

E-Commerce Industry – GST Issues

1 September 2018



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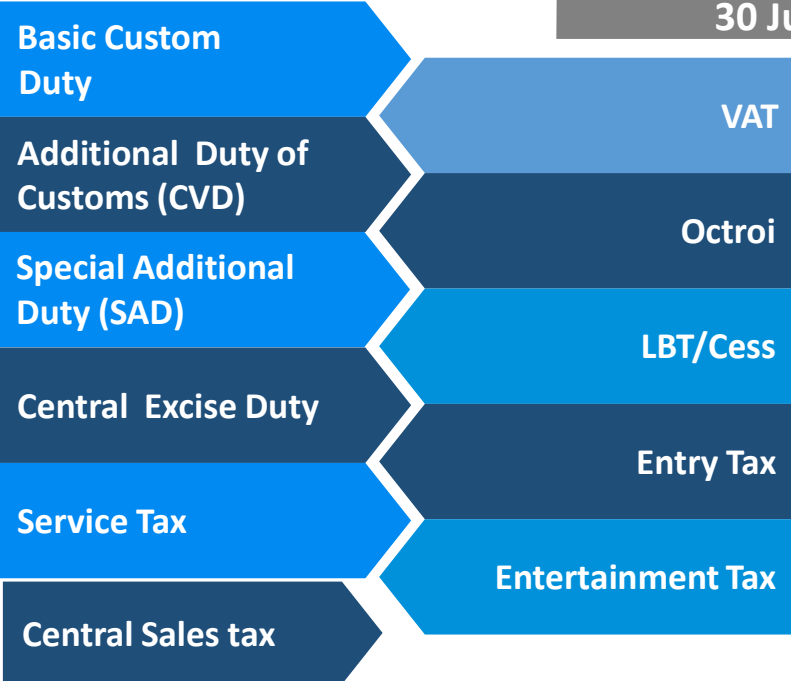
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Erstwhile Indirect Tax Structure in India

Indirect Taxes in India upto 30 June 2017



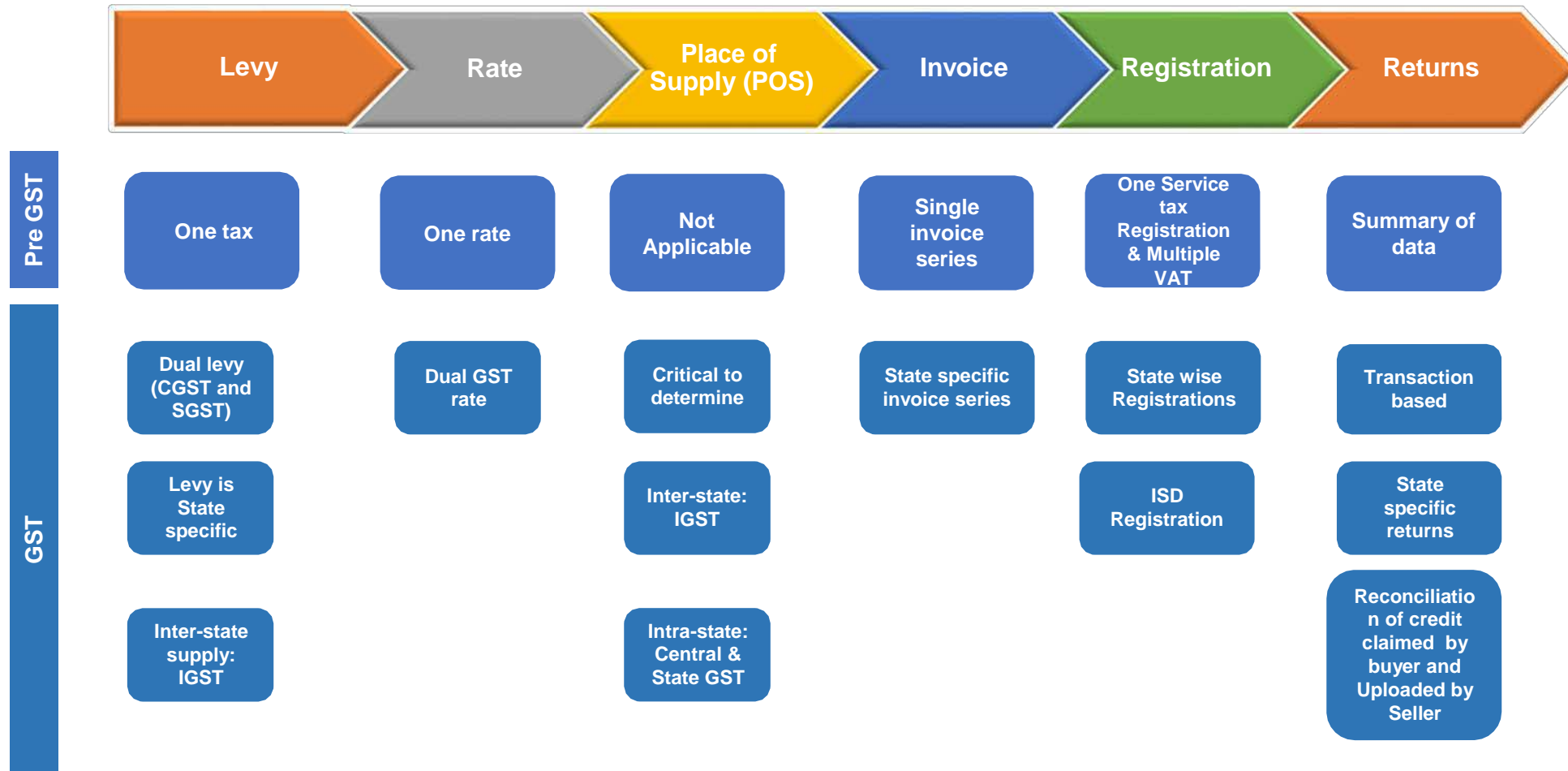
BCD	10%
CVD	12.50 %
SAD	4%
Excise Duty	12.50%
Service Tax (incl. SBC & KKC)	15%
CST	2 % – 15 %
VAT	5% – 15 %
Entry Tax / Octroi/ LBT	1% – 15 %

