

UNDERSTANDING THE TAX PROVISIONS FOR E-COMMERCE OPERATORS UNDER THE NEW GST REGIME

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In recent years, e-commerce in India has managed to capture the eye-balls and also the mind-space of the consumers at large such as never before and with this unprecedented growth, India has become the second largest market for e-Commerce. India is adding three new internet users every second. E-commerce companies have the potential of creating 12 million new jobs in the next 10 years. The e-commerce market in India is expected to breach the \$100-billion mark by 2020. To tap the opportunity, e-Commerce companies are aggressively ramping up their technology. E-Commerce is still less than 2% of the overall consumption in India, as against 14% in China. India can also take a leaf out of the example of Taobao village program in China created by Chinese internet giant Alibaba. From 20 such villages in 2013, the number has grown to 780 by 2015. These digital villages are spread over 17 provinces in China, and cover more than 2,00,000 active online shops. In India, more than 800 million people live in 640 lacs villages. Over the last couple of years, India has changed the way it shops and trades. The unprecedented growth of the e-commerce sector has been largely driven by rapid technology adoption and access to the internet through broadband, 3G/ 4G etc., resulting into an increased online consumer base. Due to this digital revolution, the e-commerce sector in India has recorded a four-fold increase in its size in 2009. The industry is growing at a compound annual growth rate (CAGR) of more than 35%. The explosive growth in the e-commerce sector has given rise to multiple tax issues. The e-commerce companies besides their normal challenges such as rising competition, rapidly changing technology, shrinking margins etc., are now facing litigation owing to their innovative business models. Marvel of E-Commerce “Uber, the world’s largest taxi company, owns no vehicles. Facebook, the world’s most popular media owner, creates no content. Alibaba, the most valuable retailer, has no inventory. And Airbnb, the world’s largest accommodation provider, owns no real estate.” [By Tom Goodwin (Sr. VP, Strategy and Innovation, Havas Media)] Study Paper on Taxation of E-Commerce under GST 2 .Business model of leading players in the e-commerce industry in India enables thousands of small and medium enterprises to reach customers across the country to market their products while the customers are assured timely delivery and genuine products at most competitive prices. E-commerce business model also supports the key policy initiatives of “Make in India” and “Digital India” of the government in addition to providing jobs to several thousands of young people in urban, semi-urban and rural areas of the country. Further, e-commerce business is having a very strong and positive ripple effect on several other industries such as commercial vehicles, two-wheelers, mobile telephony and internet services, cash handling and management services etc. The e-commerce market in India is expected to nearly double to Rs. 2,11,005/- crore by December 2016 and cross \$ 100 billion mark within next 5 years making significant contribution in GDP. E-commerce gives a secure and cost-efficient contribution in the growth of SME’s and SME’s contribute 17% of the Nation’s GDP and 40% in the total exports from the country. E-commerce also provides and supports the thought process to encourage cashless transactions which will greatly help the Government’s long-term vision to curb black money.

E-COMMERCE AND THE PREVIOUS TAX STRUCTURE

- **VAT/ CST on e-Commerce transactions:** E-commerce transactions in India suffered from lots of complexities in regard to indirect taxation. One of the major concern for e-Commerce operator was the implementation of Value Added Tax (VAT) on online marketplace companies in some States. Further, disputes have arisen in case of e-Commerce companies that undertake storage of goods procured from various sellers in their warehouses before dispatching them to the respective buyers. The tax authorities are perplexed whether this movement of goods from supplier to warehouse would fall under the ambit of sale of goods and chargeable to VAT/ CST. Further, these complexities worsen, in as much as question arises as to whether the transaction is chargeable to VAT or CST, in case of transactions triggering events related to sales in multiple States. The Kerala State Commercial Department has issued a demand notice to various eoperators like Flipkart and

Myntra demanding VAT on sale of goods hosted on their web portals. However, the said demand was quashed by the Kerala High Court subsequently. The same issue arose in the State of Karnataka, where the State VAT department demanded VAT on sale of goods from the warehouse of e-operators.

