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# UNFAIR ODDS: 28% GST ON THE ONLINE GAMING INDUSTRY

## **Abstract**

Over<sup>1</sup> the last few years, the online gaming industry has witnessed a boom. Gaming applications are playing a dominant role in realizing the dream of a trillion-dollar economy. However, the recent amendments to the Goods and Services Tax or GST, an all-inclusive tax used on the supply of goods and services, applicable to the gaming industry have become an impediment to the growth of not only gaming enthusiasts but also the overall economy of the country.

This research work shall discuss the amendments to the Central Goods and Services Act, 2017 and the Integrated Goods and Services Act, 2017 that have defined and levied tax upon online money gaming. It talks about how the growing gaming industry is going through a tumultuous phase due to an unexpected and exorbitant tax rate imposed on them. Gaming giants like Dream 11 and Games 24x7 are on the verge of shutting down due to huge tax invoices they received from the concerned government. The article further highlights the challenges and setbacks the economy would have to face in light of the increased taxes due to the emergence of illegal practices like tax evasion and black-market operations in the gaming industry. The article concludes with some suggestions that can be incorporated into the legislation in order to remove impediments to the growth of the Indian economy and undo the technical challenges that might arise in the future. The imposition of a whopping tax rate of 28% on the online gaming industry has created a reservation in the minds of investors who are unwilling to invest because of the suspicion of lesser revenue.

The article analyses the amendment levying tax of 28% GST on online money gaming in light of the Indian market and further discusses the negative impact of the amendment upon the gaming industry.

## **Introduction**

Online gaming has garnered attention in recent years as a popular means of entertainment in India. Research conducted by the International Centre for Sports Security (ICSS) has shown the betting industry in India to be worth over 130 billion USD. According to a report by FICCI and Ernst & Young Private Limited,

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<sup>1</sup> Shreya Singhal, Rajiv Gandhi National University of Law, Punjab.

India stands as the second largest online gaming market in the world, with around 42.5 crore gamers in FY23.<sup>2</sup>

Amendments to the Central Goods and Services Tax Act as well as the Integrated Goods and Services Act, enacted and notified in October 2023, have attempted to regulate the growing online gaming industry by imposing a higher tax rate of 28% upon “specified actionable claims”, which include online money gaming, gambling, betting, horse racing, lottery and casinos, as opposed to the normal tax rate of 18%. Such a distinction has been made in view of the differing nature of games of chance and games of skill.

Though the amendments have introduced several regulatory measures for the online gaming industry, their impact on the gaming industry as a whole has been largely counterproductive, hindering India’s goal of becoming a USD 1 trillion economy. The excessive tax rate has discouraged both players of such online money games and foreign investors. Further, an overburdening of costs over revenues has hampered the growth of the gaming industry.

### **Regulatory Developments and Taxation in the Online Gaming Industry**

Sections 2(80A) and 2(80B) was inserted into the Central Goods and Services Act, 2017 which defines “online gaming” and “online money gaming” respectively.<sup>3</sup> Online gaming is defined as offering a game on the internet, including “online money gaming” under section 2(80A) of the Act, which is defined subsequently as “online gaming in which players pay or deposit money or money’s worth, including virtual digital assets, in the expectation of winning money or money’s worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.”

The growing popularity of online gaming has been attributed to several factors. An increasing number of people, particularly those in the older generation, are playing online games as a leisure activity due to the rise in popularity of computer and mobile gaming as well as the expansion of internet connectivity. This is evident in the rise in popularity of the online game “Ludo King” during the COVID-19 pandemic.<sup>4</sup>

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<sup>2</sup> FICCI and Ernst & Young, “Windows of Opportunity: India’s Media & Entertainment Sector - Maximizing Across Segments” (2023).

<sup>3</sup> Section 2(80) Central Goods and Services Act 2017 (Ind).

<sup>4</sup> Vijayanand, K. (2022). Regulation of E-Sports in India: Can Online Gaming Be Brought under the Purview of Cyber Laws in India? Jus Corpus Law Journal, 3, 1050.

However, the rapid expansion of the online gaming industry has several undesirable consequences and is directly linked to problems such as addiction, cyberbullying, fraud, social isolation, gambling, and cybercrime, many of which have been witnessed among online gamers playing the game “PUBG”. The “Blue Whale Challenge”, a popular online gaming challenge in 2016, led to extreme results, including players even committing suicide.<sup>5</sup> The newly emergent “Metaverse” has led to novel forms of cybercrime, with documented instances of virtual rape.

In April 2023, the Ministry of Electronics and Information Technology introduced regulations for online gaming in the form of amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, also referred to as the “Gaming Amendments”.<sup>6</sup> The regulations provide a legal foundation for an industry long afflicted with uncertainty and unethical behaviour by outliers, and represent a positive move in a dynamic field.

The Amendments have provided wide definitions encompassing all internet games as well as entities offering them, known as Online Gaming Intermediaries (OGI), with primary focus on online real money games. Online real money games allow users to play games after making “deposits”.<sup>7</sup>

Further, self-regulatory bodies are required to publish on their website, a report containing the list of verified online games, validity period, and details for suspension. In the event that a self-regulatory body’s registration is cancelled, the Central Government may direct OGIs that provide online real money games and middlemen to allow users to continue accessing online real money games that the SRB has verified.

According to Section 2(Q)(d) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, “online real money games” are those that allow players to deposit funds or other assets in the hopes of winning prizes.<sup>8</sup> In this section, “winnings” refers to any reward given or planned to be given to an online game participant in conformity with the rules of the online game and based on the player’s performance.

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<sup>5</sup> Sharma, A. (2021). Are E-Sports Sports? An Empirical Analysis vis-a-vis Developments So Far. *Global Sports Policy Review*, 2, 109.

<sup>6</sup> The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (Ind).

<sup>7</sup> Naruka, S. (2023). Critical Analysis of New Online Gaming Rules of India. *Indian Journal of Integrated Research in Law*, 3, 1, 7.

<sup>8</sup> Section 2(Q)(d) The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021(Ind)

This means that, since “kind” refers to anything that represents a win rather than necessarily money, online non-real money games that award tokens or vouchers in the shape of money will also fall under this regulation. It is quite unfair to these games because, despite not involving real money, they will also be subject to new regulations.

Lastly, the distinction between skill-based and chance-based games is largely ambiguous, due to a lack of definition of either kind of game. The Supreme Court specifically tested the game of rummy based on the idea of skill versus chance in the cases of *State of Andhra Pradesh v. K. Satyanarayana & Ors.*,<sup>9</sup> and *State of Bombay v. R.M.D. Chamarbaugwala*,<sup>10</sup> wherein it was found that rummy is a game of skill, as opposed to three-card games like “Teen Patti Flush,” which is a game of chance. The Supreme Court held that any game involving the shuffling and dealing of cards contains an inherent element of chance due to the unpredictable distribution of the cards in the shuffled deck. Therefore, regulatory measures for online gaming are relatively novel.

In October 2023, the Central Goods and Services Tax (Amendment) Bill and the Integrated Goods and Services Tax (Amendment) Bill were passed after approval from the GST Council, and subsequently, the Parliament, which levy a tax of 28% on betting, casinos, horse racing clubs, and online gaming. The rates, made applicable via notification by the Central Board of Excise and Customs, was a revision from the previous rate of GST of 18%.

Further, Schedule III of the Act was amended to include the tax requirement from the aforementioned categories as actionable claims other than specified actionable claims, including betting, lottery, casinos, horse racing, gambling, and online money gaming.<sup>11</sup> The amendment has made activities relating to online gaming clear specific in addition to according recognition to virtual digital assets.

### **Challenges and Consequences for India’s Online Gaming Industry**

The online gaming industry has two aspects to it, one being the game of skill and the other being the game of chance. Games of skill are won by using one’s mind, whereas games of chance are won by mere luck.

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<sup>9</sup> *State of Andhra Pradesh v. K. Satyanarayana & Ors.*, AIR 2020 AP 11228.

