SCRUTINISING THE PERTINENCE OF SERVICE TAX IN E-COMMERCE

Omar Munir* & Rudra Dutta**

By far there seems to be no particular definition and explanation to the term 'E-Commerce'. It is taken as a sense of denoting a way rather than through conventional physical means. The means being spoken about include 'click & buy' method, which uses computer systems and also 'm-commerce', which make use of various cellular phones. E-Commerce accounts for not only the buying act or/and availing services via online platforms but also various other activities in connection with transactions:

- Delivery
- Payment Facilitation
- Supply Chain and Service Management

Traditional benchmarks are said to have been fractured and it had got to the front different business models aiming to empower consumers. According to ***Greenstein*** *and* ***Ferman***, "*Electronic commerce (e-commerce) is defined as the use of electronic transmission medium (telecommunication) to engage in the exchange, including buying and selling of products and services requiring transportation either physically or digitally from location to location*."[1] The very first phase of e commerce gave rise to a new business hierarchy and nomenclature using various combinations of business and consumers. This phase has its own advantages and disadvantages in the traditional business methods. Therefore, e-commerce has changed the global economy's dynamics and made it more interactive.

The e-commerce sector has been said to the arguably the most exciting sector of the Indian economy. It is on trial to become the world's most thriving e-commerce market. The Internet is manoeuvring in the Indian market and also the pocket of the consumers. The total tally of more than 11.47 million broadband users has been fulminating.

* *Student* @ Amity Law School, Noida, AUUP; Email: omi0329@gmail.com; Contact: +91-8130615176

** *Associate Advocate* @ Mr. Parijat Sinha (AOR), Supreme Court of India, Contact: +91-9999775824

[1] Cost Accounting; https://www.coursehero.com/file/p310d05/According-t-o-Greenstien-and-Ferman 2008-el-elctronic-commerce-e-commerce-is/

The dominance of e-commerce transactions is worldwide. These transactions take place between parties residing in not just different states but also divergent countries. The magnitude of cross-border or cross-boundary transactions has witnessed a tremendous increase. The accessibility of Internet has sanctioned the companies which were earlier confined to their local areas to venture into the World Wide Web and to sell their goods, services and information at an international platform. Such a step has also seen a significant reduction in the transaction costs of communicating and selling without cognizance to geographic borders or the size of the company.

THE BUDDING E-COMMERCE INDUSTRY IN INDIA

Every industry's presence has a very significant role to play in the economic growth of a country. Lately, India has witnessed the enormous growth of the communication industry. This industry is regarded to be the most promising for the near future. Out of all communication means, Internet seems to be of most importance. It facilitates access to the knowledge banks and also renders services of world-class standards. It is providing for a new way of executing, conducting and managing business using the updated technology. Succinctly, e-commerce in India has made things a lot easier and faster

The Internet and Mobile Association of India has published a report which reveals that the e-commerce market in India is expected to grow by 37% to touch the USD 20 Billion mark by 2015.[2]

A report provided by the *Forrester Research* shows that the revenues incurred by e-commerce in India will shoot up by more than five times by 2016, the trajectory will be from USD 1.6 Billion in 2012 to USD 8.8 Billion in 2016. It also said that the shoppers in metros are primarily availing the e-commerce services in the areas of travel, consumer electronics and online books.[3]

In India, the e-commerce industry has grown drastically over the past few years. This increase has benefitted other individual industries as well. The travel industry accounts for

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[2] Report November 9th, 2014; http://www.livemint.com/Industry/ZH8rVd65WLhQzsUFYE9zCJ/Indian-ecommerce-marrket-to-reach-20-billion-next-year-rep.html/

[3] Trends in India e-commerce Market; Report provided by Forrester Research for ASSOCAM's 2nd National Conference on e-commerce, 2012

nearly three-fourths of the business that happens online, which is the maximum with approximately 71%. E-Tailing comes in second with a minute share of 16%.

The presence of e-commerce has radically brought about massive change in the travel industry to the extent that a vacation now seems a click away. The increase in the number of users of IRCTC, i.e., the website for Indian Railways, is the best example to prove the presence of e-commerce. A huge chunk of services are available on these websites, not only can you book tickets but also find the best hotel accommodations, nearby restaurants, car rentals etc.

