



ECONOMIC
LAWS
PRACTICE
ADVOCATES & SOLICITORS

E-commerce Sector

Goods and Services Tax (GST)
A Walkthrough

June 2, 2022



KEY PROVISIONS RELATED TO ECOM SECTOR



KEY PROVISIONS

IMPORTANT DEFINITIONS

- *“**electronic commerce**” means the supply of goods or services or both, including digital products over digital or electronic network;*
- *“**electronic commerce operator**” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;*

COMPULSORY REGISTRATION IN CERTAIN CASES.

- ***persons who supply** goods or services or both, other than supplies specified under sub-section (5) of section 9, **through** such **electronic commerce operator** who is required to collect tax at source under **section 52**;*
- ***every electronic commerce operator** who is required to collect tax at source under section 52;*

KEY PROVISIONS

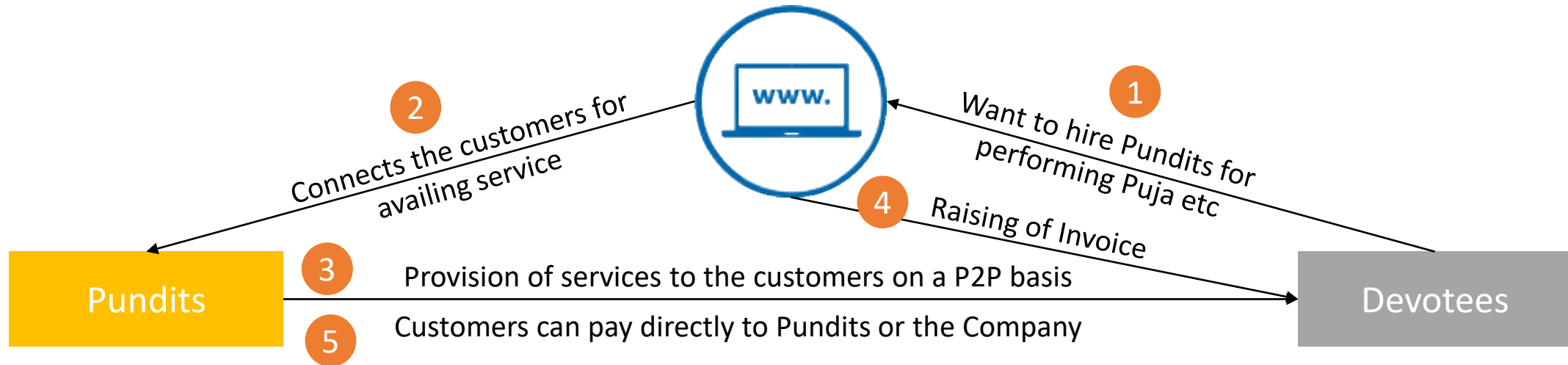
Particulars	Threshold limit available	Registration mandatory
Supply of Goods	No	Yes
Supply of Services	Yes	No (Registration only when T/O exceeds INR 20 Lakhs/10 Lakhs)

Likely to be eased

COMPOSITION LEVY.

- *he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;*

KEY PROVISIONS – CASE STUDY



Key facts

- Company earns commission for each successful transaction
- Pundits are neither employees of the company nor the company is acting as their agent

Query

- Whether company is eligible to avail exemption - “services by way of conduct of any religious ceremony”
- If above is No, whether Company can avail basic threshold exemption

KEY PROVISIONS – AGGREGATOR TAX

AGGREGATOR TAX

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

Notification No.17/2017 - Central Tax Rate F.No.334/1/2017-TRU Dated 28th June, 2017

RD + URD

1

Transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle



KEY PROVISIONS – AGGREGATOR TAX

2

URD

Accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes



3

URD

House-keeping, such as plumbing, carpentering etc



4

RD + URD

Restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.





AGGREGATOR TAX – UNREGISTERED HOTELIER

Hotelier Voucher

MakeMyTrip Booking ID - NH2003187396553

Vendor Booking ID - 0035454967

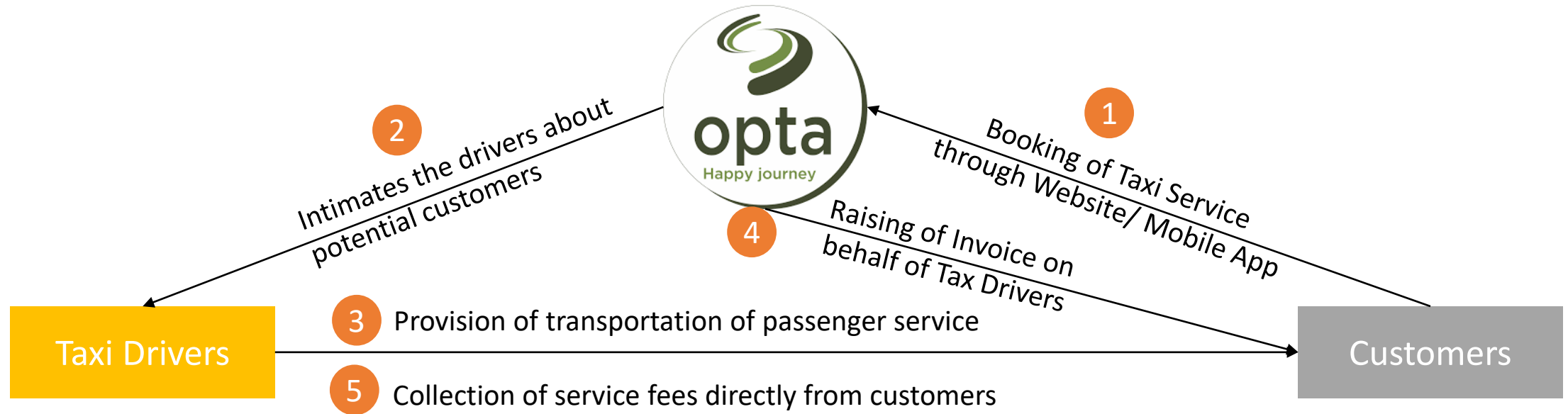
Booking Date - Fri, 29 June 18 12:32 PM



BOOKING DETAILS	PAYMENT BREAKUP																					
<p style="text-align: center;">1 Night</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">Check In 09 Jul 2018 02:00 PM</td> <td style="width: 50%;">Check Out 10 Jul 2018 10:00 AM</td> </tr> </table> <hr/> <p>Room 1 3 Adults, 1 Child (12 years)</p> <p style="margin-left: 40px;">Mountain View Room (Room Only)</p>	Check In 09 Jul 2018 02:00 PM	Check Out 10 Jul 2018 10:00 AM	<p>TARRIF</p> <table border="0" style="width: 100%;"> <tr> <td>Hotel Sell Price</td> <td style="text-align: right;">13400.0</td> </tr> <tr> <td colspan="2">1 Room x 1 Night</td> </tr> <tr> <td>Extra Adult / Child Charges</td> <td style="text-align: right;">0.0</td> </tr> <tr> <td colspan="2"><hr/></td> </tr> <tr> <td>(A) Hotel Gross Charges</td> <td style="text-align: right;">13400</td> </tr> <tr> <td>MMT Commission</td> <td style="text-align: right;">2680.0</td> </tr> <tr> <td>GST @ 18% (Including IGST or (SGST & CGST))</td> <td style="text-align: right;">482.4</td> </tr> <tr> <td colspan="2"><hr/></td> </tr> <tr> <td>(B) MMT Commission (Including GST)</td> <td style="text-align: right;">3162.4</td> </tr> </table>	Hotel Sell Price	13400.0	1 Room x 1 Night		Extra Adult / Child Charges	0.0	<hr/>		(A) Hotel Gross Charges	13400	MMT Commission	2680.0	GST @ 18% (Including IGST or (SGST & CGST))	482.4	<hr/>		(B) MMT Commission (Including GST)	3162.4	<div style="background-color: #ffff00; padding: 5px; text-align: center;"> <p>MMT to Pay Hotel (A-B) 10238</p> </div> <p>GST Regn. No.-06AADCMS146R1ZZ PAN No.-AADCMS146R CIN No. -U63040DL2000PTC105210 Service Category - Reservation of hotel booking</p>
Check In 09 Jul 2018 02:00 PM	Check Out 10 Jul 2018 10:00 AM																					
Hotel Sell Price	13400.0																					
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<hr/>																						
(B) MMT Commission (Including GST)	3162.4																					

*GST on hotel accommodation charges by Ecommerce Operator: 2412.0
Note: *As you are an unregistered hotel, MMT is liable to charge and deposit GST on the hotel accommodation charges under Section 9(5) of CGST and similar provisions of respective SGST Laws.

