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## **E-COMMERCE TAXATION IN INDIA: COLLECTION OF GST FROM ONLINE FOOD AGGREGATORS**

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### **ABSTRACT**

India has an everlasting rich culture for diverse cuisine and traditional dishes. This has significantly resulted in the unprecedented growth of the restaurants and food service industry in India. Innovation in smart phones, significant internet penetration in all classes of the society and easy access to smartphones have created a new channel in form of Mobile Food Delivery Aggregator (MFDA) apps which has drastically transformed the way eateries operate. Restaurants have created a new service desk for app-based customers through Online Dispute Resolution and Virtual customer assistance, which makes it essential to view and scrutinize every regulatory and supervisory framework that affects this space as they predominantly influence the investor choices and internal business-related managerial decisions in the corporations.

Under the modified GST regime enforced from January 1<sup>st</sup>, 2022, the Government has notified that the E-commerce operator will be under statutory obligation to collect GST directly from consumers and pay it to the Government for the 'services' supplied by them. The purpose of this article is to analyse, explore and understand 'E-commerce-taxation regime' with special focus limited to the GST collection by the online food aggregators, the legislative intent behind them and the implications of the same on the consumers, restaurants and various stakeholders in the virtual food delivery ecosystem.

**Keywords:** Consumers, E-commerce operator, GST collection, Online food aggregators, Restaurant services.

## 1. Introduction

India has an everlasting rich culture for diverse cuisine and traditional dishes. This has significantly impacted the unprecedented growth of the restaurants and food service industry in India – which has been growing at a fast pace in every vicinity. Meal planning and prepping, grocery shopping is all seen as a chore by a good number of Indian upper middle class, creating a spike in demand for services that releases them of such inconvenient chores. More than 45,000 restaurants provide home delivery and derive majority of their profits from take-away category.

The ever-increasing popularity of the Mobile Food Delivery Aggregator (MFDA) apps has drastically transformed the way eateries operate. Prior to the inception of such apps, restaurants relied on traditional delivery model in order to please their customers. This add-on service is still in existence among the Dominos chain in India. Earlier, this conventional mode was adopted as there had never been a business channel or delivery channel in smart phones. Innovation in smart phones, significant internet penetration in all classes of Indians and easy access to smartphones have created a new channel to serve the consumers. Through Online Dispute Resolution and Virtual customer assistance, restaurants have created a new service desk for app-based customers. Various studies have shown that logistics and delivery is the most wealth creating sector in India- food delivery aggregator has led to the creation and generation of huge number of employment opportunities. As per Research and Market study, India's virtual food delivery market is expected to reach 21.41 Billion Dollars by 2026<sup>1</sup>. The Cloud Kitchen Market in India is also expected to grow rapidly. Therefore, it is safe to say food aggregator apps make up a critical segment of the Indian economy. Hence, it is essential to view and scrutinize every regulatory and supervisory framework that affects this space as they predominantly influence the investor choices and internal business-related managerial decisions in the corporations.

The Goods & Service Tax (*hereinafter as 'GST'*) regime is influential and drastically affects the business prospective of the food industry as the tax on supply of goods/services is either required to be paid by the supplier under the forward charge mechanism or by the recipient

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<sup>1</sup> Research & Markets, *India 21.41 Billion Online Food Delivery Market to 2026: Focus on Bangalore, Delhi NCR, Mumbai, Hyderabad & Pune* (May 17, 2021). <https://www.globenewswire.com/en/news-release/2021/05/17/2230423/28124/en/India-21-41-Billion-Online-Food-Delivery-Market-to-2026-Focus-on-Bangalore-Delhi-NCR-Mumbai-Hyderabad-Pune.html>

under the reverse charge mechanism.<sup>2</sup> Under the modified GST regime, the Government has notified that the E-commerce operator (*hereinafter as 'ECO'*) will be under statutory obligation to collect GST directly from consumers and pay it to the Government for the 'services' supplied by them. In this context, 'supply of restaurant services' (other than the services supplied by restaurant, eating joints, etc. located at specified premises), the GST on these would be collected and paid by the ECO (i.e, Food Aggregators) with effect from January 1, 2022 to the concerned Government.<sup>3</sup> This paradigm shift of incidence from the restaurants to the food aggregators will have drastic implications on the hotel-food industry in toto.

