Operator:

As per section 2(45) of the CGST Act, 2017 'Electronic Commerce Operator' means, “*any person who owns, operates or manages digital or electronic facility or platform for electronic commerce*”

❖ Models of Electronic Commerce Operator:

Inventory Model - Manufacturer/Purchaser directly sells the product through his own website.

Aggregator Model (*Market Place*) - The operator provides a platform where the sellers can register themselves and market their products to reach the customers.

SECTION 9(5) OF THE CGST ACT, 2017

❖ Section 9(5) of the CGST Act, 2017:

As per section 9(5) of the CGST Act, 2017 “The Government may, on the recommendations of the Council, by notification, specify categories of **services** the **tax on intra-State supplies** of which shall be **paid by the electronic commerce operator** if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator **as if he is the supplier** liable for paying the tax in relation to the supply of such services”

Implications: Below services provided by person through E-Commerce Operators (ECO), ECO must pay taxes under forward charge for all such **Intra-State Supplies**.

Passenger
Transportation

Restaurant Services

Accommodation

House Keeping
Services

Supplier can be any person

Supplier can be any person other than hotels offering accommodation with declared tariff above 7500 per day

Any person other than the person liable for registration under Section 22(1) of the CGST Act, 2017 – i.e. Person crossing the threshold limit

(Master) Notification No.: 17/2017 – CT (Rate)
Dated 28th June 2017

PERSON LIABLE TO PAY GST UNDER SECTION 9(5) OF THE CGST ACT, 2017

1	If the ECO is located in taxable territory	➔	Person liable to pay tax is the ECO
2	If the ECO does not have a physical presence in the taxable territory	➔	Person liable to pay tax is the person representing the ECO
3	If the ECO neither has physical presence nor any representative in the taxable territory	➔	ECO shall appoint a person for payment of tax

Uber India has challenged levy of GST on supply of passenger transportation service through an electronic commerce operator when such service is provided by auto rickshaw with effect from 1st January, 2022, through a writ petition before the Hon'ble Delhi High Court **on the grounds of discrimination and absence of reasonable classification**

WHY NOT REVERSE CHARGE?

As per section 9(3) of the CGST Act, 2017, *“The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid **on reverse charge basis by the recipient** of such goods or services or both and all the provisions of this Act shall apply to such **recipient** as if he is the person liable for paying the tax in relation to the supply of such goods or services or both”*

Section 9(3) & 9(4) of the CGST Act, 2017

- Section 9(3): *“all the provisions of this Act shall apply to such **recipient** as if he is the person liable for paying the tax”*
- Under section 9(3) & 9(4), liability for payment of taxes is shifted from supplier to recipient on inward supply

Section 9(5) of the CGST Act, 2017

- Section 9(5): *“all the provisions of this Act shall apply to such electronic commerce operator **as if he is the supplier** liable for paying the tax”*
- Under section 9(5), ***all the responsibilities of supplier*** has been moved from the actual supplier to E-commerce operator (i.e. deemed supplier)

WHETHER PROVIDING ONLY IT PLATFORM IS AN E-COMMERCE SERVICE

Favorable

Humble Mobile Solutions Private Limited – Advance Ruling No. KAR ADRG 58/2019

Facts of the case

- The Appellant is an e-commerce platform, facilitating temporary arrangement of **car drivers for car owners AND not the radio taxi.**
- The platform allows various car owners to select drivers from a list available on the platform.
- The payment to such drivers are either directly made to drivers or channelized through the e-commerce operator.
- Question in law: Whether the above-mentioned services covered under section 9(5)

Ruling pronounced

- Applicant is providing the platform for aggregating the independent drivers and car owners
- Supply of providing reference of driver provided through ECO doesn't qualify under notification no 17/2017 – Rate and hence **ECO is not liable to pay GST u/s 9(5)**
- Also, provision of TCS u/s 52 shall be attracted only if consideration is collected by ECO and not if directly paid to drivers
- ECO is liable to pay tax u/s 9(1) for services provided/consideration charged to drivers as well as car owners (i.e. convenience fees)
- Taxability of GST by drivers is not responsibility of ECO

WHETHER PROVIDING ONLY IT PLATFORM IS AN E-COMMERCE SERVICE

Against

Opta Cabs Private Limited – Advance Ruling No. KAR ADRG 14/2018

Facts of the case

- The appellant provides taxi aggregation service wherein it provides the IT platform to the customers and taxi drivers to integrate both of them on a single platform.
- The appellant is **collecting monthly usage charges from the taxi drivers** and not collecting any amount from the customers.
- Ride fare is directly collected by the taxi drivers from the customers
- Question in law: Whether the above-mentioned services covered under section 9(5)

Ruling pronounced

- GST is leviable on the **amounts billed by the appellant on behalf of the taxi operators** for the services provided in the nature of transportation of passengers through it.
- Aggrieved by the order, appeal is preferred by the applicant.