- **Service tax on e-Commerce transactions:** Service tax was leviable on an activity by one person for another for a consideration, unless the same was specifically excluded under the Negative List of Services given under S.66D of the Finance Act, 1994 or exempted vide the Mega Exemption Notification No. 25/2012-ST dated 20-06-2012. Further, service tax was payable on services relating to access of online information, database access and retrieval services, as well as the development and supply of digital content and software. Furthermore, levy of service tax on e-Commerce transactions under aggregator model Study Paper on Taxation of E-Commerce under GST 11 (restricted to aggregator of service only) had been brought in w.e.f. 01-03-2015 vide the Union Budget 2015-16. However, the taxability of transactions in digital mode is prone to divergent views and litigation. Online market place faced double taxation and ended up paying both VAT/ CST as well as service tax. VAT authorities are of the view that the e-Commerce companies are involved in supplying and distribution of goods and, therefore, would qualify as 'dealers'. The authorities are also of the view that these companies act as commission agents or consignment agents of sellers. Therefore, these companies are covered under the definition of 'dealers' and, therefore, are liable to discharge VAT liability.
- **Entry tax on e-Commerce transactions:** Some States such as Orissa, Uttarakhand, Mizoram and West-Bengal had rules to charge e-Commerce companies, additional taxes for "delivering" products to customers in their State. Imposition of entry tax on goods purchased online had added more woes for eCommerce industry as they already face lot of problems and imposition of entry tax had led to impediments in speedy delivery of goods in inter-State transactions. (iv) Equalization Levy: It is commonly known as Google Tax. At a time when the Government is pushing the concept of "Ease of doing" business in the country, the imposition of equalization levy may affect adversely in terms of increasing the compliance cost and accounting hassles for e-Commerce industry. Although, the so-called "Google Tax" is aimed at indirectly taxing internet giants such as Facebook, Whatsapp, Truecaller, Twitter, LinkedIn, and Google, on the income they earn on account of soliciting advertisements from Indian advertisers. However, the onus for deducting and depositing and making further compliances are to be done by the Indian advertisers. In effect, the companies like Facebook may shift the burden on Indian entrepreneurs. The equalization levy seems to be just a beginning and the government seems in offing to levy tax on digital transactions such as mobile application, TV advertisements on international channels etc., in the future.

KEY CONTENTS OF AGREEMENTS WITH THE VENDORS AND CUSTOMER (NORMAL TERMS OF AGREEMENT BETWEEN THE VENDORS AND THE ECOMMERCE OPERATORS)

There is always a significance of terms of contract between the supplier and the recipient of goods or services or both. The levy of indirect tax stems from such contract between the parties. The terms of contract decide whether the eCommerce operator is an agent, intermediary or a principal and the levy of tax under GST 12 differs from case to case. In view of this fact, the key contents of agreements entered by the e-Commerce operators may be summarized as under- (i) That a debit note shall be raised against the vendor in all cases where the goods supplied by it are found defective at any stage and such defective goods shall be sent back to it. All expenses relating to such sale like cost of transportation, all kinds of discounts allowed at the time of sale including cash discounts shall be borne by the vendor. (ii) That a debit note shall be raised against the vendor in all cases where the goods supplied by it are returned to it at any stage and all expenses relating to such sale and sales returned like cost of transportation, all kinds of discounts allowed at the time of sale including cash discount shall be borne by the vendor. (iii) That during the course of specific event or promotion or any other marketing activity undertaken by the e-Commerce operator, any planned liability on the sale of merchandise or services shall be communicated to the vendor and a decision on shared liability shall be taken on case to case basis and shall be communicated to and debited to the account of the vendor from time to time. (iv) That the purchase order or the amended purchase order shall be deemed to have been accepted by the vendor, if the same is not otherwise communicated to the eCommerce operator within three common working days from the date of placement of such order. (v) That all goods and/or services shall be delivered by the vendor in accordance with the time and delivery terms as contained in the Purchase Order/Amended Purchase Order. Else, the same may be accepted at a discounted price at the discretion of the concerned

manager of the e-Commerce operator. (vi) That in case of change in price or MRP the vendor should give minimum 15 days time to the e-Commerce operator.