The research purpose is to analyse and understand what kind of tax reforms have been introduced with respect to online food aggregators, the legislative intent behind them and the implications of the same on the consumers, restaurants and various stakeholders in the virtual food delivery ecosystem. E-commerce-taxation regime has been explored with special focus limited to the GST collection by the online food aggregators and their impact. The project aims to deal with the following research questions:

- a) What is the motive behind the new GST regime reform?
- b) What are the repercussions of these reforms on online food aggregators, consumers and small businesses/ restaurants?

The methodology adopted is doctrinal in nature which focuses on critically analysing the new GST reforms introduced in the previous year and current year through various primary data resources like circulars, legislations and notifications, and secondary data resources like newspapers and articles available.

The first chapter enroutes the concepts of E-Commerce taxation regime in India focusing on the GST liability imposed on ECO. This will be followed in the second chapter by discussing the new reforms introduced by the Government and analysing their legislative intent. The next portions primarily focus on the implications of the reformed GST regime on the food aggregators. The last chapter will constitute the concluding remarks of the authors.

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<sup>2</sup>*Facing issues in implementing GST changes for Restaurants and Food aggregators?* TAXMANN [2021] 133 taxmann.com 201.

<sup>3</sup> *Ibid* at 139.

## 2. E-commerce taxation: E-Commerce Operator liability

Electronic Commerce or predominantly termed as 'E-Commerce' has become a hotspot for buyers and sellers of goods for conducting transactions in an open virtual space. E-Commerce has gradually become an integral part of strategic business policies, boosting economic development and facilitating the growth and expansion of global economies.<sup>4</sup> GST is a comprehensive tax levied on 'producing, selling and utilization of products and services' at a national level.<sup>5</sup> GST is an indirect tax which is destination-based, value added and multi-staged, levied on the final consumption of goods and services. The tax liability has to borne by multi-players from the very beginning till the final user i.e. manufacturers, suppliers, retailers, intermediaries and the ultimate consumer.<sup>6</sup>

### 2.1 General Provisions Relating to GST On E-Commerce Operators

The term 'E-Commerce' has been defined in Sec. 2(44) of the CGST Act, 2017 to mean "*the supply of goods or services or both, including digital products over digital or electronic network.*" This definition is indicative of the fact that if an online website or portal merely provides a platform to engage in exchange of information about the goods and services between the viewer and the main supplier of goods and services, it would not amount to E-commerce as there is no actualisation of supply happened over digital or electronic network. Section 2(45) of the CGST Act, 2017 defines the term 'Electronic Commerce Operator' as "*any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.*" This definition is an inclusive definition and covers under its ambit not only the cases where the online or digital platform is owned by a person but also the persons who have management or operating rights irrespective of the ownership aspect. Section 24(x) of the CGST Act, 2017 has made it mandatory for EOC's to obtain registration irrespective of the value of supply made by them and the threshold exemption benefit is not made available to e-commerce operators. The provision for mandatory registration is applicable on only those ECO's who are required to collect tax at source under Section 52 of the CGST Act, 2017. In cases where the EOC is

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<sup>4</sup> Dr. Pankaj Gupta, *E-Commerce in India-A New Perspective*, 2 INTEGRATED JOURNAL FOR RESEARCH IN ARTS AND HUMANITIES 26, 31 (2022).

<sup>5</sup> Diksha Panwar, *Impact of Goods and Services Tax on the Restaurants and Food Service Businesses in India* INTERNATIONAL JOURNAL OF APPLIED BUSINESS AND ECONOMIC RESEARCH 1, 12 (2017).

<sup>6</sup> Jyoti Peswani and Alka Pandey, *A Review of Billing Structure in the GST Regime with Special Reference to Restaurant Industry*, 3 INTERNATIONAL JOURNAL OF MANAGEMENT AND INFORMATION TECHNOLOGY 20, 21 (2021).

collecting GST from the consumers in place of the suppliers under a notification issued under section 9 (5) of the CGST Act, 2017, the suppliers of such services are entitled for threshold exemption.<sup>7</sup>

### 3. Reforms brought in the GST Collection regime vis-à-vis Online Food Aggregators

Until recently, the process of GST collection and payments in respect of food ordered through food delivery apps like Zomato, Swiggy was such that restaurants charged 5% GST on food bills to its ultimate customers and the food delivery apps charged 18% GST commission from restaurants for delivery of their food and marketing purposes<sup>8</sup>.