SECTION 52 – TAX COLLECTED AT SOURCE

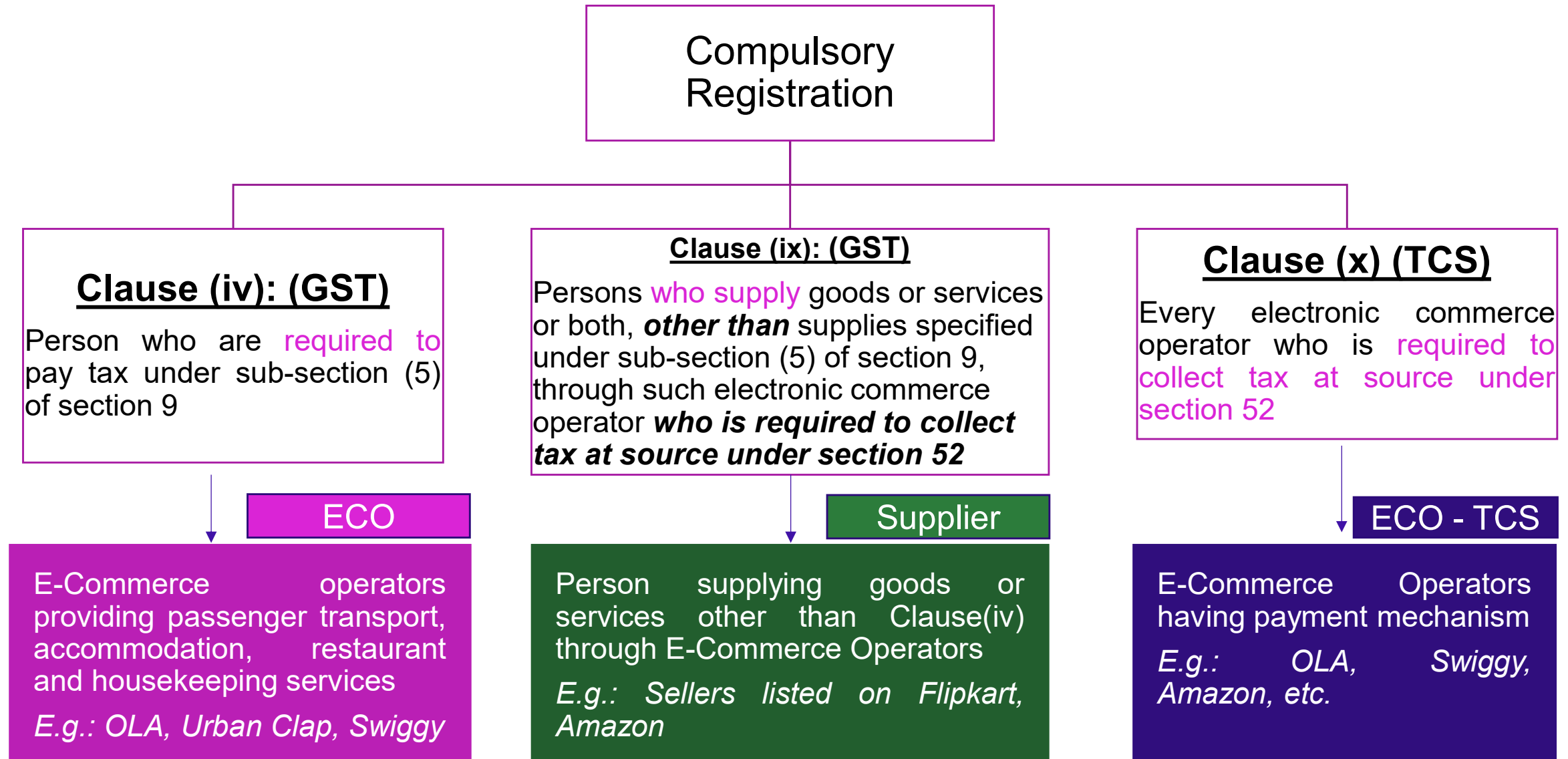
Driving Provisions	Section 52 and Rule 67	Monthly Return	GSTR-8
Applicability	E-commerce Operator, not being an agent and who collects consideration on behalf of supplier	Annual Return	GSTR-9B <i>(Not yet Notified)</i>
Rate	1% of Net Value of Taxable Supplies <i>Net Value</i> – Total supplies through operator reduced by supplies returned (-ve value to be ignored)	Due Date	For liability deposit - 10th of the subsequent month Annual Return - 31st December of subsequent year
Exemption	No Exemption	Manner of Credit	Credit in Electronic Cash Ledger post acceptance
Responsibility	E-Commerce Operator	Interest	As per Section 50(1)
		Refund	Available as per Section 54 and Rules made thereunder