FDI Regulations The regulatory environment for e-Commerce retail sector in India is constantly evolving and being liberalised given the huge potential to attract foreign investment and benefits to consumers. As per the FDI policy, contained in the 'Consolidated FDI Policy Circular 2015' (FDI Policy) as amended from time to time, FDI upto 100% under automatic route is permitted in Business to Business (B2B) e-commerce. However, FDI in B2C ecommerce is permitted in following circumstances: (i) A manufacturer is permitted to sell its products manufactured in India through e-commerce retail. (ii) A single brand retail trading entity operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce. Study Paper on Taxation of E-Commerce under GST 13 (iii) An Indian manufacturer is permitted to sell its own single brand products through e-commerce retail. Indian manufacturer would be the investee company, which is the owner of the Indian brand and which manufactures in India, in terms of value, At least 70% of its products in house, and sources, at most 30% from Indian manufacturers. The above liberalisations in the FDI regime, especially in the context of retail trade, have significantly contributed to revival of the foreign investor confidence in India and extended the breadth of the e-Commerce sector. Another significant development in the e-Commerce space from the regulatory standpoint is the introduction of guidelines [vide Press Note No. 3 (2016 series) dated March 29, 2016] governing FDI in marketplace e-Commerce models. The new guidelines clearly lay down the definition of 'inventory based model of e-commerce' [inventory of goods and services is owned by the e-Commerce entity and is sold to consumers directly] and 'market place model of e-Commerce' [provision of information technology platform by an e-Commerce entity on a digital and electronic network to act as a facilitator between buyer and seller], thereby permitting 100 per cent FDI in a marketplace model of e-commerce under automatic route, subject to certain prescribed conditions. Now, the marketplace e-Commerce companies will be allowed to provide support services to sellers on their platform such as warehousing, logistics, order fulfillment, call centre and payment collection. However, post sale, delivery of goods to customers, customer satisfaction and warranty/ guarantee of goods/ services sold will be responsibility of sellers. Further, it has been prescribed that goods/ services which made available for sale electronically on website shall provide name, address, contact details of sellers. FDI in inventory based model of eCommerce on B2C basis is prohibited. The prescribed stipulations entail prohibition on offering of discounts or exercising ownership on inventory, no direct role in influencing pricing decisions of vendors, ceiling on each vendor/ group company account to not exceed 25 per cent of total sales effected through marketplace model etc

E-Commerce provisions as contained in the GST Act, 2017

Section 2(44) of the CGST Act 2017 , says that electronic commerce means supply of goods or services or both including digital products over digital or electronic network.

Section 2(45) says that electronic commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Levy of GST IN E-COMMERCE

- Section 9(5) says that the Government may, on the recommendation of the Council, under GST 24 notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the person liable for paying the tax in relation to the supply of such services.
- Where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.
- Where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.
- The Central Government vide Notification No. 17/2017-Central Tax (Rate) dated 28-Jun-17 w.e.f. 1-Jul-17 notified that in case of services by way of transportation of passengers by a radio taxi etc. and services by way of renting of hotel accommodation, tax shall be paid by the e-commerce operator except where supplier of such service is liable to be registered. This is a new entry in addition to the list of services under RCM as approved by the GST Council.

- It is very important to note here that liability to pay tax would be on the e-commerce operator only for the service provided through such operator and this is not for supply of goods through such operator, which will be out of this deemed levy on the operator.
- **Liability irrespective of brand** Further, it is also important to note that unlike in the existing service tax provision, where the e-commerce operator is made liable to pay service tax only in case where service is provided under the brand of the operator, whereas in the case of GST whether the service is provided under the own brand (say example Redbus, Make my trip) or under the brand of the operator (say example Uber or Ola) still operator shall have to pay the applicable GST.