While only a minor chunk of the market share is devoted to e-tailing industry, it does not contradict the growing influence of online shopping on consumers. The e-tail business faces a major hurdle in form of the direct connection that the customer had with the product[4], which the industry is trying to overcome by incorporating different technologies to form a near virtual world over the internet. Initially, e-tailing was seemingly more known for buying of computer products and till date it contributes a majority of e-tailing to it, but lifestyle product shopping is the going trend over the net. The businesses are majorly capitalizing over the convenience factor of online shopping, websites like Flipkart, Amazon and host of other players are using this factor as their success mantra.

Financial services too seem to be taking the spotlight in the e commerce industry. While in 2008 there was hardly any share of this sector in the industry but now it is at par with e tailing.

The Foreign Direct Investment Policy in India states e-commerce activities as *"an activity of buying and selling by a company through the e-commerce platform."*[5]

The fast growth of the e-commerce industry in India does not only show the rapid receptiveness of the people but also proves than the use of e-commerce helps build up our economy and supports the development of the country. The e-commerce industry have faced major developments in the investment sector in the recent times, embroils:[6]

[4] Tech to make e-tail as real as retail as Retail; http://www.dnaindia.com/analysis/column-using-tech-to-make-e-tail-retail-17445323
[5] E-Commerce in India – Legal, Tax and Regulatory Analysis, July 2015, Pg.6, Nishit Desai Associates
[6] Top 15 e-commerce investments in India in 2014, November

- Flipkart, has raised USD 1 Billion from Tiger Global Management and Naspers. Singapore's sovereign wealth fund, GIC and also the existing investors Accel Partners, DST Global, ICONIQ Capital, Morgan Stanley Investment Management and Sofina, were participants in the latest financial round.
- The financial service arm of the Japanese telecommunication and Internet Corporation, Soft Bank Internet and Media, Inc. committed $627 million funding in New Delhi-based online marketplace, Snapdeal. Following the investment, Soft Bank became the biggest stakeholder in the company.
- In February 2014, Kunal Bahl-led Snapdeal amassed $133 million funding led by eBay, Kalaari Capital, Nexus Venture Partners, Bessemer Venture Partners,Intel Capital and Saama Capital.
- Mukesh Bansal-led Myntra secured $50 million (about RS300 crore) investment led by Premji Invest along with existing investors Accel Partners and Tiger Global.
- Grocery e-tailer Bigbasket snapped up $33 million from Helion Ventures, Ascent Capital, Zodius Capital and Lionrock Capital in September 2014.
- Fashion e-commerce major Jabong secured $27.5 million (Rs 173 crore) from British development finance institution CDC in a deal in February 2014.
- Furniture e-tailer Urbanladder closed $21 million (approx Rs.120 crore) Series B funding from Steadview Capital along with the existing investors, SAIF Partners and Kalaari Capital, in January 2014.

LEGAL VALIDITY OF ELECTRONIC TRANSACTIONS

Internet has become an integral part of India's population bringing in a digital revolution altogether. A major change in lifestyle has been noted in the urban areas due to the decrease in rise for using Internet and also the convenience that the Internet brings along with is supporting this revolution. All businesses conducted by various computer networks, *whether B2B, B2C, C2C, C2B or B2B2C*, are regarded under e-commerce. The transactions involved in e-commerce may seem simple on the outside but are complex and involve serious legal issues.

Alter the liberalization of Foreign Direct Investment by the government of India and the introduction of regulations under the FEMA, 1999[7] 100%. FDI has been permitted on an automatic basis for e-commerce transactions. With an exception in Indian entities that carry out single brand retail or multi brand retail through e commerce. If the transaction takes place through the automatic route then there shall be no need for a prior approval of Ministry of Commerce and Industry.

The major legal issues to be dealt with in electronic transactions are:

E-contracts: These are governed by the basic principles of the Indian Contracts Act, 1872[8], which states that there should be free consent of both the parties for a lawful consideration. Section 10A of the Information Technology Act, 2000[9] states the validity of e-contracts. Hence both these statutes need to be read together so as to provide for the proper understanding of the legal validity of e-contracts. In the case of *Trimex International FZE Ltd, Dubai* v. *Vedanta Aluminium Ltd*[10], it was held that if both the parties exchange emails regarding mutual obligation then that shall be regarded as consent. The stamping of contracts is the other issue. It has been regarded as a basic principle of law that if an instrument has not be stamped appropriately it may lose its evidentiary value and not be admissible until the stamp duty along with the penalty has been cleared. The payment of stamp duty is not applicable in case of e-contracts. But lately as payment of stamp duty has become online there has is now a possibility that the duty might be asked on e-contracts as well.