CIRCULAR No. 167/23/2021 DATED 17 DECEMBER, 2021

Restaurant services was brought under preview of Section 9(5) *vide* NOTIFICATION No. 17/2021- Central Tax (Rate) dated 18-11-2021 w.e.f. 01-01-2022 and thereafter circular was issued to clarify various below the ambiguities.

TCS to be still deducted?	ECO is not required to deduct TCS on restaurant services as the same is now covered under section 9(5).	No Separate Registration	<i>Existing GST registration is active</i> - No requirement of separate registration by ECOs for payment of tax on restaurant services, since they are already registered for supplying services on their own account	GST applicable on URD supplier	ECOs will be liable to pay GST on restaurant services irrespective of whether the same is supplied by a registered or an unregistered person
Supplier's ATTO	Restaurant services supplied through ECOs shall be considered while computing aggregate turnover of the person supplying such restaurant services	RCM / FCM	ECOs not to report the restaurant services as inward supplies (liable to reverse charge) but as FCM in GSTR 3B	Liability - or Cash Credit?	In respect of the restaurant services, ECO shall be required to discharge entire GST liability in cash (No ITC can be utilized)
Invoice raised by?	The invoice in respect of restaurant services supplied through ECO, is required to be issued by ECO	Proportionate reversal of ITC?	ECO shall not be required to reverse proportional input tax credit on its inputs		

SECTION 24 OF THE CGST ACT, 2017:



COMPULSORY REGISTRATION - SUPPLIER

Sr. No	Services covered under section 9(5)	TCS under section 52 applicable to ECO	Compulsory Registration under section 24 required	Normal registration under section 22
1.	Yes	Yes	No. <i>If the supplier is not covered under other clauses of section 24</i>	Yes, if aggregate turnover > 20lakhs
2.	Yes	No	No. <i>If the supplier is not covered under other clauses of section 24</i>	Yes, if aggregate turnover > 20lakhs
3.	No	Yes	Yes. Clause (ix) <i>Exemption for service providers for turnover not exceeding INR 20 lacs in FY¹</i>	-
4.	No	No	No. <i>If the supplier is not covered under other clauses of section 24</i>	Yes, if aggregate turnover > 20lakhs

Summary: Suppliers supplying goods or services other than passenger transport, restaurant, housekeeping and accommodation through ECO collecting payment from the end consumer