Tax collected at source [Section 52]

Rate of tax to be collected [Section 52(1)] Section 52(1) prescribes that in spite of anything to the contrary contained in the Act, every electronic commerce operator (Operator), not being an agent, shall collect an amount calculated at such rate not exceeding 1%, as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it where the consideration with respect to such supplies is to be collected by Operator. Rate of TCS = 1% CGST + 1% SGST = Total 2%

An explanation to section 52(1) explains that the expression "net value of taxable supplies" under GST 25 shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under section 9(5), made during any month by all registered persons through Operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

Net Value of Taxable Supplies = Aggregate value of taxable supplies through Operator

Less: Supplies returned

Less: Supplies under section 9(5)

The exemption for making the collection of tax at source is as under-

- a. In case the services provided are notified under section 9(5) by which such operator is liable to pay tax
- b. If the operator is acting as an Agent (logistic provider)

Section 52(2) says that the power to collect the amount specified in section 52(1) shall be without prejudice to any other mode of recovery from the operator. The amount collected under section shall be paid to the Government by the operator within 10 days after the end of the month in which such collection is made in the manner as may be prescribed in rule 67 of Central Goods and Services Tax Rules, 2017. Note that, Every operator who collects the amount under Section 52 shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under section 52(1) during a month, in FORM GSTR-8, within 10 days after the end of such month.

Annual Statement [Section 52(5)]

- Every operator who collects the amount specified in section 52(1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under section 52(1) during the financial year before the 31st day of December following the end of such financial year
- Further, if any operator after furnishing a statement under section 52(4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission under GST 26 or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in section 50(1).
- Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

Credit to be taken by supplier [Section 52(7)]

- Supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator.
- The details of supplies furnished by every operator under section 52(4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under the Act as per rule 78 of Central Goods and Services Tax Rules, 2017.

- where the details of outward supplies furnished by the operator under section 52(4) do not match with the corresponding details furnished by the supplier under section 37, the discrepancy shall be communicated to both persons in the manner and within the time as prescribed in rule 79 of Central Goods and Services Tax Rules, 2017.
- The amount in respect of which any discrepancy is communicated and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed in rule 79(4) of Central Goods and Services Tax Rules, 2017.
- The concerned supplier, in whose output tax liability any amount has been added shall pay the tax payable in respect of such supply along with interest, at the rate specified under section 50(1) on the amount so added from the date such tax was due till the date of its payment under GST 27
- Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceeding under this Act, requiring the operator to furnish such details relating to— (a) Supplies of goods or services or both effected through such operator during any period, or (b) Stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operators and declared as additional places of business by such suppliers as may be specified in the notice.
- every operator on whom a notice has been served shall furnish the required information within 15 working days of the date of service of such notice.
- Any person who fails to furnish the information required by the notice served ,without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to Rs.25000/- An explanation to section 52 says that the expression ‘concerned supplier’ shall mean the supplier of goods or services or both making supplies through the operator.

Compulsory Registration [Section 24]

This section provides that in spite of anything contained in section 22(1)- which lays down a limit of 10 lacs or 20 lacs for the registration, the following categories of persons shall be required to be registered under this Act-

- (a) Persons who are required to pay tax under section 9(5) – as Operator
- (b) Persons who supply goods or services or both, other than supplies specified under section 9(5), through such electronic commerce operator who is required to collect tax at source)
- (c) Every electronic commerce operator
- (d) Every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person

The provisions of GST Act have influenced business strategies of both e-Commerce operators and suppliers . Both e-Commerce player and seller will have to upload invoice wise details of supplies in their respective returns and the GST system will match them. If they do not reconcile then it will be added to the liability of the seller. This will lead to additional compliances. TCS provisions shall be attracted on the first form of e-Commerce model, where both operator and supplier act on principal-to-principal (P2P) basis. It will lead to a lot of compliances and penalty provisions shall be applicable in case of non-compliance. Most of sellers registered with marketplace operators are small and medium businesses. Government has introduced composition scheme under GST Act. Section 10(2) of CGST Act prescribes that if a person is engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source, then he cannot opt composition scheme. The advantages of composition scheme is one need to file only 5 returns per annum as against 37 in a normal case. As per section 24, e-Commerce operators and persons who supply goods or services or both are required to be registered compulsorily under this Act. Thus the small seller having turnover up to 20 lacs who is not otherwise required to be registered, will have to be compulsorily registered under this Act. As per the registration provisions under Chapter-VI of CGST Act, every business involved in E-commerce is required to get registered in each State in which they making taxable supplies. Since the e-commerce business model is as such that the seller expects order from all the states, they are liable to obtain registration in all the states. Each Order or Invoice will now need to carry HSN or SAC code as well. However initially government is lenient for HSN or SAC codes. Place of Supply has to be determined and mentioned in every invoice (based on GSTIN for B2B and delivery address for B2C). To sum up , GST will have a positive

impact on E Commerce sector. Both the suppliers and the consumers will be benefited. It will be easier for the supplier to supply goods in other states.