Data Protection: The protection and the privacy of the information provided during an online transaction is the main issue in e-commerce. Section 43A of the Information Technology, Act, 2008[11] talks about the failure to protect data and the compensation for it. Any web portal or site collect in data should have a policy to protect the privacy of its users in place, the consent of the user must always be taken when sensitive information is being obtained and the portal must maintain reasonable security. Any sort of unauthorized access or misuse of the sensitive information must be taken care by the service providers. In the case of *Kharak*

[7] Foreign Exchange Management Act **(Act no 42 of 1999)**
[8] *Indian Contract Act*, 1872. (Act no. 9 of 1872)
[9] Section 10A Validity of contracts formed through electronic means, IT Act,2000 (1 of 2000)
[10] 2010(1) SCALE 574
[11] Section 43A Compensation for failure to protect data; IT Act, 2008

Singh v. *State of Uttar Pradesh*[12] and *People's Union of Civil Liberties* v. *Union of India*[13], the 'right to privacy' was recognized as a part of the larger Right to Life and Personal Liberty under Article 21 of The Constitution of India[14].

Intellectual Property Rights: The infringement and violation of trademark, Copyright or patents is of enormous possibility over the Internet. In the case of *Satyam Inforway Ltd.* v. *Sifynet Solutions Pvt. Ltd.*[15], the Supreme Court held *that a domain name may pertain to the provision of services within the ambit of section 2(a) of the Trademarks Act, 1999*[16] Domain names are said to have trademark protection as if there are similar domain names it may lead to disputes.

Efficient delivery system: (An effective supply chain and service management) in e-commerce it is necessary to keep the consumer protection issues in consideration. The *Consumer Protection Act, 1986* looks upon the relationship the consumer and the provider share, though there are no specific provisions dealing with online transactions. *The Information Technology (Intermediaries Guidelines) Rules, 2011*, states that the intermediaries are under the obligation to publish the rules and regulations also the public policy and user agreements for access or usage of the intermediary's computer resources by another person. In the ease of *Consim Info. Pvt Ltd* v. *Google India Pvt. Ltd*[17] , the court recognizes that until the triple test is passed, no injunction can be granted to Consim. The test was of

1) Prime facie case

2) Balance of convenience

3) Irreparable hardship

But here the court decided depending on the fact that the trademark dispute was generic in nature. The court said that though Google cannot be held liable for infringement as it was not possible to always check online posted advertisements The court finally made an observation

[12] AIR 1963 SC 1295
[13] 1997 (1) SCC 318
[14] Art.21 Protection of life and personal liberty; The Constitution of India
[15] AIR 2004 SC 3540
[16] Section 2 (a) 'Appellate Board' means the Appellate Board established under section 83; The Trademarks Act, 1999
[17] 2013 (54) PTC 578 (Mad)

subjected to Section 3(4)[18] *The Information Technology (Intermediaries Guidelines) Rules*, and Google was asked take an action within 36 hours of receipt of order, failing which the court may hold it to be liable.

PAYMENT MECHANISM OF E-COMMERCE

The onset of e-commerce brought about a need for refined, tech savvy and efficient payment systems. Initially a payment system for an electronic transaction may sound very simple - as the person chooses a product, buys it online, clicks 'pay', enters payment details and it is done. In reality, it is way more complex than the normal methods of payment. A number of players are involved in this payment mechanism.

- A payer -the customer
- A payee -the seller
- An issuing bank -the payer's bank
- An acquiring back the seller's bank Credit or Debit card companies, entities such as Master or Visa-typically associations of bank or; other financial institutions, providing an array of payment products to the financial institutions
- One or more payment processors or gateways providing technology for the receipt and process payment instructions and settlement, or actually receiving and holding funds received born the customer for onward payment to the merchant
- Certification authorities, like Payment Card Indus Security Standards Council

System of Payment

The Payment and Settlement Systems Act, 2007, regulates both the traditional as well as the electronic payment systems in India. This Act defines *'payment system'* as, *"a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement services or all of them but does not include 2 stock exchange."*[19]

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[18] Section 3: Due diligence to he observed by intermediary; The Information Technology (Intermediaries Guidelines) Rules, 2011