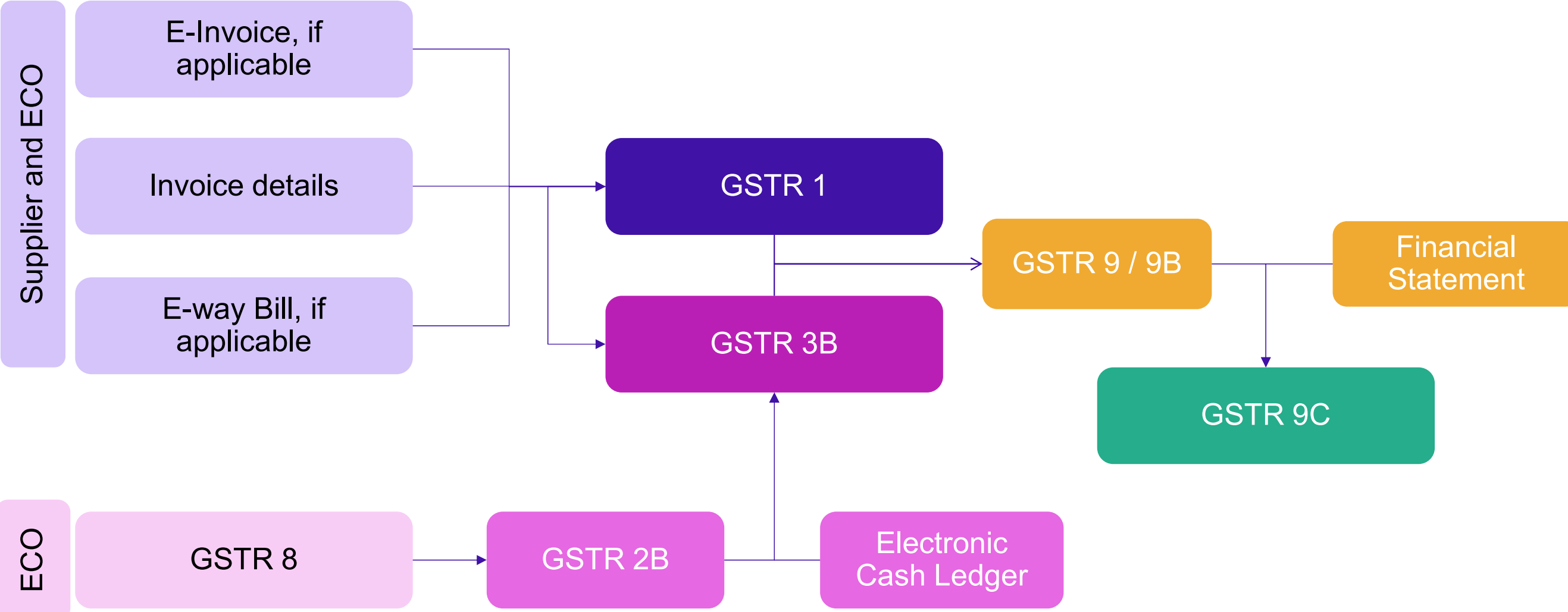
¹Notification No. 65/2017 dated 15 November 2017

COMPULSORY REGISTRATION – E-COMMERCE OPERATOR

Sr. No	Services covered under section 9(5)	TCS under section 52 applicable	Compulsory Registration under section 24 required	Normal registration under section 22
1.	Yes	Yes	Yes. Clause (iv)	-
2.	Yes	No	Yes. Clause (iv)	-
3.	No	Yes	Yes. Clause (x). <i>But only for the purpose of deduction of TCS²</i>	-
4.	No	No	No. <i>If the supplier is not covered under other clauses of section 24</i>	Yes, if aggregate turnover > 20lakhs

²Note: Where the ECO is required to deduct TCS under section 52, compulsory registration is only for the purpose of collecting tax at source. This registration is in addition to the registration that the ECO is required to take under section 22 of the CGST Act, 2017, if the aggregate turnover exceeds INR 20 lakhs.

GST COMPLIANCE FLOW



RETURNS

UPDATE IN GSTR3B FORM

Description	Total Taxable Value	Integrated Tax	Central Tax	State/UT Tax	Cess
(1)	(2)	(3)	(4)	(5)	(6)
(i) Taxable supplies on which electronic commerce operator pays tax under Sub-section (5) of Section 9 [To be furnished by the electronic commerce operator]					
(ii) Taxable supplies made by the registered person through electronic commerce operator, on which electronic commerce operator is required to pay tax under Sub-section (5) of Section 9 [To be furnished by the registered person making supplies through electronic commerce operator].					

APPLICATION

Supplies made u/s 9(5) by →

Supplier (Vaishali)

ECO (Zomato)

Report in

Table 3.1.1(ii)

Table 3.1.1(i)



Do not report in

Table 3.1(a)

Table 3.1(a)

GST COUNCIL MEETING

RECOMMENDATIONS IN 47TH GST COUNCIL MEETING HELD ON 28 & 29 JUNE, 2022

- **Waiver of requirement of mandatory registration** under section 24(ix) of CGST Act, 2017 for person supplying goods through ECOs, subject to certain conditions, such as – the **aggregate turnover on all India basis does not exceed** the turnover specified under sub-section (1) of section 22 of the CGST Act and notifications issued thereunder, the person is not making any inter-state taxable supply
- Composition taxpayers **would be allowed** to **make intra-state supply** through e-commerce operators subject to certain conditions.