CHAPTER 2: ANTI – PROFITEERING AND E- WAY BILLS

After reading this Chapter , you should be able to understand :

- The concept of anti profiteering
- The composition and functions of anti- profiteering authorities
- E-way bills

The main objective of this chapter is to provide the readers a clear understanding about the concept of anti-profiteering and e- way bills in GST regime.

Anti Profiteering is a check against profiteering – something which ought to be ethical but is now a legal issue in Goods and Service Tax.

While every business would like to earn more and more profits from business, given an opportunity, it is a fact that GST is a new concept being introduced in India for first time and claimed as a major tax reform and that experience suggests that GST may bring in general inflation in the introductory phase. The Government wants that GST should not lead to general inflation and for this, it becomes necessary to ensure that benefits arising out of GST implementation be transferred to customers so that it may not lead to inflation. For this, anti profiteering measures will help check price rise and also put a legal obligation on businesses to pass on the benefit. This will also help in instilling confidence in citizens.

As per section 171 of the CGST/SGST Act, any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. An authority may be constituted by the government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

The GST law contains a provision on anti-profiteering measure as a deterrent for trade and industry to enjoy unjust enrichment in terms of profit arising out of implementation of Goods and Services Tax in India, i.e., anti-profiteering measure would obligate the businesses to pass on the cost benefit arising out of **GST** implementation to their customers.

Section 171 provides that it is mandatory to pass on the benefit due to reduction in rate of tax or from input tax credit to the consumer by way of commensurate reduction in prices.

Anti-profiteering Authority

The power has been given to Central Government to constitute an authority to oversee whether the commensurate benefit of allowance of input tax credit or reduction in the tax rates have been passed on to the final customer. Section 171(2) of the GST Act provides for establishment of an authority for an anti-profiteering clause in order to ensure that business passes on the benefit of reduced tax incidence on goods or services or both to the consumers.

The National Anti-profiteering Authority shall be responsible for applying anti-profiteering measures in the event of a reduction in rate of GST on supply of goods or services or, if the benefit of input tax credit is not passed on to the recipients by way of commensurate reduction in prices. The National Anti-profiteering Authority shall be headed by a senior officer of the level of a Secretary to the Government of India and shall have four technical members from the Centre and/or the States.

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The Authority shall consist of-

- (a) a Chairman
- (b) 4 Technical Members (Commissioners of State/Central tax)

The Authority will determine the method and procedure for determining whether the reduction in rate or the benefit of input tax credit has been passed on by the seller to the buyer by reducing the prices.

Constitution of the Standing Committee and Screening Committees

1. The Council will constitute a Standing Committee and a state level Screening Committee on Anti-profiteering,

2. Standing Committee will comprise of officers of the State and Central Government as nominated by it.
3. The State level Screening Committee will be established in each State. It will consist of-
 - 1 officer of the State Government, nominated by the Commissioner and
 - 1 officer of the Central Government nominated by the Chief Commissioner.

Appointment, salary, allowances

1. The Chairman and Members of the Authority will be appointed by the Central Government on the recommendations of a selection committee (constituted by the Council)
2. The Chairman shall be paid a monthly salary of Rs. 2,25,000 (fixed) and other allowances and benefits. If a retired officer is selected as a Chairman, he will receive a monthly salary of Rs. 2,25,000 *minus* amount of pension.
3. The Technical Member shall be paid a monthly salary of Rs. 2,05,400 (fixed) and along with allowances of a group 'A' officer. A retired person will have his salary reduced by the pension amount.
4. The Chairman and technical members will hold office for two years from the date on which he enters upon his office, or until he becomes 65 years old. He will be eligible for reappointment. A person cannot be a Chairman if he is 62 years or above.

Secretary to the Authority

The Additional Director General of Safeguards under the Board shall be the Secretary to the Authority.

The Authority under section 171 of the GST Act shall have the following monitoring functions:

- (a) Input tax credit availed by taxpayer have actually resulted in commensurate reduction in price of goods/services.
- (b) The reduction in prices on account of reduction in tax rates have actually resulted in a commensurate reduction in price of goods/services.