■ Cost
 ■ Pass through for manufacturer

Taxes typically applicable to E-Commerce sector

VAT/CST was payable on procurements and sale of goods	Service tax was payable input and output services	Entry tax was payable on procurements of goods	Excise / Customs duty was applicable on domestic / imported procurements
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Comparison for service companies : Service Tax vs. GST



E-Commerce Industry

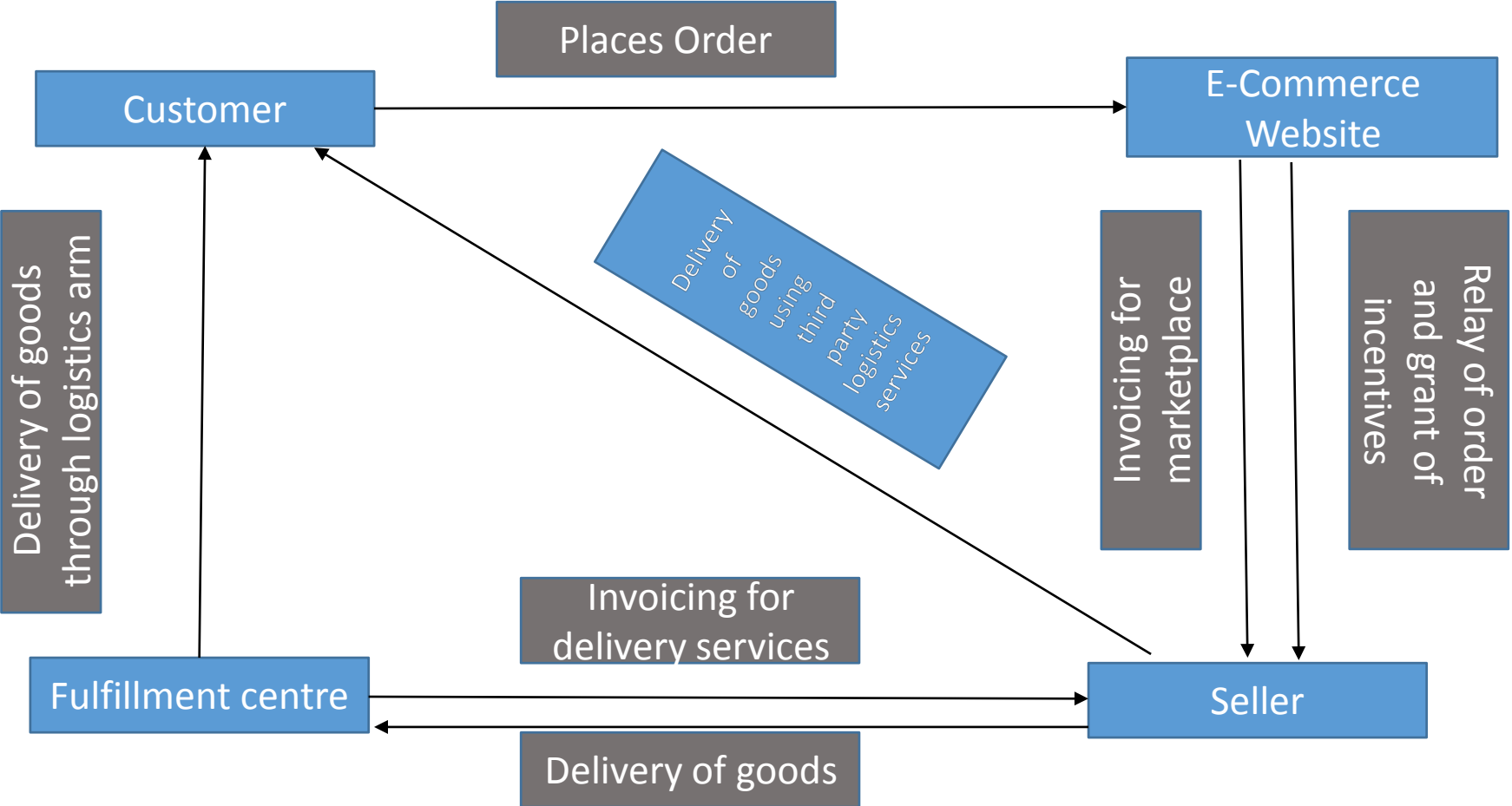
Meaning of E- Commerce:

E-commerce is the activity of buying or selling of products or services over the Internet. Electronic commerce draws on technologies such as mobile commerce, electronic funds transfer, supply chain management, Internet marketing, online transaction processing, electronic data interchange (EDI), inventory management systems, and automated data collection systems.

Business Models in E-Commerce:

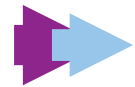
- Market Place Model (Amazon, Flipkart)
- Inventory Model (Croma, Reliance)
- Aggregator Model (Ola, Uber)
- Re-commerce – Procure, re-furbish and sale Model
- Online Information and Database retrieval services (OIDAR)

General E-commerce model

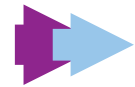


- Various Indirect Taxes Applicable:**
- Excise Duty
 - Value Added Tax (VAT)/CST
 - Service Tax
 - Entry Tax/ Octroi

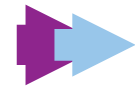
Challenges in the erstwhile regime



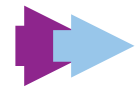
Cascading effect of taxes



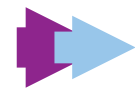
Tax on manufacture, sales and provisions of services



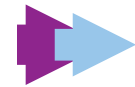