KEY PROVISIONS – CASE STUDY



Key facts

- Company provides IT platform for integrating taxi drivers and customers on a single platform
- A fixed monthly usage charge is recovered from tax drivers, irrespective of the trips made or income earned by the drivers

Query

Whether provisions of Section 9(5) of the CGST Act, will apply in this case?

KEY PROVISIONS - TCS

COLLECTION OF TAX AT SOURCE

- **52. (1)** Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to 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 the Government on the recommendations of the Council, **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.**

EXPLANATION

- For the purposes of this sub-section, the expression “net value of taxable supplies” shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.



KEY PROVISIONS - TCS

- **Compulsory registration by Ecom Operator in each individual state for TCS**
 - In states where there is no physical presence, the Ecom Operators may declare the head-office as its place of business for obtaining registration in that State/UT
 - The proper officer for the purpose of registration of ECOs (ecommerce companies) has also been notified by each State/UT



TCS – REGISTERED HOTELIER



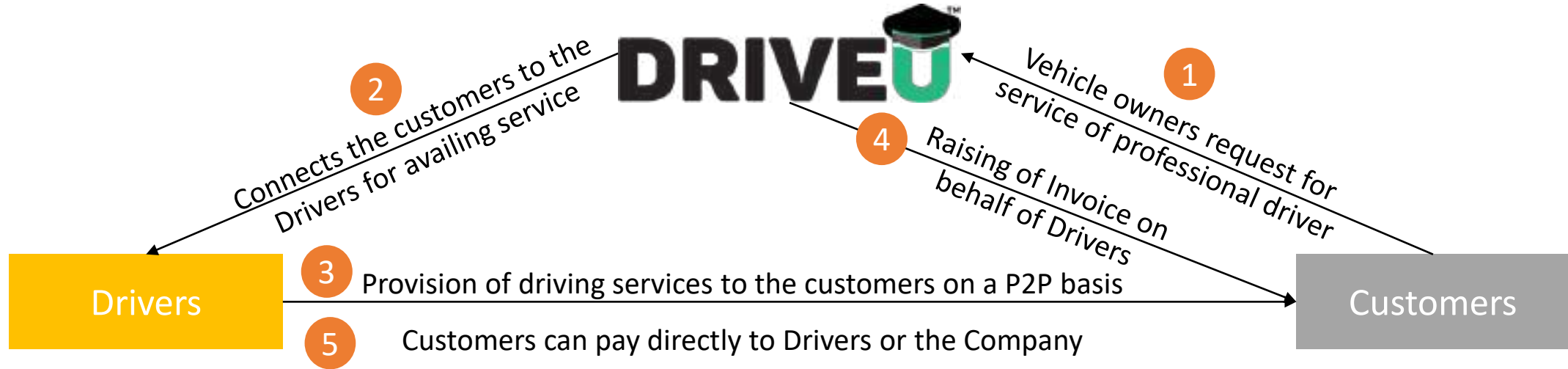
Booking ID **0055864561**

Vendor Booking ID **HTLGWET6X7**

Room Charges 1 Room X 3 Night	INR 25500.00
Extra Adult/Child Charges	INR 12000.00
Hotel Taxes	INR 9250.00
Service Charge @ 0 %	INR 0.00
(A) Hotel Gross Charges	INR 46750.00
Goibibo Commission	INR 7500.00
Goibibo GST @ 18 % (includes IGST/CGST/SGST)	INR 1350.00
(B) Goibibo Commission (Including GST)	INR 8850.00
(C) TCS @1% (includes CGST / SGST)	INR 375.00
Goibibo to Pay Hotel (A - B - C)	INR 37525.00

NOTE: TCS Amount subject to reconciliation

KEY PROVISIONS – CASE STUDY



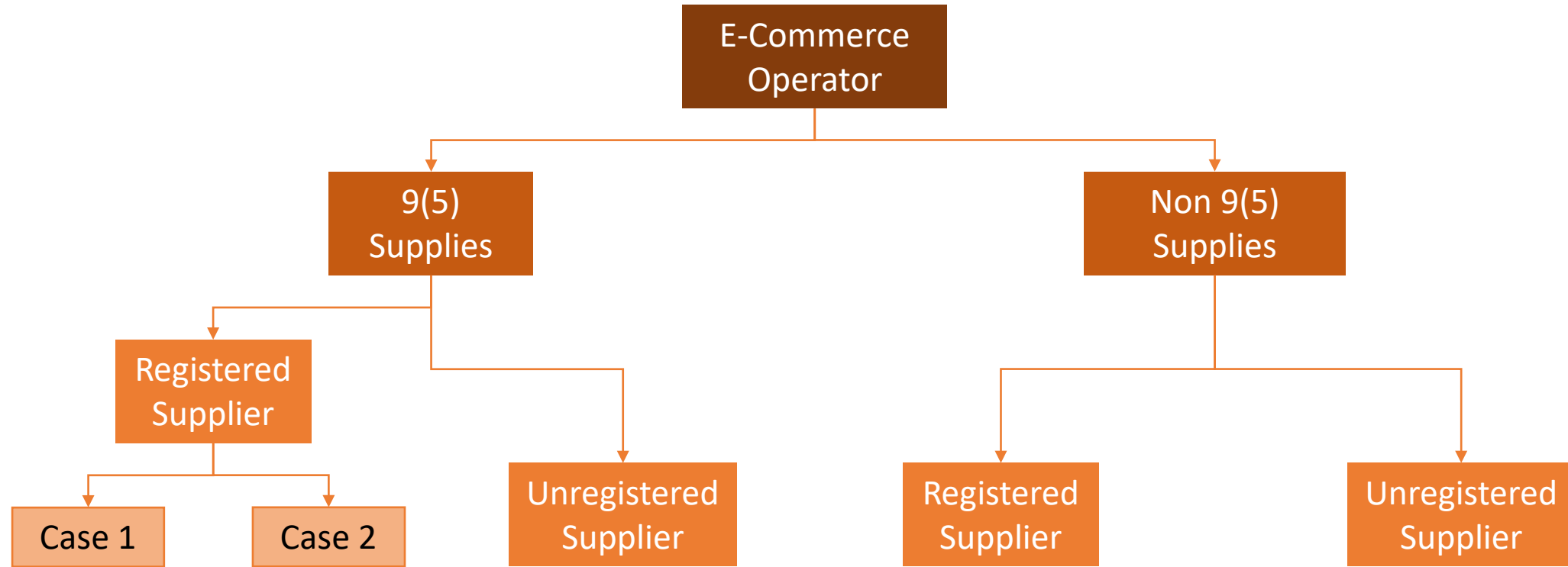
Key facts

- Drivers enlist themselves on the platform. Screening & training is done prior to listing.
- Company earns commission, listing fees, collection fees etc from Drivers
- Drivers act on P2P basis and have the right to enter into contract with the customers