<sup>10</sup> *State of Bombay v. R.M.D. Chamarbaugwala*, AIR 1957 SC 699.

<sup>11</sup> Schedule III, Central Goods and Services Act 2017 (Ind).

With the increased rate of taxation to 28% for games of chance, the gaming industry as a whole would suffer a setback.<sup>12</sup>

Many gaming apps like Quizy, Dream 11, Games 24x7, and the like have faced the plight of the imposed taxation.<sup>13</sup> In terms of both the user base and valuation, Dream11 is the industry leader in the fantasy gaming sphere in India. Further, Games 24x7, a popular online gaming forum hosting games such as RummyCircle and My11Circle, has gained traction in recent years. Some gaming apps due to increased costs had to lay off their workers causing a loss to the growing Indian economy, even worse, some gaming apps had to either shut down completely or close some of their units. Dream11, PlayGames 24x7 and several other real money gaming firms, were accused of evading approximately Rs. 55,000 crore in GST, the largest amount of claim against a company since the show cause notice of Rs. 21,000 crore issued to Gameskraft. A notice of around Rs 21,000 crore was sent to Dream11. Gaming giant Dream 11 received a show-cause notice from the Director General of GST Intelligence (DGGI) office for the white-collar crime of tax evasion.<sup>14</sup>

Prior to August 2023, the gaming industry paid taxes to the exchequer at the rate of 18% GST on the revenue earned. This also created a great deal of revenue for the government. However, with the changes proposed at the 51st meeting of the GST Council, not only the tax percentage increased from 18% to 28%, but also the tax earlier was paid out of the revenue earned by the gaming industry, but now it is calculated on the full-face value of the deposits.<sup>15</sup> Calculating tax on the full-face value is arbitrary and discriminatory to the gaming industry.

In Gameskraft Technologies Private Limited v. DGGSTI, the question before the High Court of Karnataka was whether online games based on skill, such as rummy, can be classified as ‘gambling’ or ‘betting’ under Schedule III of the Central Goods and Services Act, 2017. Highlighting the distinction between games of skill and games of chance, the High Court held that games such as rummy could not be classified as games of chance. Further, it revoked the levy of GST on Gameskraft Technologies Private Limited, which had been wrongly accused of providing facilities for “betting” and “gambling” on its website. Instances such

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<sup>12</sup> The Economic Times. (2023, July 13). Fuelling foul play and finishing fair play: How GST will distort gaming industry. Retrieved January 1, 2024, from <https://tinyurl.com/3d9n57s3>.

<sup>13</sup> Ibid.

<sup>14</sup> Outlook India. (2023, October 3). DGGI Slaps GST Evasion Notices To Dream11 And Play Game 24/7. Retrieved January 1, 2024, from <https://tinyurl.com/5f4ekbyd>.

<sup>15</sup> Live Mint. (2023, August 2). Gaming industry slams no rollback on 28% taxation. Retrieved January 2, 2024, from <https://tinyurl.com/3rywe4su>.

as these display the lack of clarity regarding the determination of games of skill and chance for the purposes of levying tax, which is yet to be resolved even after the amendments to the CGST Act and the IGST Act.<sup>16</sup>

Gaming giants are facing the trouble of increasing costs as their costs are superseding their revenues which leads to less money in hand with them, as a result, their ability to invest in new games is hindered, further, hampering the innovation aspect. Foreign investors while investing in other jurisdictions consider a lot of factors, the majority of them being the taxation laws of the country and the government subsidies. With whooping taxes on the gaming industry, foreign direct investments would face a setback in the country. Additionally, the existing platforms would cease to carry out their function in India which would help benefit the offshore platforms, leading to outflow of Indian currency.

Due to increased taxation, investors would try to evade their taxes by indulging in illegal and unethical practices like black market. This whole scenario would boost the black-market operations. After, the implementation of these taxes, gamers would either have to face the freight of high taxes or they would have to indulge in illegal activities which are anti-national in nature. High taxation has equated the online gaming with gambling.

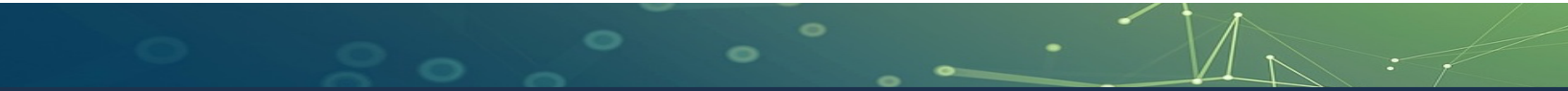
### **Conclusion**

The drastic increase in the rate of GST on the online gaming industry from 18% to 28% has led to unfavorable consequences for the growth of the Indian economy, and has negatively impacted players, operators and investors. Gaming giants such as Quizy, Dream11 and Games 24x7 have been subjected to excessive scrutiny, leading to an imbalance of revenues and costs, causing losses. Players are reluctant to spend on such games, and investors are discouraged from funding them. Though a certain level of regulation is needful in order to curb fraudulent activity, such a high tax rate has impeded the expansion of the bustling gaming industry.

In view of these complex challenges, it is imperative that lawmakers revisit the decision to levy a tax rate of 28% upon online money gaming. The innovative and novel nature of the gaming industry along with the booming domestic and foreign investments that it has ushered in are factors that need to be considered in determining the tax to be levied, and a balanced approach that takes into consideration these factors need to be adopted. In order to capitalise on the economic growth of the gaming industry,

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<sup>16</sup> Maheshwari, A. (2023). The GST Conundrum of Online Gaming. Indian Journal of Law and Legal Research, 5, 1.



which will further assist it in reaching its goal of becoming a USD 1 trillion economy, it is necessary for India to set up a harmonious balance between regulation by way of increased taxation and a liberalized approach resulting in economic growth.



## I. Introduction<sup>1</sup>

“When a man sells eleven ounces for twelve, he makes a compact with the devil, and sells himself for the value of an ounce.”

-Henry Ward Beecher<sup>2</sup>

Chiefly defined under OECD jurisprudence and EU competition law<sup>3</sup>, the act of pricing necessary goods exorbitantly high, especially in times of emergency, to take advantage of, and profit off people’s need is called ‘profiteering’. It is usually intercepted by the implementation of antitrust and consumer protection laws<sup>4</sup> or by statutes which ban excessive pricing of essential goods at certain times<sup>5</sup>. Especially, in the backdrop of the almost recent VAT rate reductions occasioned by COVID 19, to alleviate the effects of the economic crash caused by the pandemic, anti-profiteering laws assume great importance.

One such legal provision is Section 171 of the Indian Central Goods and Services Tax Act, 2017<sup>6</sup>, (hereinafter CGST Act, 2017) which intends to benefit consumers by effectively reducing GST rates and increasing the availability of Input Tax Credit so that manufacturers do not fill their pockets at the cost of the consumers. Section 171 on paper does not prohibit businesses from strategically increasing their prices for commercial profit, but it is a regulatory measure against unjust profiteering.

The article will primarily analyze the functioning and constitutionality of the anti-profiteering measure in comparison with similar international tax policies from Australia and Malaysia.

## II. How anti-profiteering under GST works:

### a) Intent behind the Formation of the NAA:

Historically, Contracts Act, 1872<sup>7</sup> and the Central Excise and Customs Act, 1962<sup>8</sup> have had codified customary equitable principles against unjust enrichment. In the pre-GST era, the Comptroller and Auditor

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<sup>1</sup>Mousumi Das, Damodaram Sanjivaiyya National Law University, Andhra Pradesh.

<sup>2</sup>Beecher, H. W. (1869b). Plymouth Pulpit: A Weekly Publication of Sermons Preached by Henry Ward Beecher.

<sup>3</sup> Gerber, D. J. (2020). Competition law and antitrust. Oxford University Press, USA.

<sup>4</sup> Treaties of the European Union: Consolidated Versions of Treaty on European Union and Treaty on the Functioning of the European Union. (2016).