Origin based taxation – tax accrues to origin state



Restricted Credit regime



Restricted trade between States due to taxation structure



Multiple Compliances

Challenges for E-Commerce business:

- Entry Tax
- Local Registration requirements
- Way Bill
- TDS
- Other compliances

E-Commerce under GST



Relevant Definitions

Sec 2(44) of CGST act, 'electronic commerce' means the supply of goods or services or both, including digital products over digital or electronic network.

Sec 2(45) of CGST act, 'electronic commerce operator' means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Sec 2(17) of IGST act, 'online information and database access or retrieval services' 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

Registration Requirements

Registration Requirement for E-Commerce operator

- E-Commerce operator is mandatorily required to obtain registration under GST
- Composition Scheme for E-commerce operator - GST law has explicitly excluded e-commerce businesses from this scheme

Registration Requirement for actual supplier of goods/services

- Where supplies are made through an E-commerce operator and the operator is required to collect tax u/s 52 of CGST Act and its aggregate turnover exceeds 20 lakhs or 10 lakhs (in Specified states), then registration is compulsory
- In case where E-commerce transactions attracts tax u/s 9(5) (Reverse charge) then no registration is required for actual supplier of service

(Example - Radio taxi or Passenger Transport Services provided through electronic commerce operator then 100% tax is to be paid by e-commerce operator)

- Composition Scheme is not available for supplier supplying through e-commerce operator.