[19] Section 2(n) of the PSS Act defines "Settlement"

The definition of *'payment systems'* in the Act includes the system that enables credit card and debit card operations, smart card operations, money transfer operations or similar operations. It also empowers the Reserve Bank of India to govern the operations of the payment system. Except for this Act, there are several other rules and regulations, especially those established by the RBO governing the system that involves 'clearing, payment or settlement' of a payment, depending upon the mature of service or undertaking involved.[20]

Players involved in the system

The players or service providers present in the ecosystem of payment system in e-commerce are:

- *Payment Processors*: Clearing, payment and settlement are mainly involved in the payment processing functions. These activities constitute the core function of a payment system. The RBI as well as other statutes regulates them. Under the *Payment and Settlement Systems Act, 2007*, only those banks or financial institutions that have authorization of RBI can perform such functions.

- *Intermediaries*: RBI defines 'Intermediaries' as "entities that collect monies received from customers for payment to merchants using any electronic/online payment mode, for goods and services availed by them and subsequently facilitate the transfer of these monies to the merchants in final settlement of the obligations of the paying customers". Keeping in mind the growth in the use of electronic payment methods across India, the RBI issued certain 'Directions for opening and operation of accounts and settlement of payments for electronic payment transactions involving intermediaries" which regulate account operations for the receipt and payment of funds by such intermediaries.[21]

- *Technology Providers*: A technology provider mainly looks into the technology or solutions to facilitate transmission of customer/merchant data, instructions, approval etc. That is within a payment system, it should be in for of software or hardware. Mostly, providers are not regulated.

TAXATION OF E-COMMERCE TRANSACTIONS

[20] E-Commerce in India – Legal, Tax and regulatory Analysis, July 2015, Pg.14; Nishit Desai Associates
[21] Definition of Intermediary by The RBI notification number DPSS.CO.PD.NO.1102/02.14.08/2009-109

With the absence of any kind of boundaries and the physical nature of e-commerce transactions relating to the goods and services, the taxation of these transactions becomes an issue in itself. As the accessibility to the Internet is across borders, the people involved in the transaction may be residents of diverse countries. Thus, the income earned out of this business may be taxed in one or more country.

The Committee on Fiscal Affairs of OECD[22] framed policies which mainly spoke about the *"neutrality, efficiency, certainty and simplicity, effectiveness and fairness and flexibility"* as the main principles for the taxation of e-commerce transactions.[23]

Another report by the Central Board of Direct taxes constituting the High Powered Committee in India was submitted in September 2001. It considered and thought upon the need for introduction of a separate tax regime for e-commerce transactions. The principles laid down by the OECD were taken into account in the report with some exemptions. Basing its theory on the principle of *'neutrality'*[24], the High Powered Committee maintained that the prevailing laws were satisfactory to tax the e-commerce transactions and there was no need for a separate regime.[25]

The Indian tax authorities have been trying their best to tax e-commerce in a way that conflict with international approaches. The International companies or enterprises catering to India face difficulties as a result and give rise to significant litigation in this respect, mainly in relation to characterization of income and withholding of taxes. Henceforth, it becomes important to carefully structure e-commerce transactions so as to reduce tax risks, especially the risk of double taxation or taxation in more than one country, without the availability of credit for payment of taxes in countries other than the resident country.

The Internet has modified many of the primary, basic and long standing concepts of direct and indirect taxation. Various issues in regard to taxation of e-commerce transactions are raised worldwide; this is mainly because of the lack of complete understanding of:

i. Technology dealing with communication,

[22] the Organization for Economic Cooperation and Development
[23] "Electronic Commerce: Taxation Framework Conditions" A report by the committee on Fiscal Affairs, OECD
[24] The concept of neutrality is the underpinning of the canonical goal of tax reform: achieving a broader base with lower rates
[25] The eCom Taxpert Group, "Taxation of Electronic Commerce in India",{2002} Asia-Pacific Tax Bulletin July/August 241

ii. Complexity of the business offered over the Internet and

iii. Particular method of business on the Internet that has made the operation of tax legislations complex.

The Information Technology Act, 2000, was the first legislation to deal with e-commerce says nothing about the taxation of it. A major chunk of state revenue that is incurred through direct and indirect taxes is lost because Internet transactions remain untaxed.