Query

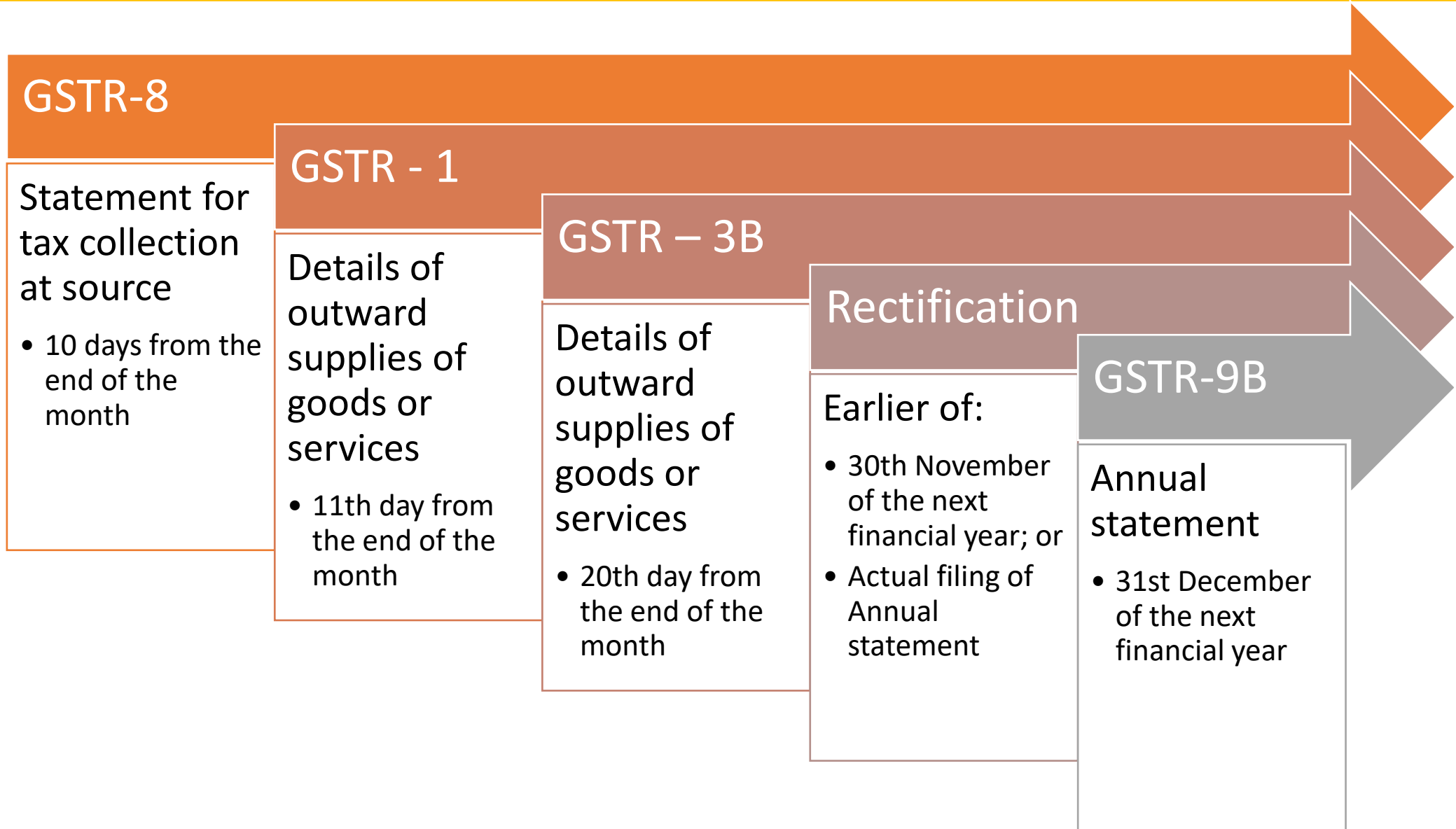
Whether provisions of Section 9(5) or 52 of the CGST Act, will apply in this case?