<sup>5</sup> OECD, Secretariat, Policy Roundtables, Excess Prices, Directorate For Financial And Enterprise Affairs Competition Committee, 18. (2011).

<sup>6</sup>Central Goods and Services Act, 2017, No. 12, Acts of Parliament, 2017 (India), § 171.

<sup>7</sup> Ibid.

<sup>8</sup> The customs act, 1962, no. 52, acts of parliament, 1962 (India).

General of India in a 2010 report<sup>9</sup>, while conducting performance audits in 23 states from 2005 to 2009, had exposed that several suppliers had not reduced the maximum retail price (MRP) of their goods even though tax rates had been significantly reduced, which the commodity prices did not reflect<sup>10</sup>, and that a benefit of 86 million US dollars had been illegally diverted to enrich their own pockets<sup>11</sup>. To tackle such situations, on November 16, 2017, the government created the National Anti-profiteering Authority (NAA) to enforce the anti-profiteering clause of the CGST Act, 2017 via a three-tier structure<sup>12</sup>.

The first phase in the three-stage anti-profiteering review process involves state screening committees evaluating reported occurrences and referring them to the standing committee. After verifying the facts, the standing committee selects which cases to transmit to the Directorate General of Safeguards (DGS). The DGS files complaints with the NAA, which has a three-month investigating window that can be extended by another three months. The NAA is able to issue fines, reduce costs, refund money that were not passed along with 18% interest, cancel business registrations, and more. Initial investigations, like the ones carried out in the cases of a Honda dealer<sup>13</sup> and Hindustan Unilever<sup>14</sup>, indicate a lengthy process that spans four to seven months. Notably, there are indications that more direction could be required as to the methodology for assessing pricing compliance. These rules apply to both MRP-based and non MRP-based goods as well as services.

#### **b) Structure of the NAA:**

NAA, consisting of a five-member standing committee, was to be chaired by a retired high court judge or a member of the Indian legal service who has served at least three years in the capacity of additional secretary or above in the central government. Other members were to be joint secretary level commissioners in central excise and service tax, either at the centre, or in any of the states.

The sunset clause determined that NAA was to be functional for two years from the date of its inception, unless the GST council, comprising of the Director General of Anti-profiteering (DGAP) and nine tax officials from the centre or state level screening committees, decided otherwise. Currently, the fate of the

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<sup>9</sup> Comptroller and Auditor General of India, Implementation of Value Added Tax in India – Lessons for Transition to Goods and Services Tax – a Study Report (2010).

<sup>10</sup> Comptroller and Auditor General of India, Implementation of Value Added Tax in India – Lessons for Transition to Goods and Services Tax – a Study Report (2010).

<sup>11</sup> Comptroller and Auditor General of India, Implementation of Value Added Tax in India – Lessons for Transition to Goods and Services Tax – a Study Report ¶ 2.44.

<sup>12</sup> Central Goods and Services Tax Rules, 2017 (CGST Rules 2017), R.126.

<sup>13</sup> M/s Honda Cars India Ltd. v The Commissioner, Central Excise and Service Tax.

<sup>14</sup> Hindustan Unilever Ltd. v Commissioner of G.S.T & Central Excise.

NAA is ambiguous as the High Court of Delhi determines the constitutional validity of its discretionary powers<sup>15</sup>.

**c) Functions of the NAA:**

NAA is in charge of examining whether the benefits of a rate cut or input tax credit have been passed down to customers in the form of lower prices<sup>16</sup>. It identifies registered entities that have failed to transfer these advantages<sup>17</sup>. NAA has the power to issue orders, which includes requirements of price reductions, issuing of penalties equivalent to 10% of the amount profiteered and cancellation of the registration granted to the profiteer under the CGST Act, 2017<sup>18</sup>, restoration of funds equal to the unpassed benefit plus 18% interest, and starting additional investigations as deemed appropriate<sup>19</sup>. NAA ought to ensure accountability and transparency in the implementation of fair trade practices by submitting a quarterly performance report to the GST Council. If the valid recipient is unidentified or does not claim the higher amount, the money goes to Consumer Welfare Fund (CWF)<sup>20</sup>. Besides adjudicating on consumer complaints, NAA can also take suo moto action, a benefit not extended to suppliers.

**d) Litigation under the current anti-profiteering system:**

The DGAP claimed in *DGAP v. Nestle India Ltd.*<sup>21</sup> that advantages of the GST tax reduction must only be transferred through a corresponding decrease in pricing, in accordance with Section 171 of the CGST Act, 2017. But the NAA departed from this position in order to prevent the supplier from pocketing the excess money and to guarantee the transfer of benefits. The NAA recognised a number of approaches for passing on GST advantages in *DGAP v. L'Oréal India Pvt Ltd.*<sup>22</sup>, including post-supply price decrease, MRP reduction, and grammage rise. The authority was swayed by the case of *Hindustan Unilever Limited*<sup>23</sup> to provide recognition to the benefits transfer via grammage increase, subject to the provision of pertinent documentation.

As demonstrated in *Neeru Varshney v. Lifestyle International Pvt. Ltd.*<sup>24</sup>, supplier discounts were seen as ordinary business practices and not related to adherence to anti-profiteering laws, i.e., discounts were

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<sup>15</sup> Dipak Mondal, Delhi HC to Hear 51 Petitions against Anti-Profiteering Law under GST, Business Today, Dec. 12, 2020.

<sup>16</sup> Central Goods and Services Tax Rules, 2017 (CGST Rules 2017), R. 127 (i).

<sup>17</sup> Central Goods and Services Tax Rules, 2017 (CGST Rules 2017), R. 127 (ii).

<sup>18</sup> Central Goods and Services Tax Rules, 2017 (CGST Rules 2017), R. 127 (iii).

<sup>19</sup> Central Goods and Services Tax Rules, 2017 (CGST Rules 2017), R. 133 (iv).

<sup>20</sup> GST Anti-Profiteering Authority to Aid Consumer Confidence, The Economic Times, 25 July 2017.

<sup>21</sup> *DGAP v. Nestle India Ltd.*, Case No. 70/2019.

<sup>22</sup> *DGAP v. L'Oréal India Pvt Ltd*, IO. No. 20/2022.

<sup>23</sup> supra note 13.

<sup>24</sup> *Neeru Varshney v. Lifestyle International Pvt. Ltd.*, Case No. 8/2018.

not a part of taxable value and therefore discounts were not taken into account in order to compute the reduction in prices. The NAA emphasises the importance of a fair understanding of “commensurate reduction” in order to combat profiteering. A more expansive meaning incorporates both volume (an increase in grammage) and value (a decrease in price), but a rigorous reading restricts it to value reduction. The dual interpretation seeks to accomplish the intended goal of the legislation and successfully counteract profiteering.

### III. Constitutionality of NAA:

In 2018, the National Anti-Profiteering Authority (NAA) Chairman chose a case-by-case approach rather than establishing rules for deciding the mechanism of price reduction<sup>25</sup>. There has been inconsistent results from the NAA's use of discretionary techniques, such as averaging base prices<sup>26</sup> and utilising actual prices paid<sup>27</sup>. Important words like “commensurate reduction” are not defined, which leaves businesses perplexed. For instance, the NAA used a range in the case of Director General of Anti-Profiteering versus Lite Bite Travel Foods Pvt. Ltd.<sup>28</sup>, but has sought an absolute figure in other instances. Such proceedings that are conducted on the basis of entirely discretionary methodologies vastly differ from case to case and end up in violation of the principles of natural justice.

Difficulties arise since no a defined appeal procedure exist for NAA orders, which can lead to licence revocation. Businesses have to appeal under Art. 226 of the Constitution<sup>29</sup>, which imposes an unfair burden on our high court. There is an urgent need for statutory appeal process and a separate forum for appeals.

The absence of a grace period for modifications makes compliance challenging for businesses. The NAA also applies fines for non-compliance, but due to lack of clarity as to which remedial actions are to be taken first, uncertainty is created when it comes to how anti-profiteering laws are put into practice.