The Government has notified anti-profiteering authority (APA) which will check any undue increase in prices of products of companies under GST. The APA will work to check any undue increase in prices of products by taxpayer companies under the GST regime.

Various authorities under GST law for anti-profiteering shall, thus comprise of the following:

- National Anti-Profiteering Authority,
- Standing Committee on Anti-Profiteering, and
- State level Screening Committee.

The powers to take action are also listed as duties whereby it can order price reduction, refund of profit, recovery, penalty or even cancellation of GST registration. The authority constituted by Central Government will have powers to impose a penalty in case it finds that the price being charged has not been reduced consequent to reduction in rate of tax or allowance of input tax credit.

During the two years of initial transition into GST regime, Anti-Profiteering Authority (APA) will step in and may ask businesses that have not passed on full benefits of reduced tax burden to consumers to make up for such benefit, with interest.

Anti-Profiteering Authority (APA) shall act as a monitoring and regulatory authority to curb anti-profiteering practices of tax payers under GST regime. The APA shall have powers to:

- Make company reduce the prices.
 - Make company refund the money to the consumer along with interest @ 18% p.a.
 - Order company to deposit the refund amount in the Consumer Welfare Fund (in case the buyer is not identifiable).
 - Impose monetary penalty equivalent to amount involved in undue profiteering.
 - Cancel registration of the assessee.
- Orders of authority may be for any of the following:
- Reduction in prices
 - Returning money to the customer along with interest
 - Depositing money in customer welfare fund in case the customer does not claim it or is not identifiable
 - Imposition of penalty equivalent to the amount of profiteering
 - Cancellation of registration

Union Cabinet has on 16th November, 2017 cleared the setting up of GST National Anti-profiteering Authority (NAA). The post of Chairman and members of the authority have been created paving the way for

authority to be functional soon. Ideally Government should have set up NAA much earlier as consumers are the ultimate sufferers of price hike, inflation and undue profiteering.

A five-member panel headed by Cabinet Secretary P K Sinha and comprising of Revenue Secretary Hasmukh Adhia, CBEC Chairman and chief secretaries from two states has been entrusted with the task of selecting the chairman and members of the authority.

The National Anti-Profiteering Authority is an assurance to consumers. If any consumer feels the benefit of tax rate cuts is not being passed on, he can complain to the authority. The body is mandated to ensure that the benefits of GST rate reduction is passed on to consumers.

- The five-member anti-profiteering authority will have power to ask those not passing on the tax benefit to return the undue profit earned to consumers along with an 18% interest, reduce prices and if the consumer is not identifiable, deposit the amount in a Consumer Welfare Fund.
- Companies will have to ensure that retailers and distribution chain pass on the GST cat benefit to consumer with immediate effect. No delay will be allowed. It is the company’s responsibility to ensure that its entire retail chain follows its directives on pricing. If a trader is not selling a good at revised MRP, then it is the responsibility of the company. It will have to respond to the Anti-profiteering. Authority on this action can only be taken against organized players as they are the ones who decide MRP.

The setting up of NAA has been expedited in view of the fact that many traders and businesses have failed to pass on the benefit to consumers. Activation of this provision in the law might have been avoided, had trade and industry passed on the eliminated cascading of taxes to consumers by way of lower prices.

E- WAY BILL

E-way Bill is an electronically generated document which is required to be generated for the movement of goods of more Rs. 50,000 from one place to another.

This document is required to be generated online for transportation of goods irrespective of whether such transportation is intra-state. The e-way bill generated in any state shall be valid in every state and union territory of India.

What is the date of applicability of e-way Bill in GST?

The e-way bill under GST Regime is applicable from 1st April 2018 for the movement of goods from one state to another.

For movement of goods within the state, e-way bill has been introduced in phases starting from 15th April till 3rd June 2018. The phases roll-out has been completed and e-way is now applicable in all the states.

The E-Way Bill under the GST Regime replaces the Way Bill which was required under the VAT Regime was a physical document which was required to be generated for the movement of goods. The physical document under the VAT Regime has now been replaced with an electronically generated document in the GST Regime.