COMPLIANCE – AGGREGATOR TAX & TCS

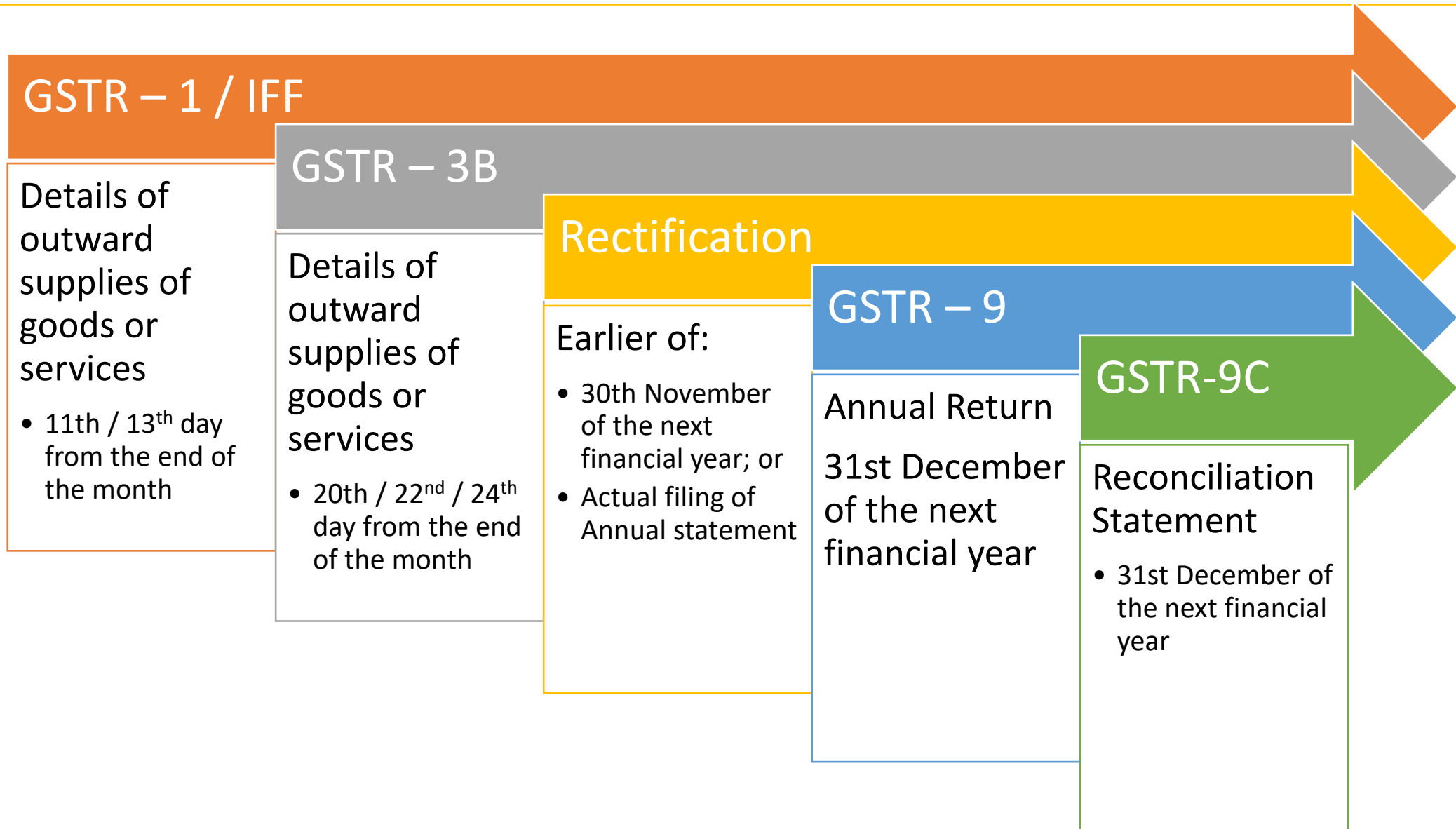


Aggregator Tax	✗	✓	✓	✗	✗
TCS	✓	✗	✗	✓	✗

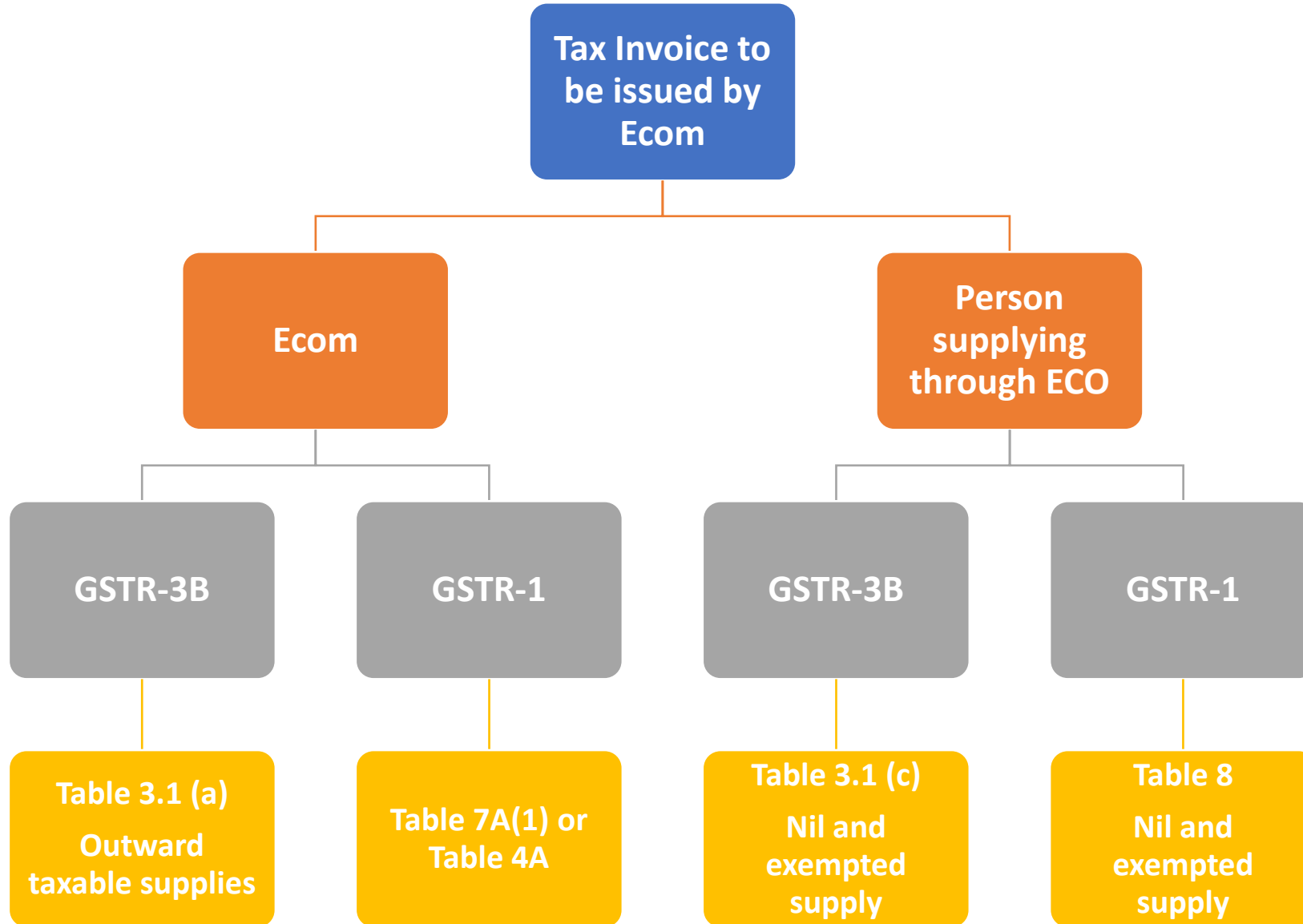
KEY COMPLIANCES FOR ECOM



KEY COMPLIANCES FOR E-TAILER



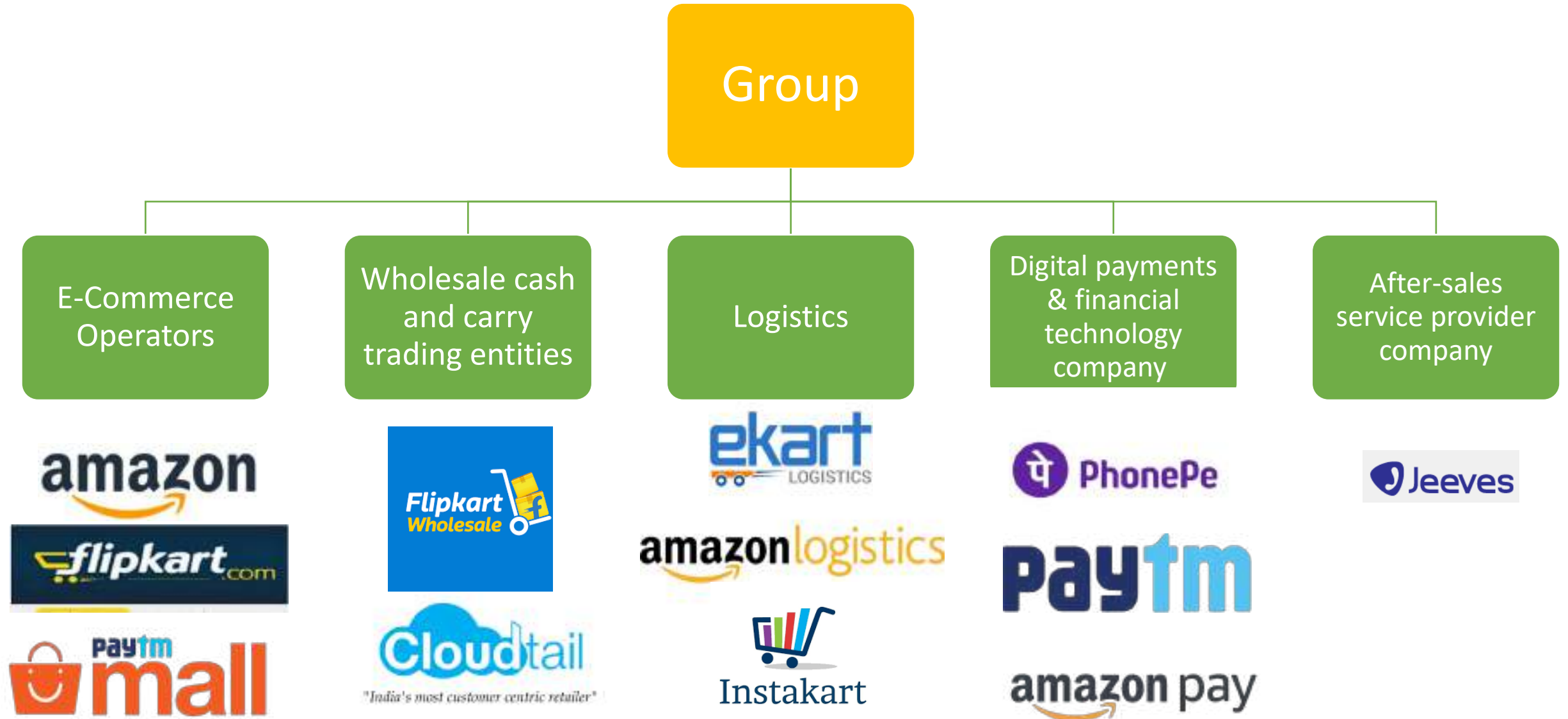
REPORTING FOR 9(5) CASES



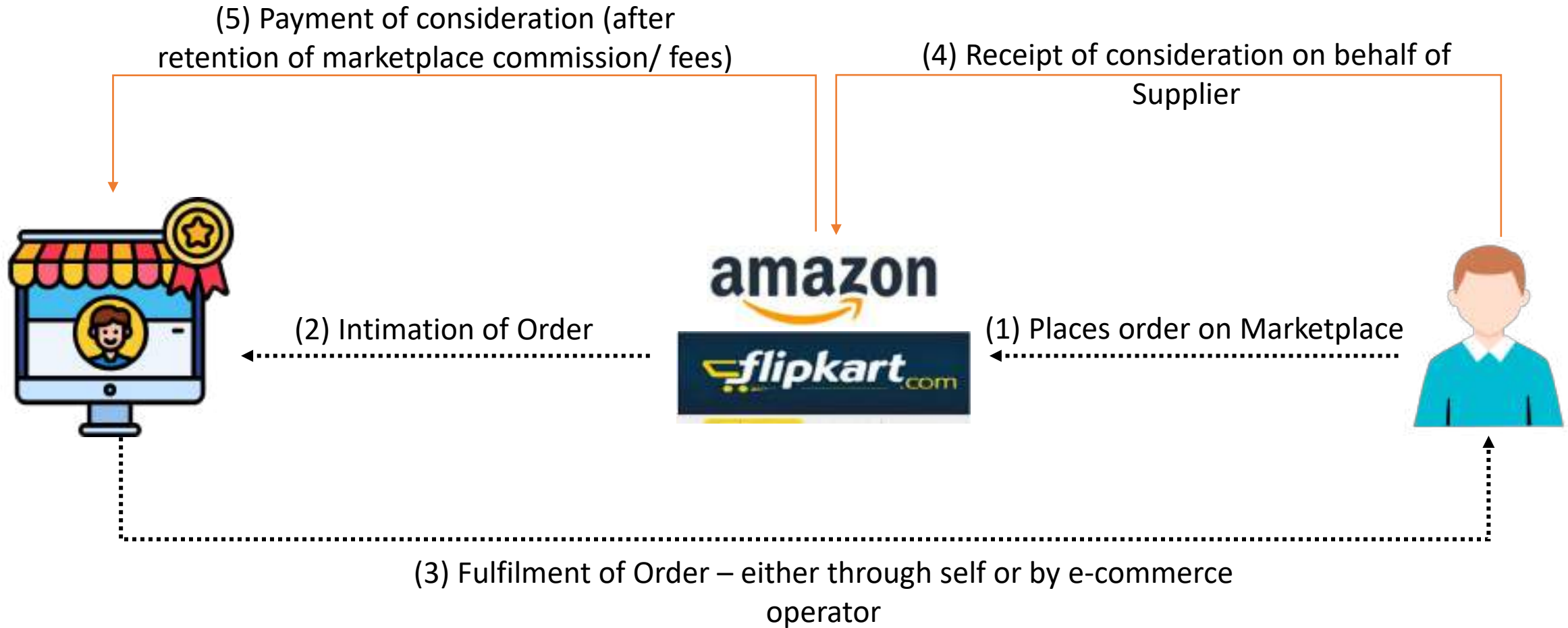


TYPICAL TRANSACTION FLOW

TYPICAL GROUP STRUCTURE



COMMISSION BASED MODEL - GOODS



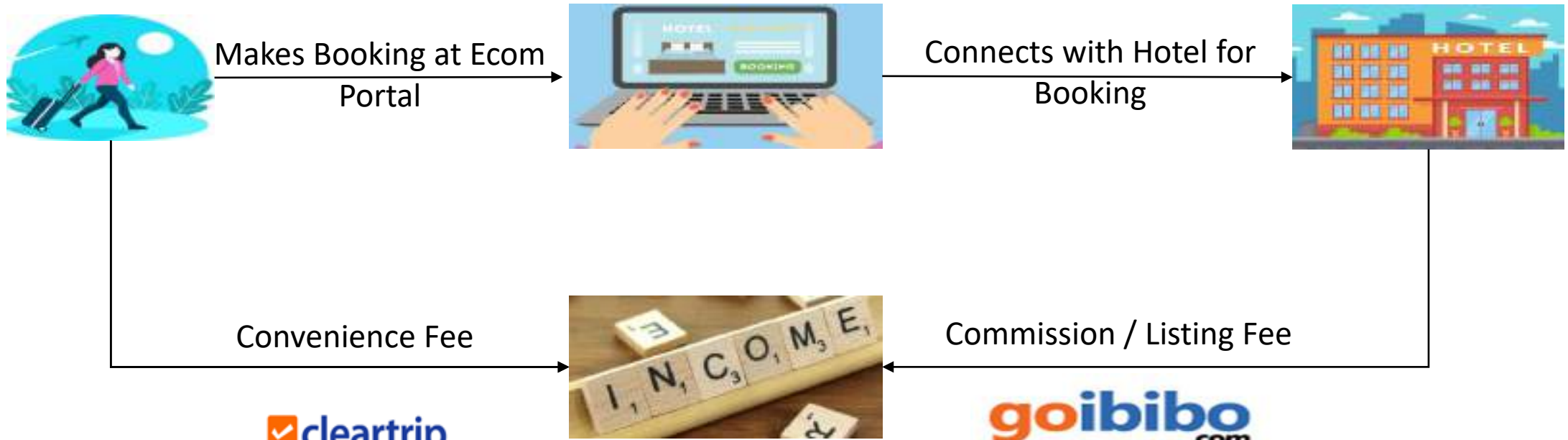
Key Revenue Streams

Commission

Shipping charges

Warehousing charges

COMMISSION BASED MODEL - SERVICES



TOTAL CHARGE	
Rs. 20,679	
RATE BREAKUP	
Room Rate	Rs. 16,000
GST on Hotel Rate	Rs. 4,480
Convenience Fee*	Rs. 199
Total	Rs. 20,679



Room Charges 1 Room X 3 Night	INR 25500.00
Extra Adult/Child Charges	INR 12000.00
Hotel Taxes	INR 9250.00
Service Charge @ 0 %	INR 0.00
(A) Hotel Gross Charges	INR 46750.00
Goibibo Commission	INR 7500.00
Goibibo GST @ 18 % (includes IGST/CGST/SGST)	INR 1350.00
(B) Goibibo Commission (Including GST)	INR 8850.00



COMMISSION BASED MODEL – CONVENIENCE FEE / BRAND FEE FROM CUSTOMER

Practical Scenario

- Hotel Tariff Reduced because of discount
- In exchange, convenience fee/ brand fee earned by Ecom Operator from the customers is shared with the Hoteliers
- Discount to be borne by the Hotelier

Potential dispute –

- Ecom Operator has artificially split the hotel tariff and convenience/brand fee portion – to avail the benefit of lower tax rate