“On 17<sup>th</sup> September 2021 the GST Council held its 45<sup>th</sup> meeting in Lucknow where it took decisions regarding major changes in the taxation regime. One of these changes was to make ECO liable to pay tax on restaurant services provided through it with some exceptions [w.e.f. 1st January, 2022].<sup>9</sup>

The Council also suggested to add “Restaurant Services” under Section 9(5) of the CGST Act, 2017. Section 9(5) deals with taxability of supply of services –output tax of which shall be paid by e-commerce operator even though e-commerce operator is not the actual supplier<sup>10</sup>. In case a particular service is notified under S. 9(5), the actual supplier of goods does not need to get registered even if the turnover exceeds the threshold limit when the supplier of goods is the ECO. The liability to comply with GST provisions fall on the ECO.”

Accordingly, the ECOs are no longer required to collect Tax Collected at Source (herein referred to as TCS) and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5)<sup>11</sup>. However, with respect to other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will have to continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner as it was.

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<sup>7</sup>CBIC, *FAQ: E-Commerce*, available on <https://www.cbic.gov.in/resources/htdocs-cbec/gst/faq-e-commerce.pdf>.

<sup>8</sup> Anshul, *Zomato, Swiggy liable to pay 5% GST from Jan 1; here's what it means for customers, restaurants* CNBC (21<sup>st</sup> December 2021) available at <https://www.cnbcv18.com/personal-finance/zomato-swiggy-to-collect-5-gst-will-food-become-costly-for-customers-check-here-who-will-be-impacted-11959362.html>.

<sup>9</sup> *Supra* note 7.

<sup>10</sup> Central Goods and Services Act, 2017, §. 9(5), No. 12 of 2017, Acts of Parliament (India).

<sup>11</sup> *Tax Collected At Source ( TCS ) Under Goods and Services Tax*, CLEAR TAX (12<sup>th</sup> January 2022) available at <https://cleartax.in/s/tcs-under-goods-and-services-tax>.

### 3.1 Collection of GST Prior to 1st January 2022

Prior to the reforms brought on 17<sup>th</sup> September 2021, the GST collection regime was as follows:

#### *Process Description*

1. Customer (A) orders food online through Food Aggregator (F) from the desired restaurant (Y) listed on the F's platform.
2. F provides order details to A and collects payment from A for both restaurant services and delivery services.
3. Y raises a tax invoice (including GST) for its supplies to A.
4. F makes payment to the delivery partner (X) for delivery services.
5. F makes net payment to Y (including GST levied on supply) for restaurant services after considering the following:
  - (a) F charges TCS amount (under GST)
  - (b) F deducts its commission charges along with GST (issues a separate tax invoice to Restaurant).
  - (c) F deducts any other charges<sup>12</sup>.

### 3.2 Collection of GST After 1st January 2022

The process flow for supply of restaurant services through ECO in context of GST after January 01, 2022 would be as under:

#### *Process Description*

1. Customer (A) orders food online through Food Aggregator (F) from the desired restaurant (Y) listed on the aggregator's platform

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<sup>12</sup> Facing issues in implementing GST changes for Restaurants and Food aggregators? TAXMANN [2021] 133 taxmann.com 201.

2. F provides order details to A, collects payment and issues a tax invoice to A
3. Y can issue a commercial invoice for its supplies to A
4. F makes payment to X for delivery services
5. F makes net payment to Y (excluding GST levied on supply) for restaurant services after considering the following:
  - (a) F deducts its commission charges along with applicable GST (issues a separate tax invoice to Restaurant)
  - (b) F deducts any other charges<sup>13</sup>.”

### **3.3 Tax Collection at Source (TCS) by electronic commerce operator**

In e-commerce, order for supply of goods or services is placed through portal. The e-commerce companies pass on these orders to actual suppliers of goods and services. Supply of goods or services is done by third party unknown to the person placing order. So far, e-commerce companies supplying goods were not liable to pay VAT or CST as they were not selling goods.

Recently, the services provided through portal were brought under service tax net. Now, e-commerce companies selling goods on portal are being made liable to collect 1% GST at source.”