RECOMMENDATIONS IN 48TH GST COUNCIL MEETING HELD ON 17 DECEMBER, 2022

- The Law Committee deliberated on the requisite legal changes required to implement the abovementioned recommendation as per 47th GST council meeting
- The Committee also recommended that **FORM GSTR-8 might be amended for capturing the information of supplies made by unregistered suppliers through e-commerce operators** by insertion of two tables in FORM GSTR-8. it also recommended that Rule 67(2) of CGST Rules, 2017 might be amended to clearly bring out that the details of TCS furnished by ECOs in FORM GSTR-8 shall be made available only to the registered suppliers, as the supplies by unregistered persons do not attract TCS.
- Considering the time required for development of requisite functionality on the portal as well as preparedness by ECOs, the implementation of scheme might be deferred to 01.10.2023.

ISSUES IN ECOMMERCE SECTOR

ISSUES IN ECOMMERCE SECTOR

- 01** → GSTN Number of seller by ECO operator cannot be reported
Seller to obtain monthly invoice details from the ECO and undertake reconciliation of turnover
- 02** → Invoice level details of TDS and TCS not appearing in GSTR 2B
Data should be sought from customer/ECO every month and should be reconciled with records
- 03** → Compliance burden
ECOs to undertake compliances *(we CAs can help 😊)*
- 04** → Penalty imposed on ECO for non-compliance by URD inter-state sellers
ECOs to ensure that they do thorough KYC of their seller and implement check to ensure that URD seller does not provide any inter-state supply
- 05** → Complex workings and huge documentation
ECOs to have robust systems to handle such compliances and documentations
- 06** → Supply Chain and logistic an important factor
Strong supply chain and logistics team to be deployed to ensure no non-compliance

FMCG AND RETAIL

LEGAL PROVISION

APPLICABLE LEGAL PROVISIONS

Section 15	Value of Taxable Supply
Section 12 & 13	Time of supply
Section 17(5)	Apportionment of credit and blocked credits
Section 171	Anti - Profiteering measure
Rule 39	Procedure for distribution of input tax credit by Input Service Distributor
Circular No. 92/11/2019-GST dt. 07 March 2019	Clarifying various doubts related to treatment of sales promotion scheme under GST
Circular No. 72/46/2018-GST dt. 26 Oct 2018	Clarifying the procedure in respect of return of time expired drugs or medicines

ISSUES IN FMCG AND RETAIL SECTOR

ISSUES IN FMCG AND RETAIL SECTOR

1. ITC on free samples and gifts to customers

2. Treatment of time expired goods

3. Valuation of supply in case of discounts

4. Classification (Medicaments vs Cosmetics)

5. Input Service Distributor vs Cross Charge

6. Anti - Profiteering

7. Vouchers

ISSUES IN FMCG AND RETAIL SECTOR

1) ITC on free samples and Gifts to customers

Situation

Company distributes its products as a part of marketing initiatives **as free samples or gifts to dealers/ distributors** for penetrating the market, acquiring more customers etc.
e.g. buy 10 items with additional 2 items free
e.g. it is mentioned 10 units chargeable and 2 units free

Issue Involved

Whether ITC is required to be reversed on the goods supplied based on commercial terms without consideration under the said transaction

Solution

Circular No. 92/11/2019-GST

Situation	Output Tax	ITC availability
Free samples and gifts	No Supply. No Tax	ITC to be reversed
Buy one get one free offer	It is supply of 2 goods with price of one. Tax payable	ITC available

ISSUES IN FMCG AND RETAIL SECTOR

2) Treatment of time expired goods

Situation

Goods have a defined life term which is normally referred to as the date of expiry. Such goods which have crossed their date of expiry are colloquially referred to as **time expired goods** and are returned back to the manufacturer, on account of expiry, through the supply chain.

Issue Involved

Treatment of such goods under GST

Solution

Circular No. 72/46/2018-GST

(A) Return of time expired goods to be **treated as fresh supply**

(B) Return of time expired goods by issuing **Credit Note**

(A) Return of time expired goods to be treated as fresh supply

Registered Person (other than a composition taxpayer)

- He may treat it as fresh supply called as “**Return Supply**” and issue an invoice for the same
- ITC is available to the recipient of return supply

Composition Dealer

- He may return the goods by issuing “**Bill of Supply**” and pay tax at the rate applicable to a composition taxpayer.
- **No ITC available to the recipient of return supply** (also explore credit note)

Unregistered person

- He may return the said goods by issuing any commercial document without charging any tax on the same

(B) Return of time expired goods by issuing Credit Note

Supplier

- Supplier can issue a credit note and also reverse the ITC so availed against the goods being returned.