The litigation before the High Courts is mainly fixated on the following points of law<sup>30</sup>:

#### a) Fixed period to pass benefits of commensurate reduction:

The NAA requires companies to share the advantages of price reductions right away, ignoring the real-world difficulties Fast-Moving Consumer Goods (FMCG) companies confront while having to wait for stock

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<sup>25</sup> Kir, A. (2023). Profiteering Under GST: Lessons from India, Australia and Malaysia. *British Tax Review*, 3, 295, 302–303.

<sup>26</sup> Meenakshi Agrawal v M/s Rajkotia Medicare, Case No.69/2022.

<sup>27</sup> Ritika Vohra v. M/s Jay Cee Chemists Pvt Ltd, Case No.50/2022.

<sup>28</sup> Director General of Anti-Profiteering versus Lite Bite Travel Foods Pvt. Ltd, Case No. 44/2020.

<sup>29</sup> Indian Constitution. Art. 226.

<sup>30</sup> Bajpai, D., & Bhargava, V. (2022). Anti-profiteering under the Goods and Services Tax Law. *International In-house Counsel Journal*, 15, 7563, 7567-7568.

returns. Besides, the need for a perpetual reduction in pricing conflicts with the quickly shifting dynamics of the market.

**b) MRP reduction deemed mandatory:**

The NAA mandates a forced decrease in the MRP without taking petitioners' voluntary reductions or discounts into account<sup>31</sup>, which makes such a requirement unnecessary.

**c) Section 171 of CGST Act violates Article 14<sup>32</sup> and 19<sup>33</sup> of the Constitution of India and is thus unconstitutional:**

Article 14 provides the right to equality to any citizen of India. It is curbed by the exercise of unduly broad authority in determining the reduction in prices, a metric which varies from case to case. Article 19(1)(g) of the Constitution allows a citizen to rightfully practice any profession or carry on any occupation, trade or business. This right to trade is violated by the NAA's unrestrained discretion in regulating the prices, without taking into account, the market forces. The termination of registration for a violation implies restriction of trade for businesses.

**d) Interpretation of NAA amounts to price control:**

The NAA's restrictive interpretation, which demands a complete price drop following the GST cut, amounts to price control. It ignores a number of variables that might affect prices, including rising costs for labor, fuel even after a decrease, and raw material costs.

**IV. International tax policies:**

**a) Australia:**

Australia replaced its previous wholesale sales tax in July 2000 with its version of Goods and Services Tax. The Australian Government provided the Australian Competition and Consumer Commission (ACCC) exceptional authority for official price monitoring in order to stop consumer abuse and pocketing of undue profit by the suppliers, during the transition period by making sure that pricing modifications matched changes in tax rates<sup>34</sup>. During the three-year transition period that spanned from July 1999 to June 2002, the ACCC's rules placed a strong emphasis on the "net dollar margin rule," which forbade companies from raising net dollar product margins just because of changes in the GST<sup>35</sup>. In the first six months of the new

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<sup>31</sup> Supra note 23.

<sup>32</sup> Indian Constitution. Art 14.

<sup>33</sup> Indian Constitution. Art. 19(1).

<sup>34</sup> Cousins, D. (2001). The GST: The ACCC's Role and the Impact on Prices. Paper presented at the NSW Economics & Business Teachers' Conference, Australian Competition and Consumer Commission.

<sup>35</sup> Fels, A. (1999). The ACCC's Role in Preventing Price Exploitation in Relation to the New Tax System Changes. Paper presented at the National Conference of the Association of School Bursars and Administrators, Australian Competition and Consumer Commission.

tax system, the “Everyday Shopping Guide,”<sup>36</sup> a supplementary article to the guidelines, offered estimated price ranges for 185 popular home items and services. The widely disseminated handbook gave customers the ability to confront shopkeepers, report inaccurate pricing to the ACCC, and help companies establish rates that would reduce regulatory attention.

**b) Malaysia:**

When Malaysia switched from the sales tax to its version of Goods and Services Tax in 2015, anti-profiteering measures were put in place by the Price Control and Anti-Profiteering Act 2011 (PCAP 2011)<sup>37</sup>. PCAP 2011, which is still in force, provides a framework for identifying “making profit unreasonably high”<sup>38</sup> by taking into account variables such as company expenses, tax implications, supply and demand dynamics, and market/geographical considerations<sup>39</sup>. If these percentages—applied only to food, drinks, and home goods—exceeded the base established at the start of the fiscal year, profiteering was reported. The legislation from 2018<sup>40</sup> kept the mark-up and margin percentage methods for detecting profiteering, but also broadened the scope to include other products and services. The consequences of non-compliance were severe and included heavy fines and jail time.

**V. Conclusion**

The implementation of anti-profiteering clause is in need of uniformity in its enforcement as much as a multilaterally defined, less arbitrary structure. A balance between discouraging profiteering and giving companies the freedom to modify pricing in response to rising expenses should be struck by incorporating the criticisms of the current Section 171 as early as possible. The market forces are always shifting and tax regulations of a country cannot be too stringent, lest it shuns away its businesses.

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<sup>36</sup> Australian Competition and Consumer Commission. (n.d.). Consumers to be helped by price guide. Retrieved from <https://www.accc.gov.au/media-release/consumers-to-be-helped-by-price-guide>.

<sup>37</sup> Price Control and Anti-Profiteering Act 2011. Act 723 as at 1 November 2018..

<sup>38</sup> Price Control and Anti-Profiteering Act 2011 s.14(2).

<sup>39</sup> Price Control and Anti-Profiteering Act 2011 s.15(2).

<sup>40</sup> Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profits for Goods) (Net Profit Margin) Regulations, 2018. (2018).

# Navigating the GST Terrain: Impact on MSMEs and Pathways to Mitigation

The<sup>1</sup> implementation of the Goods and Services Tax (GST) Act in 2017<sup>2</sup> aimed at revolutionizing trade and supply chains by consolidating 17 diverse types of indirect taxes into a singular, cohesive system. This innovative framework introduced four distinct tax slabs – 5%, 12%, 18%, and 28%, categorizing over 1200 commodities accordingly. However, it's noteworthy that certain essential items like petroleum, gas, and liquor remained excluded from the GST purview. Despite the laudable intent behind GST, its journey witnessed nearly 2000 amendments within a mere seven years, prompting valid concerns about its stability and effectiveness. While the GST regime undeniably fostered improvements in trade facilitation and supply chain efficiency, it also brought forth a myriad of challenges. These challenges, including compliance burdens, inflationary pressures, and logistical bottlenecks, have significantly impacted businesses across various sectors. Among the worst-hit segments, the Micro, Small, and Medium Enterprises (MSMEs) sector stands out, grappling with the brunt of these repercussions.

As per the Micro, Small & Medium Enterprises Development (MSMED) Act of 2006<sup>3</sup>, Micro, Small, and Medium Enterprises (MSMEs) are categorized into two classes: Manufacturing and Services. Manufacturing enterprises are delineated by a turnover of up to 10 crore rupees, while service enterprises fall within the 5 crore rupees range, with further internal distinctions between micro, small, and medium enterprises<sup>4</sup>. The MSME sector contributes to 45% of India's Total Industrial Employment, 50% of India's Total Exports and 95% of all industrial units of the country.<sup>5</sup>

Registration stands as a cornerstone of GST implementation; it is necessary if aggregate turnover of an entity exceeds Rs.10 lakhs in special category states and Rs.20 lakhs in other states unless business opts for a composition scheme. Therefore, even small businesses are required to register themselves and do several compliances. For entities with an annual turnover below 2 million, the task of providing goods without proper registration presents formidable hurdles and administrative complexities because, they are unable to benefit from different schemes and the suppliers or buyers are also disdained by the thought. This poses a significant concern as there are 91,46,216 unregistered SSI entities in India.<sup>6</sup>

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<sup>1</sup> Rakshak Tyagi and Alok Kumar, Army Institute of Law, Mohali.