*Electronic Commerce Operator liable to collect tax at source –“ Notwithstanding anything to the contrary contained in the Act, every electronic commerce operator (hereinafter referred to in this section as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent, as may be notified by Government, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator. ”<sup>14</sup>*

The provision of Tax Collected at Source had been introduced with effect from 1-10-2018. The Tax Collected at Source is mainly for control purposes, as balance GST will be paid by the

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<sup>13</sup> *Supra* note 10, at 156.

<sup>14</sup> *Supra* note 10, 52.

actual supplier of goods or services. The rate for TCS is 1% for IGST for inter-state taxable supply.<sup>15</sup>

In case of taxable supply of goods within the State, the CGST rate is 0.5%<sup>16</sup>. The SGST/UTGST rate will also be 0.5%. Thus, total tax collected at source will be 1%. The actual supplier can take credit of this TCS paid by e-commerce operator.

Thus, effectively, there is no increase in tax liability. However, in case of goods on which GST is not payable (like agricultural produce, fruits, books), the 1% tax collected by the e-commerce will be cost as the actual supplier of such goods will not be able to take credit of this TCS paid by e-commerce companies.

**Registration by electronic commerce operator** – “Every electronic commerce operator, irrespective of his turnover, is mandatorily required to obtain GSTIN Registration. This registration is in addition to and separate from GST registration obtained as normal supplier.”

If electronic commerce operator has suppliers in different States, he is required to obtain GST Registration in each State. However, he can indicate his head office as place of business, if he does not have place of business in that State. ECO is not required to obtain separate GST Registration for paying tax on restaurant services. ECO will be liable to pay GST even if restaurant service is supplied to them by unregistered person.<sup>17</sup> Aggregate turnover of person supplying restaurant service through ECO will include aggregate value of supplies made by restaurant through registered person, for calculating threshold consideration or any other purpose in the Act.

It is pertinent to mention here that the Income Tax Act, 1961 also provides for collecting tax at source wherein certain persons are to collect a percentage of tax, which varies from goods to goods, from their buyers at the time of sale. Section 206C of the Act governs the goods on which such tax is collectible<sup>18</sup>.

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<sup>15</sup> Notification No. 02/2018-IT dated 20-9-2018.

<sup>16</sup> Notification No. 52/2018-CT dated 20-9-2018

<sup>17</sup> CBI&C, vide Circular No. 167/23/2021 - GST dated 17-12-2021.

<sup>18</sup> Income Tax Act, 1961, §. 206C, No. 43 of 1961, Acts of Parliament (India).



### 3.4 Motive Behind the Reforms

E-Commerce taxation regime has been a difficult domain in order to determine the levy of tax liability. The reforms with respect to collection of GST by online food aggregators was brought with an intention to plug the revenue leakages which were occurring under the previous collection regime. Previously, the online food delivery platforms catered to the services of both the customers and the suppliers/restaurants by acting as an intermediary. They collected tax from the end consumers and delivered the same to the suppliers. The listed restaurants on the food delivery platforms had to pay a 5% GST on the food bill whereas the food aggregators had to pay 18% GST on the commissions which they charged from the restaurants listed for delivering their services and marketing schemes.<sup>19</sup> Then, the restaurants were supposed to pay the tax collected to the Government. This system of indirect tax collection at source was confusing and ultimately leading to tax evasion. The Income Tax Department found huge marginal differences in amount between the taxable value turned up by online food aggregators by the TCS returns filed by them and the total taxable value of supplies reported by the listed restaurants in their returns.<sup>20</sup>

Earlier there was no mandatory registration check by these food delivery apps which resulted in certain unregistered restaurants (under the GST regime) supplying their products through these platforms. As such, the revenue generated by these unregistered restaurants through their sale on these food delivery apps were not covered under the taxation regime resulting in huge losses for the government. The Fitment Committee had observed that India lost Rs2000 crore in the past 2 financial years under GST alone.<sup>21</sup> This was the reason they recommended such food aggregator apps to be classified as ECOs, who would directly collect GST from restaurants and pay the same.

## 4. Implications of Reforms on Food Aggregators

Following the GST Council's decision to shift the burden of tax collection on ECOs, i.e. in the present case online food aggregators, there have been significant implications on the online

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<sup>19</sup> Sakshi Singh, *Impact on restaurant ecosystem of 5% GST rule on food aggregators*, RESTAURANTINDIA.IN (19 January, 2022) available at <https://restaurant.indianretailer.com/article/impact-on-restaurant-ecosystem-of-5-gst-rule-on-food-aggregators.14089>.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

food aggregators- online food delivery platforms and cloud kitchens.