What is the validity of an E-Way Bill?

An e-way bill shall be valid for the period as mentioned below from the relevant date –

Distance	Validity Period
Less than 100 km	1 day
For every 100 km or part thereof	1 additional day

Meaning of Relevant Date

The relevant date for the purpose of computation of validity of the e-way bill shall be the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way.

This can be explained with the help of an example. For eg: Mr A generates the e-bill at 2 PM on 2nd April. This would be valid till mid night of 3rd April.

In circumstances of exceptional nature, where the goods cannot be transported within the validity period of the e-way bill, the transporter may generate another e-way bill after updating the details on Part B of Form GST EWB 01.

The Commissioner may, by notification, extend the period of validity of the e- way bill for certain category of goods.

Who will generate e-way bill?

The e-way bill under the GST Regime is required to be generated by

1. Every registered person who causes movement of goods of consignment
 - i. In relation to a supply (Eg: Sales); or
 - ii. For reasons other than supply (EG; Sales Return, Branch Transfer etc); or
 - iii. Due to inward supply from an unregistered person
2. Every unregistered person who causes movement of Goods.

E-WAY BILL IN CASE OF MOVEMENT BY REGISTERED PERSON

In case the movement of goods is caused by the registered person as a consignor (i.e. seller) or the recipient as a consignee (i.e. buyer), whether in his own conveyance or a hired one or by railways or by vessel, the registered person or the recipient may generate the e-way bill in Form GST EWB 01 electronically on the common portal after furnishing information in Part B of Form GST EWB 01.

In case the movement of goods is caused by the registered person and handed over to the transporter for transportation by road, but the e-way bill has not been generated – it would be the responsibility of the transporter to generate the e-way bill.

The registered person shall first furnish the information relating to the transporter in Part B of Form GST EWB 01 on gst.gov.in and then, the e-way bill shall be generated by the transporter on the basis of the information furnished by the registered person in Part A of Form GST EQB 01. Notes for furnishing details in GST EWB 01

- HSN Code in Column A.6 shall be indicated at minimum 2 digit level for taxpayers having annual turnover upto RS 5 Crores in the preceding financial year and at 4 digit level for taxpayers having annual turnover above RS. 5 crores in the preceding financial year.
- Transport document number indicates Goods Recipient Number or Railway Receipt No. or Airway Bill NO. or Bill of Lading number.
- Place of Delivery shall be the PIN Code of the place of delivery.
- Reason for Transportation shall be one of the following: (1) Supply, or (2) Export or Import, or (3) Job Work, or (4) KD or CKD, or (5) Recipient not known, or (6) Live Sales, or (7) Sales Return, or (8) Exhibition or fairs (9) For own use, or (0) Others

E-way bill in case of sale by unregistered person In case the movement of goods is done by a person who is not registered under GST, either in his own conveyance or through a hired conveyance or through a transporter, the e-way bill in such a case shall be generated by the unregistered person himself or by the transporter.

In other words, even if a person who is transporting the goods is unregistered , he would be required to get the e-way bill generated either himself or through the transporter who is transporting the goods.

The e-way bill shall be generated in Form GST EWB -01 on gst.gov.in. An e- way bill can be generated by the unregistered himself as well on the GST Portal even if he is not registered.

E-way Bill in case of Sale by Unregistered Person to Registered Person If the goods are supplied by an unregistered person to a registered person and the registered person is known at the time of commencement of movement of goods, it would be deemed that the movement of goods is caused by the registered person.

In such a case, the registered person or the transporter shall complete the formalities of the e-way bill.

RESPONSIBILITIES OF THE TRANSPORTER

1. In case the consignor (seller) or the consignee (buyer) has not generated the e-way bill and the value of the consignment is more than RS. 50,000, the transporter shall generate Form GST EWB 01 on the basis of invoice or bill of supply or delivery challan.
2. Any transporter transferring goods from one conveyance to another in the course of transit shall before such transfer and further movement of goods, update the details of the conveyance in the e-way bill on gst.gov.in.