<sup>2</sup> Central Goods and Services Tax Act, 2017. (2017, April 12).

<sup>3</sup> Request rejected. (n.d.). <https://samadhaan.msme.gov.in/WriteReadData/DocumentFile/MSMED2006act.pdf>

<sup>4</sup> Institute of Cost Accountants of India. (n.d.). Impact of GST. Retrieved from <https://tinyurl.com/2xe34m7z>.

<sup>5</sup> Ibid.

<sup>6</sup> Unregistered SSI Sector Review of Results. (n.d.). Retrieved from <https://dcmsme.gov.in/ssiindia/census/ch5.htm>

Similarly, for those entities surpassing the 2 million mark but falling below the 15 million threshold on an annual basis, they find themselves at a crossroads at the outset of each fiscal year, faced with a dual selection dilemma one of opting composition or the regular tax regime.

Should they opt for the composition scheme, an eligible manufacturer must remit 2%, while a supplier of restaurant services must pay 5%, and any other supplier must contribute 1% of their turnover, accurately distributed between CGST and SGST or UTGST as applicable.<sup>7</sup> Registration under GST law is compulsory for opting for the Composition scheme and the option for composition levy can only be availed by submitting a form electronically prior the commencement of the financial year. A registered individual is not permitted to select the Composition scheme in one state while abstaining from it in other states.<sup>8</sup> A service provider, excluding those involved in restaurant services, is not eligible to choose the composition levy. Furthermore, for those falling within the ambit of the high tax slab, the privilege of availing Input Tax Credit (ITC) remains elusive, alongside the inability to furnish intra-state services as entities doing inter-state supply are ineligible for opting composition. This ineligibility also leads to operational and financial overheads as registration and supply set-up has to be done in different states altogether. A manufacturer involved in producing ice cream, pan masala, or tobacco, individuals engaged in inter-state supplies, as well as casual or non-resident taxable persons, are ineligible to choose the Composition Scheme. Consequently, these entities must navigate through the complexities of the tax regime and encounter operational challenges.

In contrast, selecting the alternative avenue mandates the engagement of a professional accountant due to various complexities such as quarterly tax payment and different tax payment according to supply falling under different tax slabs and distinct categories of central tax, state tax and integrated tax, thereby incurring additional financial overheads. Consequently, this financial burden necessitates small-scale service providers or producers to contemplate augmenting the selling price of their products, consequently diminishing their market viability and impeding their capacity to compete effectively against larger market incumbents offering analogous product offerings.

Moreover, the compliance burden imposed by the choice between registration and composition schemes often leads to operational inefficiencies and diverting resources from core business activities. Small scale

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<sup>7</sup> Central Board of Indirect Taxes and Customs. (n.d.). GST Flyer: Chapter 11. Retrieved from <https://tinyurl.com/3fzhpk2f>.

<sup>8</sup> Ibid.



businesses are the worst hit by this as they already are in their budding stage with a lot of consideration in respect to financial and operational constraints. Additionally, the lack of clarity and consistency in tax regulations further compounds the challenges faced by businesses, leading to uncertainty and reluctance in investment and expansion initiatives.

E-commerce operators face heightened complexity as they lack a threshold exemption from the law, necessitating registration and meticulous tracking of each product's supply.<sup>9</sup>The provision of transfer goods or services between associated or separate entities, regardless of consideration, falls under GST when conducted as part of business activities.<sup>10</sup> Additionally, the transfer of goods or services from one state to another, even within the supplier's own network or through an agent, qualifies as a supply and is liable to IGST.

If an unregistered vendor supplies goods to a GST-registered individual, the reverse charge mechanism becomes applicable. This implies that the recipient must directly pay the GST instead of the supplier. The registered buyer subject to GST under reverse charge must generate self-invoices for the purchases conducted.<sup>11</sup> The reverse charge mechanism presents a dual challenge. If MSMEs are unregistered, buyers may hesitate to engage in transactions due to the tax liability they would incur. Conversely, if suppliers are unregistered, a common occurrence in the MSME ecosystem where reliance on fellow small enterprises is frequent due to financial and operational interdependencies, it introduces additional accounting burdens for the registered MSMEs. This added complexity is often unfavorable for these businesses.

There are numerous challenges associated with claiming Input Tax Credits (ITCs), one of which pertains to the timing of availing the credit. In cases where goods are received in multiple lots or installments, the ITC can only be claimed upon receipt of the final lot or installment.<sup>12</sup> This poses a significant hurdle for small businesses, as they often lack the capacity to purchase in bulk and must resort to acquiring goods in smaller lots or installments. Being unable to claim the credit until the entire supply is received places unfair financial constraints on these enterprises, hindering their operations. Another issue with Input Tax

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<sup>9</sup> Ibid.

<sup>10</sup> (Schedule I, Central Goods and Service Tax, 2017)

<sup>11</sup> (Section 9(4), Central Goods and Service Tax, 2017)

<sup>12</sup> Aj. (2023, July 14). All about Reverse Charge Mechanism (RCM) under GST. Cleartax. <https://cleartax.in/s/reverse-charge-gst>

Credits (ITCs) is that taxpayers are unable to report them on the tax invoice; instead, they can only claim them in the future once the goods are delivered. This interruption in cash flow significantly impacts business dealings and can pose substantial challenges to trading practices. The law also imposes a 180-day deadline for settling invoices. Failure to meet this deadline results in the need to repay the Input Tax Credits (ITCs) already claimed to the government, along with interest under Section 50 which can be as much as 18% of the unpaid tax.<sup>13</sup> ITC can only be reclaimed once payment is made to the supplier. This convoluted process of paying, reclaiming, facing penalties, and reclaiming again creates significant disruption and frustration. Coupled with the time limit, it feels like a constant threat looming over enterprises, deviating from standard trade practices

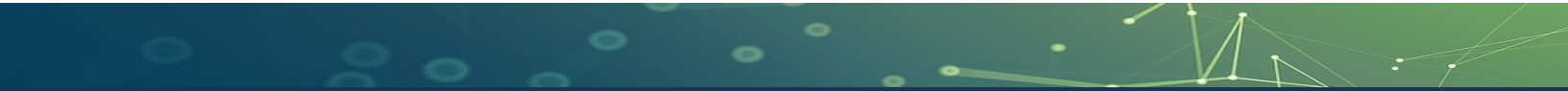
As GST operates as a destination tax, tax obligations arise in the state where the goods or services are received, in the case of inter-state supply. If the place of supply is inaccurately determined, the tax must be remitted to the correct government having jurisdiction, and any taxes paid erroneously must be claimed as a refund. However, considering the provision stipulating that a person may be subject to arrest if they collect GST but fail to remit it to the government within three months, a dilemma arises. If an individual mistakenly submits the tax to a different government and then awaits a refund before repaying it, this delay may lead to their arrest and economic repercussions. To address this issue, enhancements to government systems and networks can be enacted to prevent minor mistakes from disrupting the core operations of entities.

When discussing the persistent issues in the GST system, it is important to explore potential solutions that, if properly implemented, could alleviate these challenges. One such solution involves simplifying the composition scheme to make it more accessible for MSMEs, thereby incentivizing their participation. Additionally, extending the benefit of Input Tax Credit (ITC) to entities registered under the composition scheme could further encourage their involvement by ensuring financial advantages. Currently, transitioning to the composition scheme entails forfeiting previously availed ITC<sup>14</sup>, which hampers its attractiveness. Similarly, including inter-state supply within the purview of the composition scheme could address obstacles faced by businesses, particularly in border areas between states, where the costs and

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<sup>13</sup> CA Club. (2023, December 15b). Section 50 of CGST Act 2017: Interest on Delayed Payment of Tax | CA Club. Retrieved from <https://tinyurl.com/58rsum7c>.