*Firstly*, the GST rate of 5% given in the notification for services is subject to a condition that input tax credit ('ITC') on the goods and services used in supply of the given services has not been claimed<sup>22</sup>. The condition for not claiming the ITC is linked to the transaction and not to the registered person who is liable to pay GST. "ECOs provide their own services as an electronic platform and an intermediary for which it acquires inputs/input service and on which ECOs avail input tax credit. The ECOs charges commission/fee etc. for the services it provides. The ITC is utilised by ECOs for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before." "Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash<sup>23</sup>. The impugned transaction will continue to be treated as exempt for the purpose of reversal of ITC.<sup>24</sup>"

#### 4.1 Concept of Input Tax Credit

Input Tax Credit (ITC) is the core concept of GST as GST is destination-based tax. ITC avoids cascading effect of taxes and ensures that tax is collected in the State in which goods or services or both are consumed<sup>25</sup>. "Input tax credit" means credit of 'input tax'<sup>26</sup>. The definitions of goods, i.e. input and input services is very broad. Every goods or input services except those which are declared as 'blocked credit' under Section 17(5) of the CGST are eligible for input tax credit.<sup>27</sup>

#### Section 2(62) of CGST Act defines 'input tax' as follows—

*"Input tax in relation to a registered person, means the Central tax (CGST), State tax*

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<sup>22</sup>Goods Transport Agency in GST, CBIC, available at [https://www.cbic.gov.in/resources/htdocs-cbec/gst/goods\\_transport\\_service.pdf](https://www.cbic.gov.in/resources/htdocs-cbec/gst/goods_transport_service.pdf);jsessionid=AF347FBD413DF473BDB03D3116B03D6A (Last accessed on 31<sup>st</sup> August 2022).

<sup>23</sup> Deepika Ganesan, *Supply of Restaurant Services through E-Commerce Operator*, TAXGURU (3<sup>rd</sup> January 2022), available at <https://taxguru.in/goods-and-service-tax/supply-restaurant-services-e-commerce-operator.html>.

<sup>24</sup> Explanation 4, Notification No. 11/2017-Central Tax (Rate).

<sup>25</sup> *Input Tax Credit (ITC)*, TAXMANN, available at [https://www.taxmann.com/post/blog/input-tax-credit-gst/#:~:text=1.-,ITC%20is%20core%20provision%20of%20GST,\(56\)%20of%20CGST%20Act.](https://www.taxmann.com/post/blog/input-tax-credit-gst/#:~:text=1.-,ITC%20is%20core%20provision%20of%20GST,(56)%20of%20CGST%20Act.) (Last updated on 29<sup>th</sup> August 2022).

<sup>26</sup> *Supra* note 10, §. 2(63).

<sup>27</sup> *Supra* note 10, §. 17(5).

*(SGST), Integrated tax (IGST) or Union territory tax (UTGST) charged on any supply of goods or services or both made to him and includes—*

*(a) the integrated goods and services tax charged on import of goods*

*(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9 [reverse charge of CGST]*

*(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act [reverse charge of IGST]*

*(d) the tax payable under the provisions of sub-section (3) and sub-section (4) of section 9 of the respective State Goods and Services Tax Act [reverse charge of SGST] or*

*(e) the tax payable under the provisions of sub-section (3) and sub-section (4) of section 7 of the Union Territory Goods and Services Tax Act [reverse charge of UTGST], but does not include the tax paid under the composition levy.”<sup>28</sup>*

According to Section 155 of CGST Act, the burden of proofing a claim to input tax credit lies on the person who claims that he is eligible for the same under the provisions of the Act.<sup>29</sup>

**Secondly**, under the new scheme the contracts entered into between the restaurants/suppliers and the online food aggregators need to be scrutinized and cautiously drafted due to the shift in the GST liability from the restaurants to the online food aggregators. It will have a dualistic impact on the commission of the food aggregators and the external trading cost of the restaurants.

**Thirdly**, there has been no strict demarcation or defined meaning provided to ‘cloud kitchens’ who are the major suppliers of the food aggregators. This was done in order to avoid the ongoing dispute regarding the classification of ‘cloud kitchens’ as restaurants per se. This led to another clarification notification issued by the Central Board of Indirect taxes & Customs, in line with the GST rate notifications, which provided that service by an entity, by way of cooking and supply of food even if it is exclusively by way of takeaway or door delivery or

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<sup>28</sup>Supra note 10, §. 2(62).