The foundations of taxation policy are formed by several basic principles. The most important ones are efficiency, equality, certainty and positive economic effect[26]. Not following these basic principles proves to be fatal for the tax system of that country. Taxation is said to be a mechanism for stabilization and regulation of the economy. This fact further provides that the legislature has emphasized the economic effects of these principles with a major focus on encouraging economic growth.

The Internet activities are divided into two parts, one is I and the other is *"content service"*[27]. In access service, the individual is provided with the access to the internet and in the content service, the information is delivered electronically.

Internet service provider is provides the service for accessing Internet whereas, the online service provider provides service through Internet. The service is given in return for the payment of subscription and usage fees. These services are subjected to tax.

The taxation of mmmerce transaction can further be discussed under two broad categories:

- *Direct Taxes*
- *Indirect Taxes*

DIRECT TAXES

For the taxation of income in India, the provisions of the Income Tax Act, 1961 are to be looked into. Under this Act, the residents are subjected to tax on their total income, local as

[26] The Net and the Tax Net – The Indian Tax Structure and the challenges posed by E-commerce; Chetan Nagendra; Nandan Kamath(ed.) Law relating to Computers, Internet and E-Commerce; pg 349

[27] A General Theory of Tax structure change during Economic Development, Cambridge, Harvard Law School, 1996

well as worldwide and if non -resident then income is taxed on income sourced in India. *Section 9* of the *Income Tax Act* allows particular incomes to be accumulated or accrued in India under prescribed conditions. But, if a non-resident taxpayer is a resident of a foreign country with which India has signed a tax treaty, then that person shall be relieved under such a treaty.

The 2015 Budget has proposed a reduction of 5% in corporate tax, reducing it from the current 30% to 25%, excluding surcharge and cess, over the next four years. Surcharge has been increased by 2% for local companies, increasing the maximum effective rates to 34.61%. The withholding rates applicable in the case of royalty and fees for technical services to offshore entities are proposed to be reduced from 25% to 10%, on gross basis.[28]

In regard to the taxation of income generated by non-residents from e-commerce mainly there are two main issues:

a) *Characterization of Income:* Whether a particular income has been earned from the use or the sale of good, such as software and electronic databases. The sale of advertising space etc. shall be regarded as royalty or business income or capital gains.

b) *Permanent Establishment:* The issues those are mainly there due to the presence of an electronic terminal or a server in India, a hosting of websites or other technical equipment etc.

In the case of *Amadeus Global Travel* v. *Deputy Commissioner of Income tax*[29], the Tribunal concluded that non-resident companies working with computerized reservation systems are to be taxed in India to the extent of booking fees received from Indian residents. The Tribunal decided on the grounds that these companies shall have *'virtual'* presence in India, constituting a 'virtual' permanent establishment. In the landmark judgment of *Vodafone India Services Pvt. Ltd* v. *Union of India*[30], the Bombay High Court held that transfer pricing would increase only when an element of real income is involved and the hypothetical income is not subjected to transfer pricing regulations.

INDIRECT TAX

[28] E-Commerce in India - Legal, Tax and Regulatory Analysis, July 2015, Pg. 28-29, Nishit Desai Associates
[29] (2008) 19 SOT 257 DELHI
[30] Writ Petition no. 871 of 2014

A number of indirect taxes are levied at the central and state levels. The government is making efforts to introduce the Goods and Service Tax Act so as to rationalize the indirect tax regime of the country. Main indirect taxes levied are:

1. *Service Tax* With the introduction of the negative list approach, the service tax regime has drastically changed. As per this approach, all those services, except those on the negative list or those specifically exempted, would be charged with service tax. No e-commerce transaction has been prescribed under this negative list. Mainly, the location of the receiver of the product is treated as the place of service rendered. In case of e-commerce, the location of the service rendered would be that where the service provider is located. The 2015 Budget proposes to increase the Service tax from 12.36% (inclusive of cess) to 14%.

2. *Sales Tax* In India, there are two types of taxes levied on the sales of goods. First is the Central Sales Tax (CST), which is central and is generally payable on the sale of goods when inter-state trade takes play at the rate of 2%. The second type of tax is Value Added Tax (VAT), which is governed by the state. VAT rate differs from state to state. With respect to e-commerce transactions, sales tax is relevant on the sale of intangible goods.