Other Key Provisions

Every electronic commerce operator, not being an agent, shall collect an amount calculated at such rate not exceeding **1% (CGST+SGST) of the net value of taxable supplies** made through it, where the consideration with respect to such supplies is to be collected by the operator.

Not: Applicability of this provision has been suspended till 30 September 2018

Sec 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.

Powers under Section 9 (5) exercised

GST shall have to be paid by the electronic commerce operator on the following supplies;

(vide Notification No: 17/2017 – Central Tax Rate)

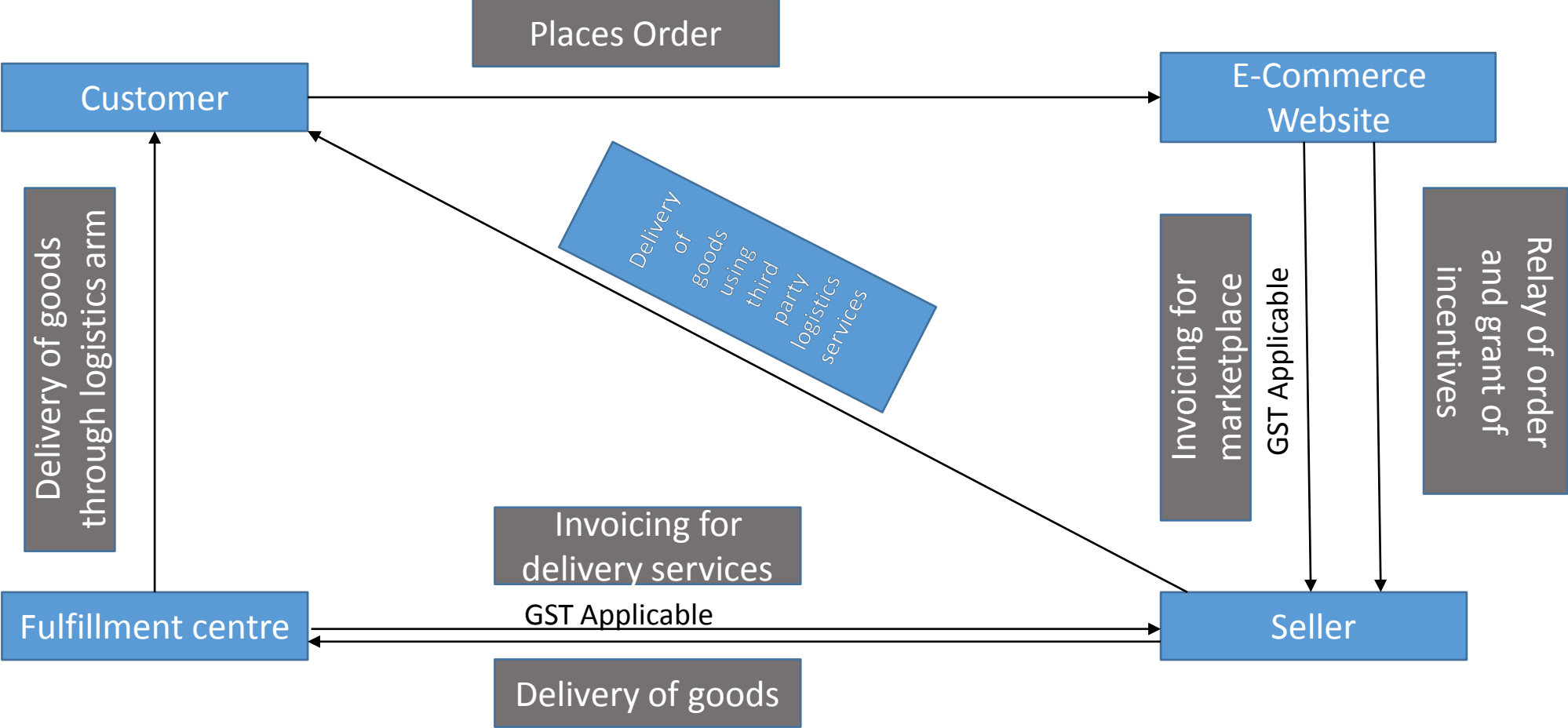
- i. services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;
- ii. services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes*
- iii. services by way of house-keeping, such as plumbing, carpentering etc, *