Particulars	Regular Transaction	Scenario
Hotel Tariff	8000	8000
Discount	-	1000
Net Tariff	8000	7000
GST	1440 (18%)	840 (12%)
Total Hotel Charges Tariff Incl GST	9440	7840
Discount by Ecom	1000	-
Convenience Fee	800	800
Total Paid by Customer	9240	8640
Total Payable to Hotel by Ecom Operator	9440	7840+640 (80% CF) = 8480

COMMISSION BASED MODEL – CONVENIENCE FEE / BRAND FEE FROM CUSTOMER

Advisable –

- Agreement should clearly substantiate that Ecom Operator –
 - Collected money on behalf of the Hotelier
 - No say in deciding tariff/price adopted by the Hotelier
 - Make sure convenience / brand fee is not shared with Hotelier
- Documents should substantiate that –
 - Convenience/brand fee should separately appear on Receipt/voucher at the time of booking
 - Separate tax invoice be raised to the customer for convenience/brand fee by Ecom Operator
 - Different terminology in documents – convenience fee, brand fee, service fee etc. should be avoided
- Legal Arguments
 - For the services provided by Ecom Operator – the consideration is the commission from the Hotelier
 - Not composite supply– two distinct taxable persons (Hotelier and Ecom Operator)



BUY & SELL MODEL - GOODS



Sells goods online



Purchases Inventory



Tax Invoice/Bill of Supply/Cash Memo (Original for Recipient)

Sold By :
Amazon Retail India Private Limited
* Building Nos. 1 & 2, Agsons Global Logistics
Park, Vill. Kishora, Main GT Road, Opp. Fau
Devilal Park
Sonapat, Haryana, 131021
IN