3. *Customs Duty* Customs Act, 1962 deals with the levy of customs duty, which is wither export or import duty. The customs duty is calculated based on the percentage of assessable or custom value[31]. The payment for the right to reproduce or redistribute imported goods should not be added to the customs value. But any fees paid as royalties or license fee must be added to the customs value.

4. *Central Excise Duty* The Central Excise Act, 1944, governs the excise duty. It is an indirect tax levied on goods manufactured in India. It is a duty collected by the central government. The valuation of the good shall incorporate the cost of engineering, development, design, artwork, plans and sketches taken place at places other than in the factory of production of such goods[32]. The excise on customized software is exempted but it needs to be paid in case of non-customized software.

APPLICABILITY OF SERVICE TAX

[31] Section 14 (1) of The Customs Act, 1962 or Tariff value under section 14(2) of The Customs Act, 1975

[32] *Pawan Biscuits Co. Pvt. Ltd.* v. *CCE, Patna*; (2002) 120 ELT 24 SC

There has been so much jubilation with respect to the Indian E-commerce story and it is on track to be the world's fastest growing E-commerce market[33]. The businesses springing up need to be sure and known about the tax liability they shall face. The main liability in e-commerce is that of service tax.

To understand service tax, Lets first understand the basic models of e-commerce. The common business models facilitated by e-commerce are:

→ ***B2B***: E-commerce has made various other businesses capable to form new relationships with the other businesses for efficiently managing the several other business functions. This model comprises of various models, including the distribution of services, procurement services, etc. IndiaMART.eom is one such example.

→ ***B2C***: There has been a model in which there exist direct dealings between businesses and consumers. These transactions have gained momentum alter e-commerce boomed. In the traditional model, the distribution starts mainly with the manufacturer and goes through the wholesaler to the retailer, who finally provides to the consumer. Over the Internet, the manufacturer or the intermediaries are directly trading with the consumer.

→ ***C2C***: In the commercial scenario, the dealings amongst consumers have been very few. E-commerce has in turn made it possible to bring to together consumers and provide for a platform to trade. Portals such as *eBay* and *Quikr* are examples of this model.

→ ***C2B***: This is regarded to be a new model of commerce. Here the consumer provides for the business and creates value for the business. This can be seen in forums where consumers provide for product development ideas or online where product reviews are given by the consumers which are used for advertisement purposes.

→ ***B2B2C***: Variant of the BZC model. There it an additional intermediary business to assist the first business with the end consumer. This model is programmed to do much

[33] Analysis on Applicability od Service Tax on E-Commerce platforms, March 17, 2015; Karan Sahi

better in e-commerce with reduced costs of having an intermediary. Flipksrt is the best example for this type of model.

These are the general models of e-commerce, now lets see the various e-commerce models from the indirect tax perspective:

→ *SUPPLY OF GOODS* A Memorandum of Understanding is entered into between the seller and the ecommerce platforms to promote the seller's business. This type of business has several models and service tax is to be levied accordingly.

a) Direct Supply from Seller to Customer: The seller have their own website to feed their business and do not rely on any online aggregators like Snapdeal, Amazon for listing goods. In this case VAT shall be charges by seller in case of intra state transaction and CST in case of inter-state movement of goods. *EXAMPLE: 'A' orders a pen from the website* xstationary.com*. X maintains site stationary. They would generate the invoice and VAT shall be levied on the product.*

b) Supply from Seller to Customer via online intermediary/Aggregators: Listing of products on websites like *Flipkart*, *Snapdeal*, *Amazon* etc, who have signed Memorandum of Understanding with the e-commerce platforms. The orders are given to the seller to complete. The seller shall make the invoice and deliver the same to the custom directly. Again VAT shall be charged in the invoice of the company, but the online portal shall generate their own invoice of services like *booking*, *commission*, *courier*. *shipping etc*. in the name of the seller. These services are covered under the definition of taxable service in the provisions of The Finance Act, 1994.The invoice of the online portal shall vary according to the MoU's with the sellers. *EXAMPLE: 'A' ordered the pen from Flipkart. The site books order on behalf of X stationery. So, Flipkart will contact with the X Stationary to deliver the goods to the customer. The seller shall levy the VAT on the goods sold by the seller. New Flipkart shall generate an invoice of services in the name of the seller. Flipkart will hence generate an invoice and levy service tax.*

c) Seller to Online Portals to Customer: The e-commerce platform shall directly sell the product bought by the seller to the final customer. The role of the site shall not be limited to provide interface but not the site shall be the owner of the goods. *EXAMPLE: 'A' ordered the pen from the site alidaddy.com. this site will book the pen on behalf of the seller and the purchase the pen from X stationary to deliver goods to customers. The invoice of X stationary would be addresses to the website and VAT would be levied. The site would also generate an invoice in which service tax would be levied over the services taken.*