<sup>29</sup>Supra note 18, §. 155.

through or from any restaurant would be covered by restaurant service.<sup>30</sup> It means that the services provided by the cloud kitchens are included in restaurant services now.

**Fourthly**, there is a concept of 'Composite supply' or 'Mixed supply', wherein “two or more goods and services are supplied together” under the GST regime. The term 'Composite supply' means “a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply<sup>31</sup>.” These two kinds of supplies are treated differentially under the GST law as discussed:

**“Nature of supply treatment<sup>32</sup>**- “In case where a combination of supplies qualifies as 'Composite supply' then the treatment applicable to the principal supply from such bundle would apply to the entire bundle/combination.” “In case where a combination of supplies qualifies as 'Mixed supply' then the treatment applicable to the supply which attracts the highest rate of tax from such combination would apply to the entire bundle of supplies/combination.

Similarly, there are two distinct supplies catered by the online food aggregator – i) ECO as the deemed supplier under GST for tax collection instead of actual supplier and ii) charges recovered from delivery, packaging, coupons, etc. from the customers by catering services to the final consumers. Both the service charges are incurred on the food aggregator's account. These services are being catered and provided under different capacities of the food aggregator on its own account and therefore, they need to be distinctively identified from the services provided by the restaurants. The same situation was prevalent under the previous GST law also wherein the above two services were not considered to be in conjunction with each other.

## 5. Implications Of Amendment On Restaurants

Following the change brought in the tax collection structure, there have been several implications on the restaurants. **Firstly**, the reform has widened the tax base as it now covers many small restaurants and vendors who deliver food through the food delivery apps but were earlier not registered under the law as they did not fulfil the threshold requirements of 20 lakhs

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<sup>30</sup> *Supra* note 2, at 121.

<sup>31</sup> Deepika Ganesan, *Supply of Restaurant Services through E-Commerce Operator*, TAXGURU (3<sup>rd</sup> January 2022), available at <https://taxguru.in/goods-and-service-tax/supply-restaurant-services-e-commerce-operator.html>.

<sup>32</sup> *Supra* note 31.

rupees as such, they could evade taxes. Now however, since the burden of tax collection has shifted, even the small restaurants will be liable to pay the taxes.

**Secondly**, restaurants which are listed on the food aggregators website have to maintain two different accounts – one for their dine-in business and another for the food delivered through these apps.<sup>33</sup> As a result, their burden of compliance has increased.

**Thirdly**, the GST law states that 'every supplier' shall be liable to get registered under the GST law 'if his aggregate turnover' exceeds Rs. 20 lakhs (Rs. 10 lakhs in case of special category states)<sup>34</sup>. Post the notification, since the liability to pay GST on restaurant services is now on the food aggregators, all the provisions of GST law relating to supply of such services would apply on the aggregators as well<sup>35</sup>.

As per Section 9(5), the food aggregators have been deemed as the supplier of services. Further, the registration provision casts liability on the supplier to get registered. Therefore, in respect of the supplies made by the restaurants, one can take a view that the food aggregators would step into the shoes of the restaurants (i.e. they would be treated as the supplier for such supplies).

Given this, it can well be argued that for the purposes of GST law the impugned supply made through food aggregators would be considered as the supply of food aggregators. In view of the above, one may take a view that the supplies made by restaurants through food aggregators would not be required to be taken in to account for determining the threshold limit for GST registration because it is not his turnover.

Similarly, in respect of the supplies made by the cloud kitchens, one can take a view that the food aggregators would step into the shoes of the cloud kitchen. The question that arises in both the cases, i.e. restaurants as well as cloud kitchens is that given the above interpretation

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<sup>33</sup> *Impact on restaurant ecosystem of 5% GST rule on food aggregators*, RESTAURANTINDIA.IN (2022), available at <https://restaurant.indianretailer.com/article/impact-on-restaurant-ecosystem-of-5-gst-rule-on-food-aggregators.14089>.

<sup>34</sup> *Registration under GST Law*, CBIC, available at [https://www.cbic.gov.in/resources/htdocs-cbec/gst/Registration\\_under\\_GST\\_Law\\_new.pdf](https://www.cbic.gov.in/resources/htdocs-cbec/gst/Registration_under_GST_Law_new.pdf) (Last accessed on 31<sup>st</sup> August, 2022).