PAN No: AAPCA6346P
GST Registration No: 06AAPCA6346P1ZZ

Order Number: 404-1823130-0507548
Order Date: 18.03.2020

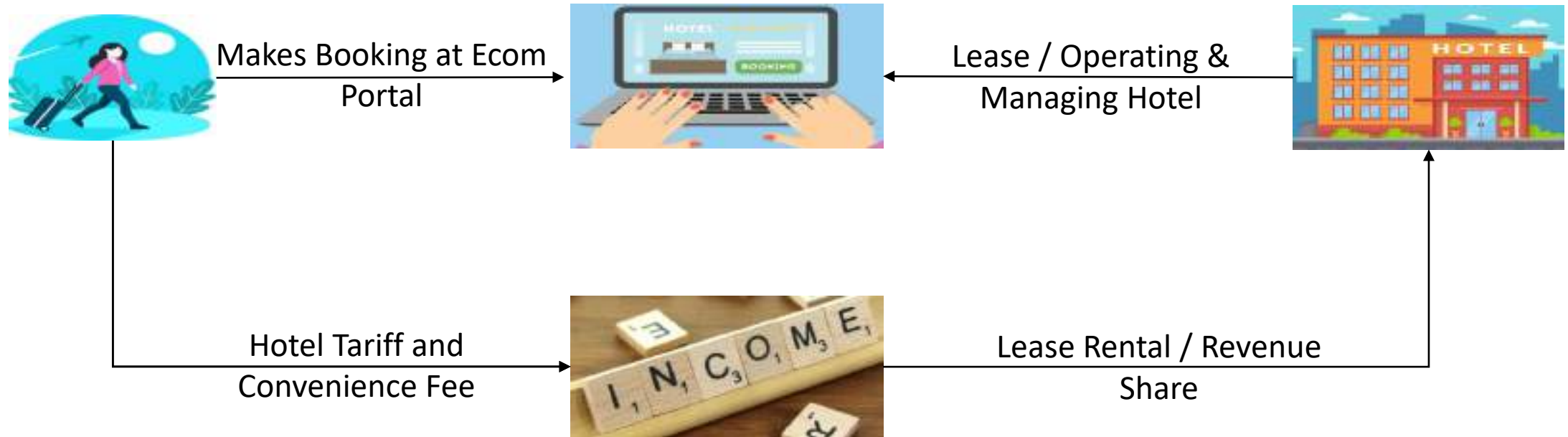
Billing Address :
Rahul Khurana
B-16006, 16th Avenue, Gaur city 2, Greater Noida
(W)
NOIDA, UTTAR PRADESH, 201301
IN
State/UT Code: 09

Shipping Address :
Rahul Khurana
Rahul Khurana
B-16006, 16th Avenue, Gaur city 2, Greater Noida
(W)
NOIDA, UTTAR PRADESH, 201301
IN
State/UT Code: 09

Place of supply: UTTAR PRADESH
Place of delivery: UTTAR PRADESH
Invoice Number : DEL3-4785749
Invoice Details : HR-DEL3-1014-1920
Invoice Date : 18.03.2020

Sl. No	Description	Unit Price	Qty	Net Amount	Tax Rate	Tax Type	Tax Amount	Total Amount
1	Maggi 2 Minutes Noodles Masala, 560g B01H5QIOXK (B01H5QIOXK) HSN:1902	₹72.32	2	₹144.64	12%	IGST	₹17.36	₹162.00
2	Daawat Devasya Basmati Rice (Aged), 5kg B01CHUQFTK (B01CHUQFTK) HSN:1006	₹170.48	1	₹170.48	5%	IGST	₹18.52	₹159.00
TOTAL:							₹35.88	₹351.00

BUY & SELL MODEL - SERVICES



BUY & SELL MODEL - CONVENIENCE / BRAND FEE BY SERVICE PROVIDER ITSELF

- Ecom Operator recovers convenience/brand fee even under buy & sell model
- 18% GST on convenience/brand fee
- Similar to – Airline charges web usage fee for directly booking flight on their website and not through Ecom Operators

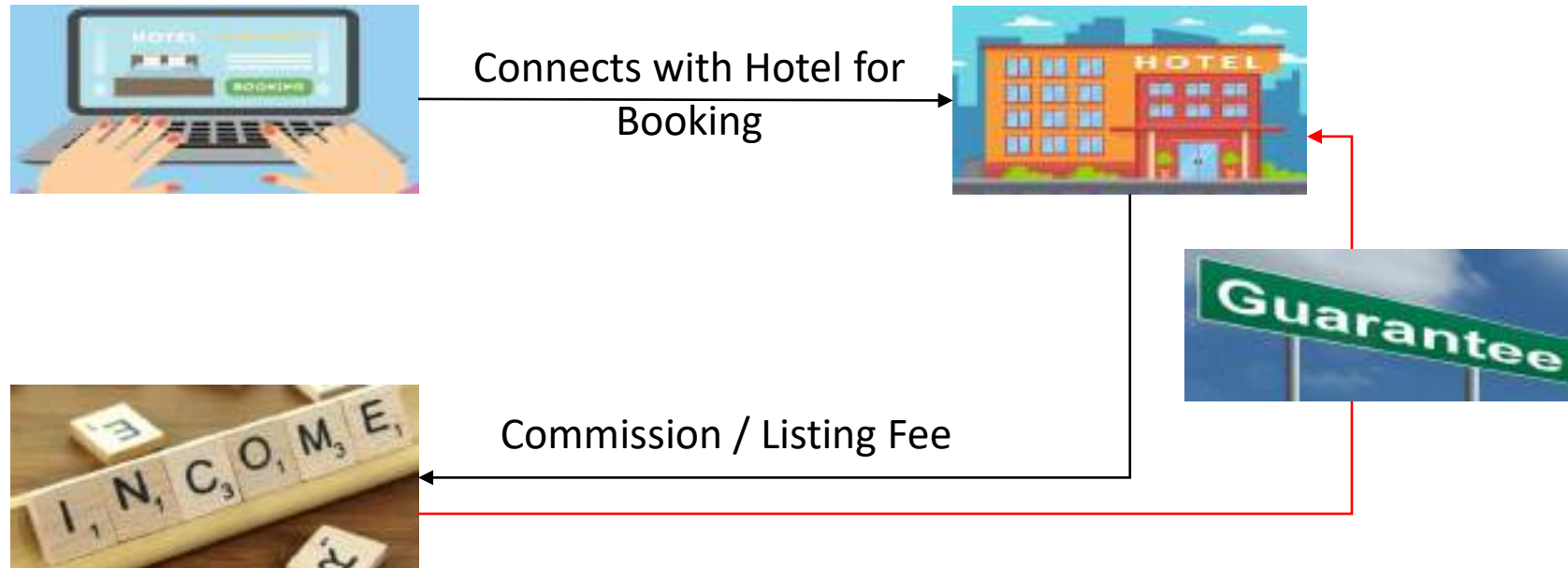


Legal Position

- Since two or more supplies appears to be naturally bundled in ordinary course of business, it can qualify as one composite supply under GST
- Ecom Operator requires to determine applicable GST rate on consolidate value of hotel tariff and convenience/brand fee (different GST rate slab wise)

Charges	Value	GST	GST on composite supply
Hotel Tariff	Rs.800	0	Rs. 126/-
Convenience/brand fee	Rs.250	Rs.45 (18%)	12% on (800+250)

MINIMUM GUARANTEED REVENUE TO HOTEL



- A minimum revenue is guaranteed by Ecom Operator (“MG”) to the Hotelier
- For the same transaction – Ecom Operator is provider of service (commission) and recipient of service (MG)
- **Point to Consider –**
 - In terms of the contract, MG amount may be considered as liquated damages to be seen as separate transaction
 - Netting off commission and MG



ONLINE INFORMATION AND DATABASE ACCESS AND RETRIEVAL SERVICE ('OIDAR')



OIDAR

OIDAR means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as:

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming



OIDAR

E-commerce portal from outside India

- **Goods** - supplied by an e-commerce operator located outside India. The liability to pay GST is on the importer in India
- **Service** - supplied by an e-commerce operator located outside India. The liability to pay GST on such supply is on the person receiving the services under reverse charge method ('RCM')

OIDAR

- OIDAR is a category of service provided through the medium of internet without having physical interface with the supplier of such service
- OIDAR is an exception to the general rule, the liability to pay tax is there on non-resident supplier of services in case of B2C transaction
- In case of B2B transaction, tax is to be paid under RCM by the recipient
- Place of supply is determined based on location of service recipient

Compliance

- A single registration to be obtained by supplier or representative for payment of GST on B2C supply



GST ISSUES UNDER ECOM BUSINESS

LIQUIDATED DAMAGES (LD)

- As per the agreement between Ecom and the logistics service provider, a fixed amount per shipment is recovered by Ecom against loss/ damage of shipments.
- While the industry is divided on applicability of GST on such charges, most of the Ecom are not paying GST on recovery of LD.