<sup>14</sup> CGST Section 18 Availability of Credit in Special Circumstances 2. (n.d.). Retrieved from <https://cleartax.in/v/gst/gst-acts/cgst-section-18-availability-of-credit-in-special-circumstances-2>.



complexities of registering and establishing units in different states can pose significant challenges and hinder supply expansion. This situation, though ironic, underscores the need to streamline processes and remove barriers to facilitate smoother business operations.

# GST: A promised dawn to Digital Economy

Contemporary<sup>1</sup> world witnesses an era of revolution, and the post pandemic times trigger a need to digitalize. India aspires to digitalize 20% of its economy by 2026<sup>2</sup>. The schemes of 'Digital India' further highlights the need to digitalize. Digitalization essentially implies the technological dependence of organizations to ensure participation in economic affairs. It is vital to not restrict the characteristic of the digital economy to merely an internet-based economy, as internet continues to be inaccessible to a fraction of Indian population. Digitalization on the contrary focuses on an assured inclusive growth. It strives to materialize the goals of welfare state enshrined in Part IV of the Indian constitution, and on the same grounds it becomes essential to widen the understanding of digital economy as a technologically enabled economy with internet as an instrument to facilitate efficient functioning of businesses. Striving to digitalize entire economic system at once appears strenuous, however gradually increasing the share of digitalized economy in national GDP through methodological and calculated steps appears achievable and practical.

Multiple developments have aided in digitalizing the Indian economy. E-commerce, and digital goods and services contribute the largest to digitalize economy. Digitally enabling goods and services, like data centers, internet and computers provide a stable foundation for digital economy to thrive, while a uniform system of taxation continues to support the evident ingredients of digital economy. This organized, efficient, and coherent system of taxation is popularly called the GST. GST has revolutionized the Indian taxation system, replacing multiple existent indirect taxes like excise duty, value added tax (VAT) and service taxes. The Goods and Service Tax, famously called the GST is a multi- stage taxation system that is imposed at every pedestal of value addition. The new system of indirect taxes has rightly streamlined the flow of indirect taxes since 1<sup>st</sup> July, 2017<sup>3</sup>. The introduced tax system is materialization of the aspiration of 'One Nation, One Tax'<sup>4</sup>. It establishes a stable foundation for the economy of nation to thrive, by bringing transparency, assuring uniform taxation across the nation, and paving a way for uniform taxation

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<sup>1</sup> Pragya Richa Tiwary, Dharmashastra National Law University, Madhya Pradesh.

<sup>2</sup>Ministry of External Affairs. (n.d.). Digital Economy to Contribute More Than 20% to India's GDP by 2026: IT Minister. Retrieved February 28, 2024, from <https://indbiz.gov.in/digital-economy-to-contribute-more-than-20-to-indias-gdp-by-2026-it-minister/>.

<sup>3</sup> Invest India. (n.d.). GST: Overall Impact and Transformation. Retrieved February 28, 2024, from <https://www.investindia.gov.in/team-india-blogs/gst-overall-impact-transformation>.

<sup>4</sup>Goods and Services Tax Council. (n.d.). Brief History of GST. Retrieved February 28, 2024, from <https://gstcouncil.gov.in/briefhistorygst#:~:text=One%20Nation%2C%20One%20Tax%3A%20GST,the%20cascading%20effect%20of%20taxes.>

laws to exist. It is vital to bring to light the fact of GST being a destination-based tax that aims to reduce tax burden on businesses by allowing for an Input Tax Credit (ITC) which enables businesses to claim credits for already paid taxes on inputs and raw materials.

### **Objectives of GST that materialize the aspirations of digital economy**

The characteristics of GST establish it as an indispensable element that pillars the development of digital economy. Primarily, GST aims to integrate the Indian taxation system. It strives to transform indirect taxation system and fundamentally make it transparent. The system is in alignment with the need of modern trends of digitalization as it profoundly provides for online services, accessible to all business ventures assuring technological dependence of businesses. The provisions of e-Way bill system, e- invoice, and promoted usage of quick response codes (QR codes), compel tech dependence<sup>5</sup>. In addition to the aforementioned fact, such online transactions and receipts prevent the possibility of frauds, and money leakage. E-invoicing essentially refers to registration and documentation of GST transactions in a government portal. This boosts digitalization of economic affairs through a reduced need of human intervention for tallying, checking etc. Digital economy endeavors to make economic affairs paperless, and innovations of government that facilitate GST collection in the form of e-billing and e-invoice along with presence of a dedicated portal to register and monitor tax flow uphold the idea of digitalization of economy. IRIS Onyx is a dedicated platform that integrates e- way bills and e-invoicing to automate the process of generation of Invoice Registration Number (IRN). IRN is a unique number that identifies each GST transaction. This hints at the data dependence of GST. Such employment of new technologies and compulsory dependence on the same assure an increased online participation and consequentially act instrumental in achieving the dream of a digitalized economy. The aspirational development of GST chain to assure safety and integrity of uploaded and registered data is a step that would further assure online participation. As stated by the government, the current portal is susceptible to hackers and a possibility of privacy breach is predicted. To counter the same, GST chain strives to uphold transparency and assure impossibility of tampering data<sup>6</sup>. It takes away the dependence on 3<sup>rd</sup> party, thereby assuring data sovereignty to India and its citizens. It would make ITC (Input Tax Credit) settlement easier, faster and efficient.

### **GST's contribution to digitalizing economy**

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<sup>5</sup> IRIS GST. (n.d.). E-Invoicing and E-Way Bill: Generating E-Way Bill Using IRP. Retrieved February 28, 2024, from <https://irisgst.com/e-invoicing-and-e-way-bill-generating-e-way-bill-using-irp/>.

<sup>6</sup>Blockchain Government of India. (n.d.). Concept Note on GST Chain. Retrieved February 28, 2024, from [https://blockchain.gov.in/Documents/Concept\\_Note\\_GST\\_Chain.pdf](https://blockchain.gov.in/Documents/Concept_Note_GST_Chain.pdf).

Waves of COVID-19 pandemic had shattered economic systems worldwide. However, the fact of GST collection witnessing a growth surprise global citizen. CGST revenues witnessed a growth of 1.3 lakh crore rupees in 2021-22. Against the existent average monthly gross GST revenue of Rs 94,734 in 2020-21 to Rs. 1.23 lakh crore in 2021-22. The reason for the same has been an improved GSTR-3B filing. GSTR- 3B refers to the summary of GST returns. The stated filings have improved from 74% to 87% in September 2020 and February 2022 respectively. Further, the improvement of GSTR-1 filings from 54% to 82% in September 2020, and February 2022 respectively hint towards citizens' and businesses' compliance with taxation rules. This implies that most transactions of the nation are now streamlined within the framework of GST system. GST has surely increased online participation. It is evident from the enhanced value of e-bills generated for every month. The value of e-bills has risen from 16.9 lakh crore rupees to 25.7 lakh crore rupees in January 2021 and March 2022<sup>7</sup>.

E commerce invites GST payment. It can be CGST (Central Goods and Services Tax), SGST (State Goods and Services Tax) or IGST (Integrated Goods and Service Tax). For inter- state transactions IGST is collected, whereas for intra-state transactions CGST and SGST are collected. Indian e-commerce market is expected to witness a growth rate of 18% through 2025. With approximately 1 billion internet users by 2025, coupled with the expected growth rate of e-commerce market in India, India successfully becomes the fastest growing e commerce market in the world. 100% FDI are allowed via the government route in e commerce<sup>8</sup>. GST further promotes foreign investment in e-commerce by establishing a uniform framework, which brings a sense of security to investors. GST has therefore paved a way to attract investments in the already digitalized sector of e-commerce<sup>9</sup>. It is practical and feasible to gain investments in already digitalized sectors and consequentially have increased share of digital economy in GDP of nation, and GST aids in the same.

### **Newly discovered opportunities to increase online GST collection**

A substantial increase in online transactions promises an increased share of digitalized economy in national GDP (Gross Domestic Product). GDP refers to the total value of goods and services produced

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<sup>7</sup> Press Information Bureau. (n.d.). Cabinet approves Memorandum of Cooperation between India and Japan on partnership in 'Specified Skilled Worker'. Retrieved February 28, 2024, from <https://pib.gov.in/PressReleasePage.aspx?PRID=1814822>.