<sup>35</sup> *Facing issues in implementing GST changes for Restaurants and Food aggregators?* TAXMANN (26 May, 2022), available at <https://www.taxmann.com/post/blog/facing-issues-in-implementing-gst-changes-for-restaurants-and-food-aggregators-refer-taxmanns-guidance-note/>.

being drawn, would the cloud kitchens have to surrender their GST registration since the food aggregator is the deemed supplier of services.

## 6. Implication of Reforms on Consumers

As far as the impact of the reforms on the consumers or the end customers are concerned, there is no change in the tax liability on the same. The changes that have been effected from 1<sup>st</sup> January 2022 with respect to collection of GST from online food aggregators have no direct or indirect impact on the customers. It is only the restaurants and the food delivery apps that have to bear the burden of the new reforms. The same has been confirmed by the Revenue Secretary Tarun Bajaj who made it clear that the move will not impact end customers and they will not have to pay more.<sup>36</sup> All that the new reforms has done is shift the burden of tax payment from restaurants to online aggregators and food delivery apps like Zomato.

## 7. Conclusion

The ambit of E-Commerce taxation regime is full of challenges and implications as there is no straight jacket formula for determining the levy and tax liability. The current reformed GST regime has provided a complicated and complex paradigm shift of GST liability from the hands of the restaurants/suppliers to that of the online food aggregators with effect from January 1, 2022 on the recommendations of the Fitment committee at the 45<sup>th</sup> Meeting of the GST council convened at Lucknow. The online food aggregators need to collect tax at source directly from the customers and pay to the Government instead of the previous practice wherein the entire food bill amount was paid to the restaurant who would finally pay the tax to the Government. This reform aimed to prevent unregistered GST establishments from selling products and services on food delivery platforms. Instead of the tax authorities completely shifting the burden of tax collection and payment to food delivery apps, they should be instructed to conduct due diligence on establishments that list themselves on the apps.

The direct implication of the new GST law can be evident from the contractual nature of the relationship between the food aggregators and the restaurant suppliers. The GST liability imposed on the food aggregator has adversely affected the dual services provided by them at

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<sup>36</sup> *Zomato, Swiggy to pay GST on restaurants' behalf. Will your online food ordering bill rise?* ECONOMIC TIMES (18<sup>th</sup> September 2021), available at <https://economictimes.indiatimes.com/industry/services/hotels/-restaurants/zomato-swiggy-to-pay-gst-on-restaurants-behalf-will-your-online-food-ordering-bill-rise/articleshow/86311045.cms?from=mdr>.

the same time by acting as an 'intermediary' towards both the customers and the restaurants. The food aggregators earned their pay through the commissions received from the restaurants for their delivery services and marketing promotions for the listed restaurants on the food delivery apps and from the customers by charging them the delivery fees, packaging fees, coupon discounts, etc. The new modified reform has affected the profit margins by increasing the costs for the food aggregators as their compliance have been substantially increased with respect to filings of returns, mandatory registrations, upgradation cost on their apps, etc. due to which they have to raise the commissions charged by them for the services offered to the restaurants and increase the delivery charges charged from the consumers. In turn, the restaurants have to face a hike in the cost of marketing and advertisements related promotional activities, more comprehensive and detailed manner of book keeping need to be adopted and better reconciliation measures, etc. which makes them to increase the prices of their food products making them exorbitantly expensive and also the need to charge the 'service charge tax' from the customers, which are sometimes inclusive in the total value of the food item itself beforehand. The customers now have to pay for the inflated prices to avail the same services and products which were comparatively cheaper under the previous regime.

It will be imperative to know whether these online food aggregators would be eligible to avail procurement done from the restaurants or not? The level of repercussion suffered by the small businesses with annual turnover less than threshold limit of twenty lakhs rupees who were not covered under the earlier GST legislation is now of the great concern. Another issue that has invited the scrutiny of tax authorities is the coupon discounts offered by food delivery platforms. There are complications on the amount that must be taxed. For instance, if the price of food is Rs 100 and in order to attract consumers, the app deducts Rs 75 if the same is paid through IDBI debit card. The issue that arises is will 5% GST be levied on Rs. 100 or Rs. 25.