RENDERING OF SERVICES

Service can be defined as per Finance Act. 2012, as any activity carried out by a person for another, for consideration and includes a declared service, but shall not include;

a) An activity which constitutes MERELY,

   a. A transfer of title in GOODS or IMMOVABLE PROPERTY, by way of sale, gilt or in any other manner; or ii. A transaction in money or ACTIONABLE CLAIM

b) A provision of service by an employee to the employer in the course of or in relation to his employment.

c) Fees taken in any court or tribunal established under any law for the time being in force. Explanation l.-For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to-

i. the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that ethos as such member; or

ii. The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

iii. The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section[34].

Service rendered by Online Portals to the Service Recipient

The service provider will levy the Service Tax, if the service provider is providing service to the customer with help of an intermediary. The intermediary shall generate an invoice towards the service provider and the service tax shall be levied on it. *EXAMPLE - MakeMyTrip.com provides for hotel information. They have entered into a MoU with the hotels. The invoice is raised by hotel on the customer. MakeMyTrip raises invoice towards hotel. Service Tax to be levied on the amount of bill issued by MakeMyTrip.*

1. *Direct rendering of Service from Service Provider to Service Receiver*

If the service provider is rendering online services; the service provider will only be liable to charge the service tax from the customer. *EXAMPLE online repairing services availed by 'B' from a company, the company shall levy a service tax from 'B'.*

2. *Service being provided from Customer to Customer.*

There shall be no chargeability of *Sales Tax*. In this case, the customers deal amongst themselves, the website only provides for a platform for make the sale or purchase. The website charges a commission on which it charges service tax for rendering the platform.

3. *Crowd-funding Websites*

Crowd-funding is the practice of funding a projector venture by raising monetary contributions from a large number of people, typically via the Internet. Lately, these have been gaining a lot of popularity. The mount of fee they charge for raising an amount if target funding is achieved is liable for service tax. *EXAMPLE pikaventure.com. indiegogo.com,*

THE ISSUES

[34] Section 65b(44); The Finance Act, 2012

There have been a lot of issues circulating around the taxation aspect of e-commerce transactions. The current dispute in this sector is relating to the storage of goods procured from different sellers in their warehouses before dispatching them to the respective buyers. The authorities are of the view that the e-commerce companies are involved in supplying and distribution of goods and hence should qualify as *'dealers'*. The authorities are also of the view that these companies act as commission agents or consignment agents of sellers. This is the reason why these companies are liable to discharge VAT. Times of India had reported that the Karnataka Government plans to amend VAT Act and bring the transactions from e-commerce marketplaces under its ambit. Such an amendment is slated to be passed in the upcoming winter session of the state legislature[35]. Action taken by one state will change the whole country's scenario. The position of service tax would need to be re-assessed after this.

The previous issue of recognizing the e-commerce companies as service providers has been solved. It has been decided that the primary object of the e-commerce companies is to offer online portals where the buyer and seller meet and the buyer places an order for goods advertised on the portal. The seller raises the invoice on the buyer. The e-commerce company issues no invoice on the buyer in respect of the goods. The company is clearly a service provider only.

In March 20lS, when the Union Budget 20l5 was announce, it was proposed in the finance bill that changes need to be made in the Service Tax rules with respect to certain e-commerce transactions involving aggregator model, impacting cab services of Uber and Ola Cabs. The Finance minister of The Union of India, Mr. Arun Jaitley while presenting the budget said that if any service is provided under the aggregator model, then the aggregator or its representative in India shall be made liable to pay Service Tax, provided service rendered using the aggregator's name[36].

Analysis of Amazon Tax in Karnataka

The main issue is relating to the taxation of the company. The tax issue in this case revolves around the *"Fulfilled by Amazon"* service. This service is provided by Amazon, in which the seller of a particular product stores its items in one of the warehouses of Amazon, mainly to reduce the delivery time. Amazon uses the best of technologies, including data mining and

[35] Analysis On Applicability Od Service Tax on E-Commerce Platforms, 19/03/2015; Karan Sahi
[36] Union Budget 2015: E-Commerce transactions on 'aggregator' platforms turn costly, 01/03/2015

critically analyzes the data to predict the products future popularity and they store the same in the warehouse so as to have quick deliveries and provide prompt service to the customers.