<sup>8</sup>Invest India. (n.d.). E-Commerce. Retrieved February 28, 2024, from <https://www.investindia.gov.in/sector/retail-e-commerce/e-commerce>

<sup>9</sup>Invest India. (n.d.). GST: Overall Impact and Transformation. Retrieved February 28, 2024, from <https://www.investindia.gov.in/team-india-blogs/gst-overall-impact-transformation>.

within a nation in a specified period of time. It can be calculated annually or quarterly. The post pandemic landscape of Indian economy observes a trend of startups. Governmental schemes of 'Start-up India', further inspire young entrepreneurs to participate in nation building. The Ministry of Electronics and Information Technology has an initiated named TIDE 2.0 that aims to aid and promote startups in the technical domain that employ newer technologies of Artificial Intelligence, block chain etc. The scheme has a cumulative outlay of Rs. 264.62 crores in 5 years<sup>10</sup>. Such startups would surely be instrumental in boosting digital economy in India. In addition to this, the technology acquaintance of these startups would guarantee GST transactions being made purely online. Hence, the TIDE 2.0 scheme assures technology dependence on two grounds. First through the very nature of startups and secondly, through online transactions and tax payment.

The developing domain of digital goods and services, provides for a scope to implement GST on newly invented online services and goods. For example, the unimaginable acceptance of e books was beyond the contemplation of human civilization. E books have replaced hard cover books to quite some extent. It is evident that the future is digital and the possibility of replacements of traditional instruments is predicted. Software and SaaS (Software as Service) would form foundation of future market transactions. These evolving technologies provide for a growing space to impose taxes. India is majorly a service-based nation, driven by brilliant minds. Hence, innovation is evident, which is further fueled by the government scheme of 'Make in India'. When nations worldwide underwent lockdown, India adapted to newer means of earning their livelihood. For example, doctors provided online consultations and teachers taught through online classes. The possibility of new online services being developed is predicted too. The mentioned advancements expand the scope of levying taxes, thereby assuring increased tax collected. This would further pave way for digitalization of economy as online transactions would increase.

### **Conclusion**

The goods and services tax system is instrumental in boosting digital economy in India. Through its uniform system of taxation, it brings transparency and assures inclusive growth. It has provision for e-way billing and e-invoicing which already contribute to digitalization. The development of GST chain assures data protection thereby inspiring online participation. GST provides for a conducive environment for foreign investments in the already digitalized sector of e commerce. New innovations will provide for a broader scope to impose GST and since, the future is majorly digital, a boost to digital economy is assured.

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<sup>10</sup> Ministry of Electronics and Information Technology. (n.d.). Innovation Promotion. Retrieved February 28, 2024, from <https://www.meity.gov.in/content/innovation-promotion>.

# NOTIFICATION AND CIRCULARS

## **1. Revenue has notified the public tech platform for frictionless credit**

Vide notification no.06/2024, [F. No. CBIC-20001/1/2024-GST], the revenue has notified “Public Tech Platform for Frictionless credit”. It is a platform developed by RBI as part of its Statement on “Developmental and Regulatory Policies”. It will be used to share the information by the common portal based on consent.

“Public Tech Platform for Frictionless Credit” means an enterprise-grade open architecture information technology platform, conceptualised by the Reserve Bank of India as part of its “Statement on Developmental and Regulatory Policies” dated the 10th August, 2023 and developed by its wholly owned subsidiary, Reserve Bank Innovation Hub, for the operations of a large ecosystem of credit, to ensure access of information from various data sources digitally and where the financial service providers and multiple data service providers converge on the platform using standard and protocol driven architecture, open and shared Application Programming Interface (API) framework”

## **2. Press Release Against fraudulent summons**

Director General of GST Intelligence, BIC, via press release on 10th February, 2024, has acknowledged the incidence of fraudulent summons and reminded the taxpayers regarding the facility of Document Identification number (DIN) verification. By circular no. 122/41/2019-GST, CBIC made it necessary for the officers to provide DIN in their communication which can be verified on “VERIFY CBIC DIN” window.



# RELEVANT CASES

1. **Supreme Court Upholds Allahabad High Court Judgement which provided that “Administrative Delegated functions such as Circulars cannot circumvent legal statues”:** Allahabad High Court | *M/S Vivo Mobile India Private Ltd v Union of India* | 2023: AHC:194323-DB

## Facts

The Petitioner is a duly incorporated company engaged in the manufacturing, assembly, and wholesale trade. It was the contention of the respondent that the Input Tax Credit (ITC) availed by the petitioner during the period of February 2020 to August 2020 was excessive in nature, the GST Authorities alleging that petitioner had claimed excess Input Tax Credit of Rs. 110 Crores, reliance was based on Circular No. 113 dated 11.11.2019 issued by the Central Board of Indirect Taxes and Customs. Based on the Circular, tax demand along with penalty and interest totaling to Rs. 235.52 Crores was raised under Section 74(9) of the GST Act.

## Issues

1. Whether the claims by GST Authorities based on circular dated 11.11.2019 were appropriate.
2. Whether the Demand of sum 235.52 crores by the GST Authorities was legitimate.

## Judgement

The Allahabad High Court in its ruling stated that Input Tax Credit is a substantive right which has been provided by the GST Act, under Section 16, and the circular dated 11.11.2019 and this cannot override statutory provisions as these provisions has the sanction of the legislature and an act of delegated function cannot override it. It interpreted the proviso to Rule 36(4) of the GST Rules, creating a deeming fiction during the COVID-19 period, and allowing for a longer reconciliation period.

The Court directed the respondents to return the entire excess recovery amount of Rs. 11 Crores to Vivo Mobile with 6% interest. The judgment emphasized the legislative intent to facilitate taxpayers and revenue during the COVID-19 period. The Court observed that intention of the legislature to make claim of Input Tax Credit as a substantive right is clear from the conjoint reading of Sections 16, 41, 49(2) and 2(46) of the GST Act.

**The Supreme Court via order dated 04.01.2024 rejected the special leave petition filed by the state upholding the judgement of the Allahabad High Court.**

2. **Attachment of Bank account prior to the determination of the wrongful availing of ITC is merely a arm-twisting-method: Vivek Narsaria v. State of Jharkhand W.P. (T) No. 4491 of 2023, decided on 15-1-2024.**

### **Facts**

The SGST initiated a proceeding against the petitioner. Which was followed by another SCN by the CGST asking the petitioner to revert the credit availed as it was allegedly done on the account of fraudulent transactions. Further DGGI of CGST carried out a search in the premises and properties of the petitioner and various summons were issued in the furtherance of this proceeding.

Meanwhile the petitioner was issued a SCN by SGST in order to revert the wrongly availed ITC along with the penalty therein. The petitioner submitted the amount of 40.00 Lakhs and reverted 3.42 crores in the furtherance of the order. However, the bank account of the petitioners was frozen by the department.

### **Issue**

1. In a case of multiple proceedings which authority shall carry out the entire proceeding as per Section 6 of CGST?
2. Whether it is lawful to freeze the bank account without the determination of liability?

### **Judgement**

While relying on the provision of Section 6 r/w clarification dated 5.10.2018 and 22.06.2020, where all the proceedings are related to a single chain of event, the department which initiated the proceeding for the first time shall continue the proceeding. The officer of central GST does not have any extra power in these circumstances as per the scheme of the Act.

In reference to the freezing of bank account, the Hon'ble Court lamented the action of the department by declaring the freezing of the bank account before proving any liability as arm twisting method used against the assessee to make them succumb to a particular authority.

- 3 **Appeal against Demand Order for Tax and Penalty - Vardan Associates v. Assistant Commissioner of State Tax Special Leave Petition (C) No. 21079 of 2022.**

### **Facts**

The appellant, a company engaged in horizontal directional drilling, contracted with GAIL for various projects. They availed services of M/s. Hariom Freight Carriers (HFC) to transport a machine from Uttar

Pradesh to West Bengal for a project. An E-way bill was generated for the transportation, but the validity expired before the actual movement due to delay in arranging transportation by HFC.