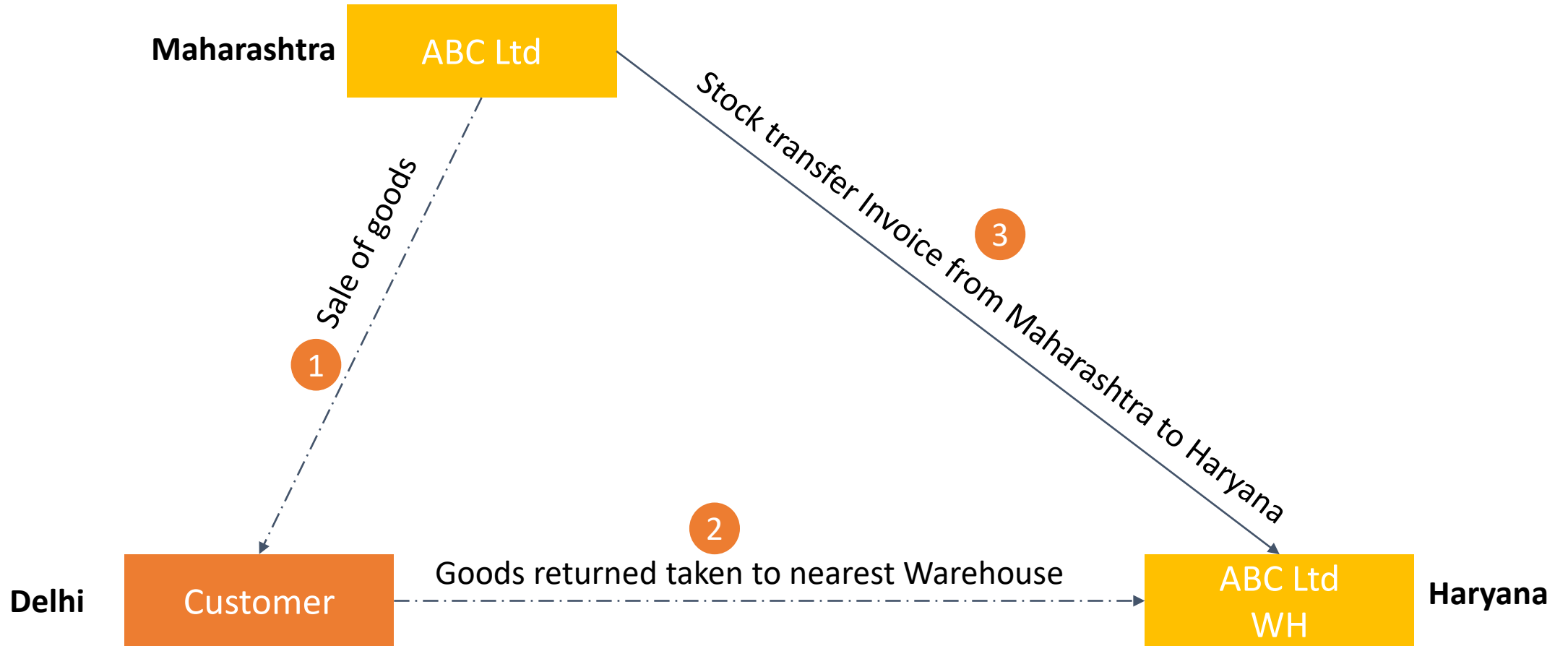
- **Points for considerations:**
 - Department may argue that in terms of Section 7(1)(d) r/w Entry 5(e) of Schedule II, *'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act'* is a supply of services. Therefore, the tolerating act of suppliers may be considered to be a supply of service.
 - It is possible to contend that Logistics service providers under an obligation to compensate Ecom for the loss / damages and that the compensation is not connected with any supply of goods/ services whatsoever and does not constitute a consideration for any supply and hence not liable to GST.
 - However, given the wide meaning of the term supply, the issue is contentious in nature and the no GST position is very litigious.

SELLER PROTECTION FUND (SPF)

- SPF is a payout by e-com to protect sellers from losses due to lost / damaged shipments, fraudulent customer returns etc. SPF payouts may be of amounts up to 80% of the value of the returned product.
- Industry Practice: Sellers do not raise any invoice for receipt of SPF and do not charge any GST on SPF. Further, sellers may be reversing input tax credit to the extent of lost goods. Some sellers may be paying GST on SPF. For e-com, SPF is a cost.
- **Points for considerations:**
 - SPF is fee charged by sellers for tolerating deficient returns / loss of returns. It compensates the seller for loss of revenue that the seller would have generated had the product returned been in saleable condition.
 - *'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act'*
 - Therefore, GST should be charged by sellers on SPF and tax invoices raised on the e-com.
 - GST on SPF would be available as credit to Ecom i.e. net cost for Ecom would decrease.
 - The legal position in case of liquidated damages can be applied to SPF payments.

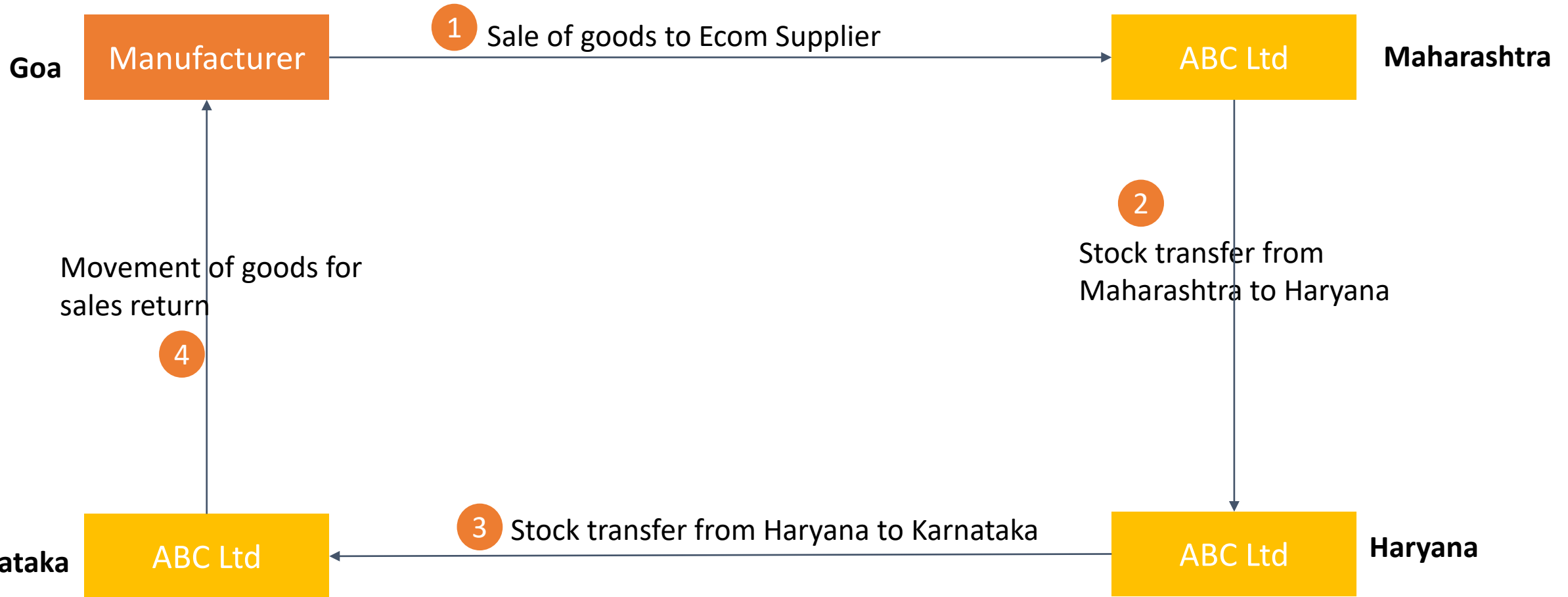


SALES RETURNS TO NEAREST WAREHOUSE





PURCHASE RETURNS FROM WAREHOUSE OTHER THAN ORIGINAL BUYING WAREHOUSE



GST RATE ON COMBO PACKS

- E-Retailers selling readymade garments on Ecom platform at Rs. 500/ piece. However, a special discount is being provided to customers of INR 100/ piece in case they buy a combo of three pieces i.e. at INR 1200 (per combo)