In both cases, Amazon would get money from the buyer, it will take a particular percentage if he sales proceed as commission and would return the rest to the seller. Amazon hence would be liable to pay Service Tax to the Central Government and the seller would be applicable to pay VAT or sales tax directly. On August 24, 2012, it was held that Amazon "is providing online retail distribution channel and the associated logistical services"[37] and thus, is clearly a service provider. A notice has associated logistical services been slapped on all the sellers who have Amazon as their warehouse as an additional place of business. Plus there is no rule stating the limit on a maximum number of vendors that can register in a warehouse, but a complete reading other provisions of law reveals that the registration need to be manned by certain clauses in terms of having a separate place to keep the goods and have provision to display notice boards outside the premises of the warehouse. The issue in short is mainly prevalent due to the self-contradicting laws and loopholes. Though this issue is yet to be solved but it is a classic example in itself of what happens in the taxation department of e-commerce transactions.

E-Commerce Entrepreneurs Expectations

The online merchants wish to promote investment in sectors like logistics and new technological invention for which they are looking forward to tax incentives. A revolutionary effect shall take place if these spheres are given a slight boost, this boost shall be beneficial for both the business as well as the consumers. Still, there needs to be better clarity regarding the tax guidelines for transactions like e-wallet, drop shipment or gift voucher.

For their online business, the entrepreneurs want more funding options. A 100° 0 FDI is expected by them for e-commerce. A strategic investment by foreign investors in small online retailers can prove to be a huge gain for the whole ecosystem. In the current scenario, 100% FDI is allowed by the Government of India in single brand ecommerce companies and up to 51% FDI is allowed in multi brand e-commerce companies.

The least these entrepreneurs expect is a well-planned e-commerce and online business policy to make it more to the ladder of success.

[37] Taxation Issues in E-Commerce ventures – An analysis of the Amazon tax issue in Karnataka

CONCLUSION

As the name itself suggests, *'service tax'* is a tax on a service. Nowadays, practically everything can be included in the term 'service'. The figures show that in the year 1994 there were only 3 services that were taxed compared to over 114 services in 2012 out of which many are included in the e-commerce sphere[38].

While talking about taxation in e-commerce, specifically when we think about the applicability of service tax in e-commerce, a lot of questions come up in our mind. The very first being, how can an online transaction be regarded as a service? Then, how is the service tax calculated on such transactions?

Though e-commerce seems to be all sorted and simple but when it comes to service tax, c-commerce some pretty complex issues start to arise.

It is crucial to note that:

- Temporary transfer or permitting the use or enjoyment of any intellectual Property Right and
- Develop, design programme, customize, adapt, upgrade, enhance, implementing of information technology software are considered to be *'declared services'*[39].

As per this, a temporary transfer of patent registered in outside India would also be taxable, if the place of service of temporary transfer is in India. But under no circumstances can a transfer of an IPR or any other service in a foreign country there of shall be taxable in India.

The extremely fast pace of growth of the e-commerce industry is not only indicative of the increasing economic growth of the country but all signifies the improvement in the living standards of the country.

This research though brings in clarity as to the applicability of service tax in the e-commerce transactions, but still the Government needs to make amends so as to make the system free of loopholes and try and remove all the discrepancies in the taxation system.

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[38] E-Commerce Startups; Here is What you need to know about AT and Service Tax liability
[39] Section 65B; The Finance Act, 1994

On a larger perspective, the base of the tax system should be broadened. Though, it should be left simple within the administrative capacity of the government. With increase in tax rates, though the government tries to enhance its revenue but as tax payers we oppose it. Hence, there needs to be a line drawn which the government will have to follow as exclusive taxes shows ill on the economy of the country.

A further clarity with regard to the levy of indirect taxed on e-eommerce transactions is needed to make things smooth sailing. The Government should focus in providing increments and incentives to this sector. They should think about making it competitive rather than burdening the players in the e-commerce market with unnecessary taxes. Only by bringing up this sector will the Government be able to achieve its vision of “Make in India Campaign”.