Consequently, the consignment was detained by tax authorities in West Bengal, and a demand for tax and penalty was issued. The appellant appealed against the demand order, deposited a portion of the tax amount, and sought provisional release of the consignment.

### **Issues**

1. Whether the imposition of tax and penalty on the appellant is justified given the expired validity of the E-way bill during transportation.
2. Whether the appellant's plea of ignorance due to HFC's failure to provide transportation is valid.
3. Whether the consignment, being an "inter unit transfer" of capital goods, should be exempt from taxation.

### **Judgement**

The court acknowledges the fault on the part of the appellant for not ensuring a valid E-way bill during transportation. Despite the fault, considering the consignment was owned by the appellant and used for contractual obligations, the court decides to intervene on the quantum of penalty. The court reduces the penalty imposed by 50% to Rs. 27,00,000, while upholding the tax amount of Rs. 54,00,000. The appellant is directed to deposit the revised penalty amount along with the tax, and upon payment, the consignment will be released. The decision is made under Article 142 of the Constitution of India and is not to be considered a precedent. The court's decision balances the fault of the appellant with the need for fairness, reducing the penalty while upholding the tax amount owed. It emphasizes the importance of compliance while acknowledging the circumstances leading to the issue.

# Doing Business in Jharkhand

In Jharkhand, the rich mineral reserves set it apart globally, being the only state in India to produce coking coal, uranium, and pyrite. This makes it a magnet for mineral-based ventures, attracting investors keen on tapping into its wealth.

Among its industrial giants, Jharkhand proudly hosts Tata Motors and Tata Steel in Jamshedpur, where they operate expansive manufacturing facilities. These industrial players not only drive economic growth but also create avenues for businesses in various sectors like auto-parts, electricity generation, and cement production. With an installed power capacity exceeding 2770 MW, the state ensures a steady energy supply to fuel its industries and sustain its development.

## list of Major Sectors in Jharkhand

1. **Textiles, Apparel and Footwear**
2. Agro – Processing/Food Processing,
3. Biotechnology/ Pharmaceuticals
3. Information Technology
4. Cement
5. Auto-Mobiles
6. Auto-Components
7. Steel Aluminum and Coal to poly generation Industries
8. Tourism
9. Mining

## Textiles, Apparel and Footwear

The textile sector is one of the most prominent sectors in Jharkhand. Jharkhand describes the textile sector as one of the prominent sectors for the growth and development of Jharkhand. This sector has become one of the key attractions for the investors as the state incentivizes the sector to promote its competitiveness globally. Jharkhand has observed tremendous growth in the sericulture. Whereas handloom, handicraft, khadi and textiles also remain on the crosshairs policy makers.

With reference to the textile sector Jharkhand predominantly relies on Tasar silk and its derivatives. Renowned nationwide for its Tasar silk variety, Jharkhand has witnessed significant progress in boosting exports and enhancing the quality and output of Tasar silk. Commanding a lion's share of 62% in Tasar silk production, Jharkhand yields approximately 1200 metric tons of this silk variety. The state benefits greatly from its abundant natural resources, particularly in the rearing of wild Tasar silk.

Government Provides Various incentives/subsidy/schemes/rebates for the promotion of the industry. A generalized list of the incentives is listed hereinbelow.

## Incentives Provided by Central Government

| S. No.   | Category                             | Incentive   | Note  |
|--|--------------------------------------|---|---|
| 1  | Capital Investment Subsidy           | 20% up-to INR 50 Cr.  |   |
| 2  | Interest Subsidy                     | 7% or 50% of the interest rates up-to 7 years from the date of Production | The loan should have been availed from the Public financial Bank and the subsidy is available up-to the amount of INR 1 Cr. |
| 3  | SGST                                 | 50 Percent  |   |
| 4  | Stamp Duty and Registration Fee      | 100% reimbursement on the stamp duty and transfer duty                    |   |
| 5  | Quality Certification                | 50% of the expense up-to INR 10 Lacs.                                     |   |
| 6  | Patent Registration                  | 50% of the expense up-to INR 10 Lacs.*                                    |   |
| 7  | Cluster Development                  | 15%   |   |
| 8  | Power Tariff                         | 50% of the electricity expenses up-to 7 years                             |   |
| 9  | Skill Development                    | One time Support up-to INR 1000   |   |
| 11   | Mandi Fee Exemption                  | No Fee  |   |
| 12   | Electricity                          | 50% of Power Tariff, 100% of electricity duty for 7 Years                 |   |
| <b>Establishment of new Textile/ Apparel/ Footwear Parks</b> |                                      |   |   |
| 13   | Mega Textile/Apparel Park (75 Acres) |   |   |
| a  | Capital Investment Subsidy           | Half of the project cost or INR 40 Crores whichever is lower              |   |
| b  | Stamp Duty                           | 50% of Stamp Duty   |   |

# Incentives Provided by Government of Jharkhand

| S. No    | Incentive   | Note   |
|----------|---|--|
| <b>1</b> | <b>Capital Investment Subsidy</b>   |  |
|          | <ul style="list-style-type: none"> <li>ATUFS</li> </ul>                                 | Maximum Subsidy up-to INR 30 Crores<br>Garmenting, Technical Textiles, Composite units among others are eligible for this scheme                           |
|          | <ul style="list-style-type: none"> <li>SPELSGU</li> </ul>                               | Additional 10% up-to INR 20 crores<br>Employment Generation Benefit  |
| <b>2</b> | <b>Export Subsidy</b>   |  |
|          | <ul style="list-style-type: none"> <li>Merchandise Exports from India Scheme</li> </ul> | For eligible Textiles and Merchandise 2% to 5%   |
|          | <ul style="list-style-type: none"> <li>Interest Equalization Scheme</li> </ul>          | 3%<br>Manufacturers are eligible to avail this benefits.   |
|          | <ul style="list-style-type: none"> <li>Duty Drawback Scheme</li> </ul>                  | Cotton Yarn and Manmade apparels among others are eligible for duty drawback scheme.<br>Variable rates for drawback based upon the availment of input tax. |
| <b>3</b> | <b>Textile and Apparel Park</b>   |  |
|          | <ul style="list-style-type: none"> <li>Scheme for Integrated Textile Park</li> </ul>    | 40% up-to INR 40 Cr. of the Cost in Grant or Equity.   |
|          | <ul style="list-style-type: none"> <li>Industry Workers Hostel Scheme</li> </ul>        | 50% up-to INR 3 Cr.  |

### **As per the Jharkhand Common Incentive Disbursement Guidelines:**

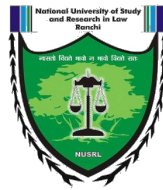
1. The applicants should register at [www.advantage.jharkhand.gov.in](http://www.advantage.jharkhand.gov.in).
2. After the registration through single window portal the applicants may choose for the incentive they are applying for.
3. The applicants has to fill Common Application form (CAF-1) which consists of questions to shortlisting the applicants according to their eligibility. After getting shortlisted for the policy the second level of the form appears.
4. The eligible applicants has to choose from multiple incentive types for which they are eligible as except the export policy the applicants cannot obtain multiple advantage from the same incentive type as per the policy of the Jharkhand Government.
5. The applicants need to apply for the incentive provided in the specific sector thereafter they can opt for the incentives provided in the Jharkhand industrial investment promotion policy,2016.
6. Wherever permissible the applicants can also apply for the similar incentives to the central government.
7. After going through all these processes the final list of the applicable incentives will appear.
8. If date of production certificate is not required for the incentive the applicants may move forward with the application and upload all the required documents.
9. Once the application is submitted, it will be sent to the officer concerned for its furtherance further an SMS and E-Mail will be sent to the applicant notifying the confirmation of the submission.

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