Schedule I – 2.5% (IGST 5%)

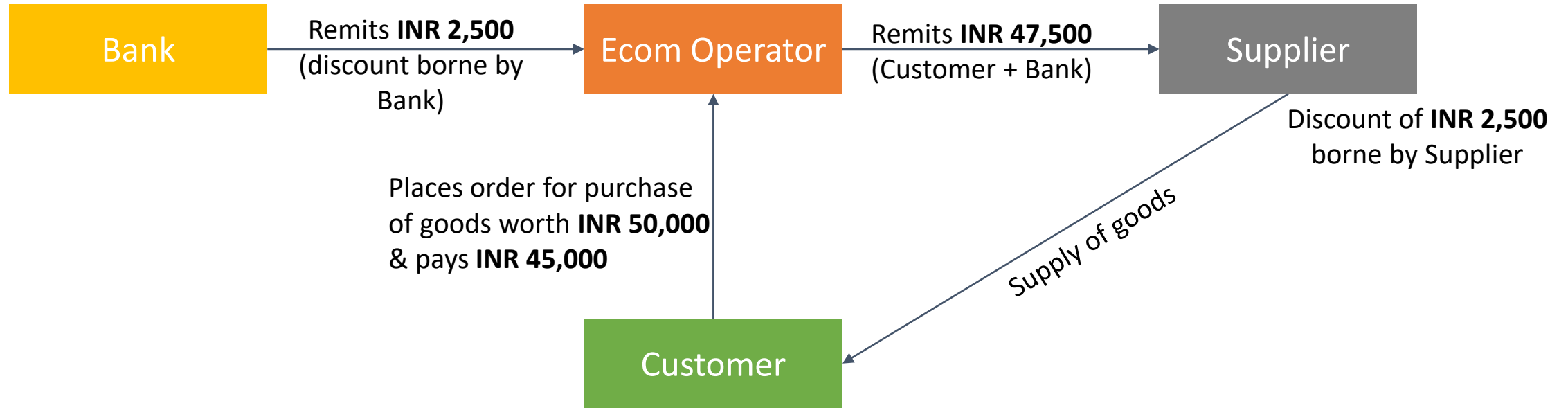
Sr No	Heading	Description
222	61 or 6501 or 6505	Article of apparel and clothing accessories or cap/topi, knitted or crocheted, of sale value not exceeding ₹ 1000 per piece

Schedule II – 6% (IGST 12%)

Sr No	Heading	Description
61	61	Articles of apparel and clothing accessories, knitted or crocheted, of sale value exceeding ₹ 1000 per piece

- What would be the GST rate that would be applicable on the said combo of three piece?

JOINT MARKETING SCHEME



- Supplier should discharge GST on INR 50,000 or INR 47,500 ?

INPUT TAX CREDIT (ITC) ACCUMULATION

CN without GST
(Financial CN's)

Supply below cost

Collocation
charges

State-wise billing

Issue – GST payment in cash in 'X' states and has accumulated GST credit lying in other States

Ecom may consider consolidating the billings and input services to the extent possible in States with ITC accumulation

Branches to raise supply invoices (cross charge) on HO / ITC accumulation State for various charges

Ecom should request vendors to issue CN's with GST to decreasing ITC accumulation

Refund of ITC availed on inputs in case of inverted duty structure

TAX COLLECTED AT SOURCE (TCS)



- “electronic commerce operator” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce
- “electronic commerce” means the supply of goods or services or both, including digital products over digital or electronic network

- **FAQs on TCS under GST dated 28.09.2018:**
28. Under multiple ecommerce model, Customer books a Hotel via ECO-1 who in turn is integrated with ECO-2 who has agreement with the hotelier... TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case will be ECO-2

TAX COLLECTED AT SOURCE (TCS)

- **TCS on collection of consideration or at the time of supply**
 - Return to be filed considering supplies and not collections – blockage of fund
 - Supply taken place on 30th October, 2018 but the consideration for the same has been collected in the month of November, 2018, then TCS for such supply has to be collected and reported in the statement for the month of October, 2018
 - Filing of GSTR 8 by 10th of following month
 - Ensuring proper reconciliation with sellers for TCS
- **TCS compliance in case of returns and refunds – maximum 10 days Return policy**
 - Value of the supplies which are returned (supply return) may be adjusted from the aggregate value of taxable supplies made by each supplier (i.e. on GSTIN basis)
 - The sales return are more than the sales in a particular period - not required to declare the negative amount when the returns are more than the supplies in a particular period – *Will balance sales return will be adjusted next month?*
- **Pay at Hotel** – contracts sometimes provide that the amount collected by the hoteliers (Pay at Hotel) shall be deposited with a bank account belonging to Ecom Operator – *TCS still payable?*
 - Liability arises where the supplier is supplying goods or services through e-commerce operator and consideration with respect to the supply is to be collected by the said e-commerce operator

SUPPLY OF SERVICE TO SEZ UNITS

- Finance Act, 2021, amended Section 16 of the IGST Act to the effect that **supplies to Special Economic Zone ('SEZ') shall be treated as zero rated supplies only if such supplies have been received for authorized operations of SEZ.**
- While Section 16 did not talk about authorised operations, Rule 89 of CGST Rules required endorsement by proper officer while filing of refund claims.
- This provision shall be effective from a date to be notified (still pending).

- **Query:**
 - In case of the purchase of goods, the same are endorsed by Proper Officer at the time of entry itself.
 - How to determine whether services are procured for authorized operations

- **Recommendation:**
 - Obtain a declaration from the customer that services are used for authorized operations along with indemnity clause in the agreement
 - Obtaining endorsement from Proper Officer (practically challenging)
 - Services forming part of the Uniform List of Services
 - Specific approval from the Unit Approval Committee

REGISTRATION

- **Compulsory Registration** – No threshold for GST registration

Section 24 Compulsory registration

- **Person who are required to pay tax under section 9(5)** – Ecom Operators liable for Aggregator Tax
- **Every Ecom Operator who is required to collect tax at source under section 52** – TCS by Ecom Operator
- **Person who supplies via Ecom Operator who is required to do TCS [other than section 9(5) supplies]** – Notification No. 65/2017 - Central dtd. 15.11.2017 seeks to exempt “suppliers of services” through an e-commerce having threshold limit of 20 lakh

live**mint**

GST registration norms likely to be eased for online sellers

Centre, state governments believe the move would vastly expand the reach of small enterprises



REPRESENTATIONS POINTS & OTHER REGULATIONS



Issues highlighted in Representation

Parity b/w online & offline sellers insofar as threshold for registration is concerned

Allowing composition dealers to sell through e-com without mandatory regular registration

Allowing sellers to register Ecom operator's warehouse as APOB in different states

Exclusion of housekeeping services from purview 9(5)

Registration requirement in case of temporary storage by delivery partners in different state where seller is not registered and subsequent supply thereof



Miscellaneous Regulations

01

State Shop and
Establishment Act

02

Personal Data
Protection Bill,
2021

03

Consumer
Protection (e-
Commerce)
Rules, 2020

04

IT (Intermediaries
Guidelines) Rules,
2011

05

Legal Metrology
Act, 2009

06

Sale of Goods
Act, 1930

07

Intellectual
Property Act,
2014



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Thank You

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