3. In case where multiple consignments are intended to be transported in one conveyance, the transporter shall indicate the serial number of each individually generated e-way bill in respect of each such consignment electronically on the common platform and a consolidated e-way bill in Form GST EWB 02 may be generated by him on the GST Website prior to the movement of goods.

e-way Bill in case of transport of goods by Rail or by Air or Vessel

In situations where the goods are transported by railway or by air or by vessel, the e-way bill shall be generated by the registered person (either the supplier or the recipient). This e-way bill shall be generated either before or after the commencement of movement of goods and the information should be furnished in Part B of Form GST EWB 01.

In case of transport of goods by Railways, the railways shall not deliver the goods unless the e-way bill required under these rules is produced at the time of delivery.

e-Way bill in case Goods transported through E-commerce operator or Courier Agency If the goods to be transported are supplied through an e-commerce operator or a courier agency, on an authorisation received from the consignor, the information in Part A of Form GST EWB 01 may be furnished by such e-commerce operator or a courier agency.

INTIMATION OF GENERATION OF E-WAY BILL

1. Upon generation of the e-way bill, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the GST Website who may utilise the same for furnishing the details in Form GSTR 1.
2. The recipient shall communicate his acceptance or rejection within 72 hours of the details being made available on the GST Website, it shall be deemed that he has accepted the said details.

SITUATIONS WHERE E-WAY BILL IS NOT REQUIRED TO BE GENERATED

It is not mandatory to generate e-way bill in the following circumstances –

1. The goods are transported for a distance less than 10 km within the same state from the place of business of the transporter to the place of business of the consignee.
2. The goods are transported for a distance less than km within the state from the place of business of the consignor to the place of business of the transporter for further transportation.
3. The goods are transported by a non-motorised conveyance.
4. The goods are being transported from the port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs.
5. In respect of specified goods like jewellery, personal and household effect etc.
6. In respect of movement of goods within such areas as are notified under clause 9d) of the sub-rule (14) of rule 138 of the Goods and Services Tax of the concerned state.

In case of Transport of Goods for a distance of more than 10 km but less than 50 km – generation of e-way bill is mandatory but it is not mandatory to mention the detail of the conveyance in the e-way bill.

DOCUMENTS AND DEVICES TO BE CARRIED BY A PERSON- INCHARGE OF A CONVEYANCE

The person in charge of a conveyance shall carry –

1. The invoice or bill of supply or Delivery of Challan, and
2. A copy of the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the commissioner.

A registered person may obtain an Invoice Reference Number from gst.gov.in by uploading a tax invoice issued by him in Form GST INV 1 and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of 30 days from the date of uploading.

VERIFICATION OF DOCUMENTS AND CONVEYANCES

1. The Commissioner or an officer empowered by him in this behalf may authorise the proper officer to intercept any conveyance to verify the e-way bill number in physical form.
2. The commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and the verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the device.
3. The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf. However, in case of receipt of specific

information on evasion of tax, physical verification of a specific conveyance can also be carried out by any officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

INSPECTION AND VERIFICATION OF GOODS

1. A Summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A Form GST EWB 03 within 24 hours of inspection and final report in Part B of Form GST EWB 03 shall be recorded within 3 days of inspection.
2. In case the physical verification of goods being transported on any conveyance has been done during transit at one place within the state, no further physical verification of the conveyance shall be carried out again unless specific information relating to evasion of tax is made available subsequently.

OTHER RELEVANT POINTS REGARDING E-WAY BILL

1. In case the value of the consignment is less than Rs. 50,22 – It is not mandatory to create the e-way bill. The e-way bill may or may not be generated in this case. In case they want to generate an e-way bill, he may generate the same at his option by the following the procedure mentioned above.
2. In case an e-way bill has not been generated, but the goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill shall be cancelled. The cancellation can be done either electronically on the GST Website directly or through a GST Facilitation Centre within 24 hours of the generation of the e-way bill.
3. An e-way bill cannot be cancelled if it has been verified in transit.
4. In situation where the goods are sent by a principal located in 1 State or Union Territory to another State or Union Territory by a person who has been exempted from the requirement of generated by the said person irrespective of the value of the assignment.
5. If the handicraft goods are transported from 1 State or Union Territory to another state or Union Territory by a person who has been exempted from the requirement of obtaining GST Registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of then consignment.