ISSUES IN FMCG AND RETAIL SECTOR

3) Valuation of supply in case of Discounts

Situation

Situations where the seller offers various discounts on goods, it becomes a task to determine the value for supply. For example:-

- a) Get 10 % discount for purchases above Rs. 5000/-, 20% discount for purchases above Rs. 10,000/- and 30% discount for purchases above Rs. 20,000/-
- b) M/s A supplies 10000 packets of biscuits to M/s B at Rs. 10/-per packet. Afterwards M/s A re-values it at Rs. 9/-per packet. Subsequently, M/s A issues credit note to M/s B for Rs. 1/-per packet

Issue Involved

What should be the taxable value in case of various discount offers.

Extract of Section 15 (3) of CGST Act, 2017

The value of the supply shall not include any discount which is given —

- (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
- (b) after the supply has been effected, if —
 - (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
 - (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

ISSUES IN FMCG AND RETAIL SECTOR

Solution

For Point (a) - It was clarified that such staggered discount under 'Buy more, save more' scheme and post supply / volume discounts established before or at the time of supply **shall be excluded to determine the value of supply.**

For Point (b) - secondary discounts **shall not be excluded** while determining the value of supply as such discounts are not known at the time of supply.

**Circular No. 92/11/2019-GST*

ISSUES IN FMCG AND RETAIL SECTOR

4) Classification related issues –

Situation

Historically, this has always been a debatable issue as to where the product will be categorised Popular issues:

- Medicament or a cosmetic (*medicaments are taxed at lower rates*)
- Composite Supply or Mixed Supply

Issue Involved

Whether to classify a product as a medicament or a cosmetic.

Case Laws and Solution

Akansha Hair & Skin Care Herbal Unit Pvt Ltd – (GST AAAR West Bengal)

- **Twin determination tests** was relied
- Perception with which one sees the product.

Vista Marine and Hydraulics India (GST AAR Kerala)

- Repair service + Supply of spare parts
- **Separate work orders, values separately indicated & separately taxable**
- Relied on Circular 47/21/2018 dt June 08, 2018 – not a composite supply

ISSUES IN FMCG AND RETAIL SECTOR

5) Input Service Distributor vs Cross Charge

Situation

Large companies operating from numerous states have multiple GST registrations. They have to allocate the ITC and the expenses to the respective branches.

Issue Involved

Whether the transactions happening within the HO and the branches will be classified as cross charge or will the company have to take ISD registration

Solution

Basis	Input Service Distributor	Cross Charge
Law	Defined in Section 2(61) of CGST Act, 2017	No GST provisions
Purpose	Distribution of ITC	Allocation of Expense
Return	GSTR 6	NA
Frequency	Monthly	As decided by management

ISD vs Cross charge?
Cummins India (MH AAR) - ISD Mandatory

ISSUES IN FMCG AND RETAIL SECTOR

6) Anti profiteering

Situation

Any reduction in rate of GST tax on any supply of goods or services or the benefit of input tax credit **should have been passed on to the recipient by way of commensurate reduction in prices**. The willful action of not changing the final price of the good or service by various means, despite the reduction in the rate of the tax for that particular good or service, results in “profiteering”.

Issue Involved

Whether reduction of GST rate has been passed on to the customer.

Case Laws and Solution

- The companies will have to revise their pricing of products and include only the reduced taxes in the new price.
- Case Law: ***M. Srinivas Vs Infinity Retail Ltd.*** (NAA)
- It was alleged that the respondent did not reduce the price of the DSLR Cameras and the Power Banks when the GST rate was reduced from 28% to 18% w.e.f 01.01.2019. The respondent was ordered to pay the profited amount of Rs. 1,91,21,441/- alongwith interest at 18%.

ISSUES IN FMCG AND RETAIL SECTOR

7) Vouchers

Situation

The trend of issuing prepaid vouchers, gift cards, coupons etc. has increased considerably. These vouchers have an expiry period and hold a value for which it can be used for payment.

Issue Involved

What will be the Time of Supply for such vouchers and taxability

Solution

There is a specific time of supply in case of vouchers i.e. in case of supply of vouchers by a supplier, the time of supply shall be—
(a) the **date of issue** of voucher, if the **supply is identifiable** at that point, or
(b) the **date of redemption of voucher**, in all other cases.

For taxability voucher use to be verified:

- Settle the obligation/ is it a commodity/ is it Money?