*The above mentioned services do not include the suppliers that are liable to be registered under GST as per section 22 (1) i.e. turnovers exceeding 20 Lakhs (Rs. 10 Lakhs for special category states)

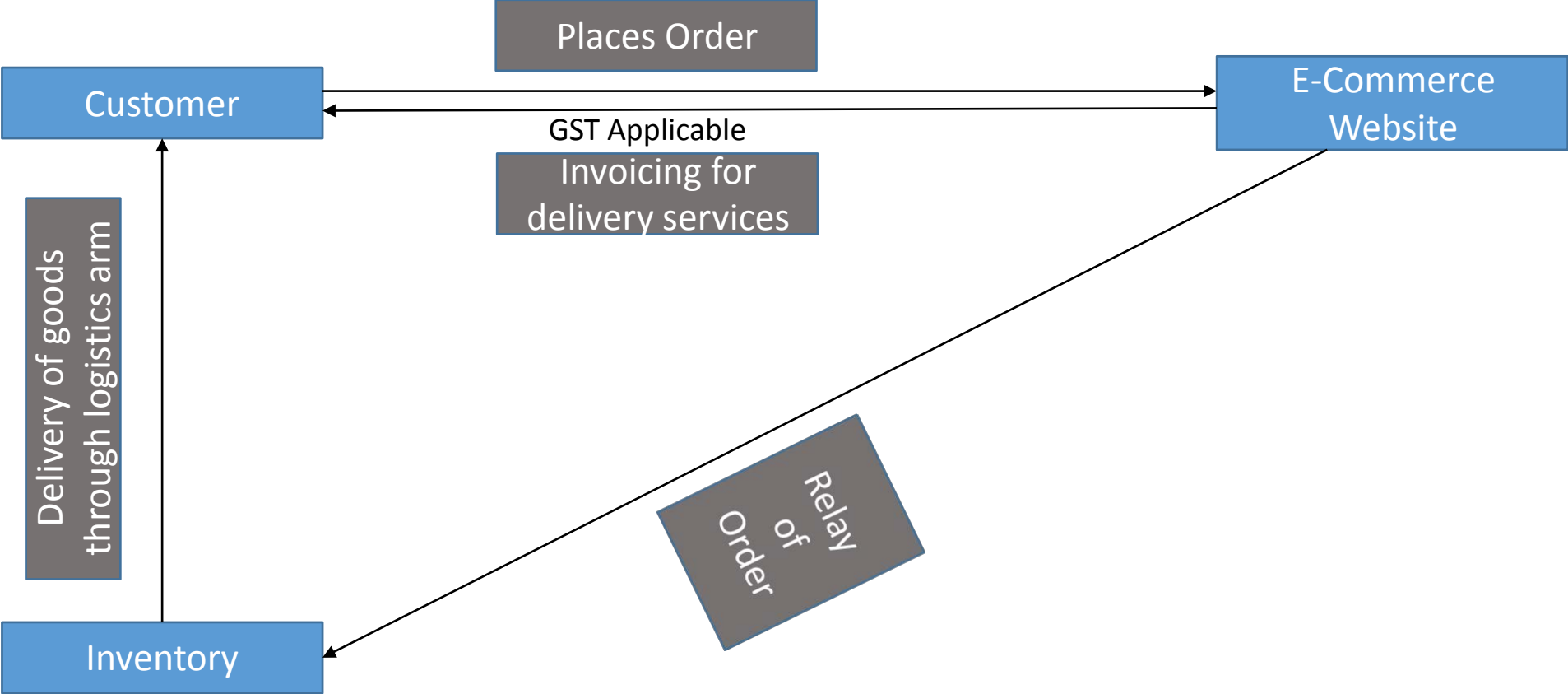
E-Commerce Models



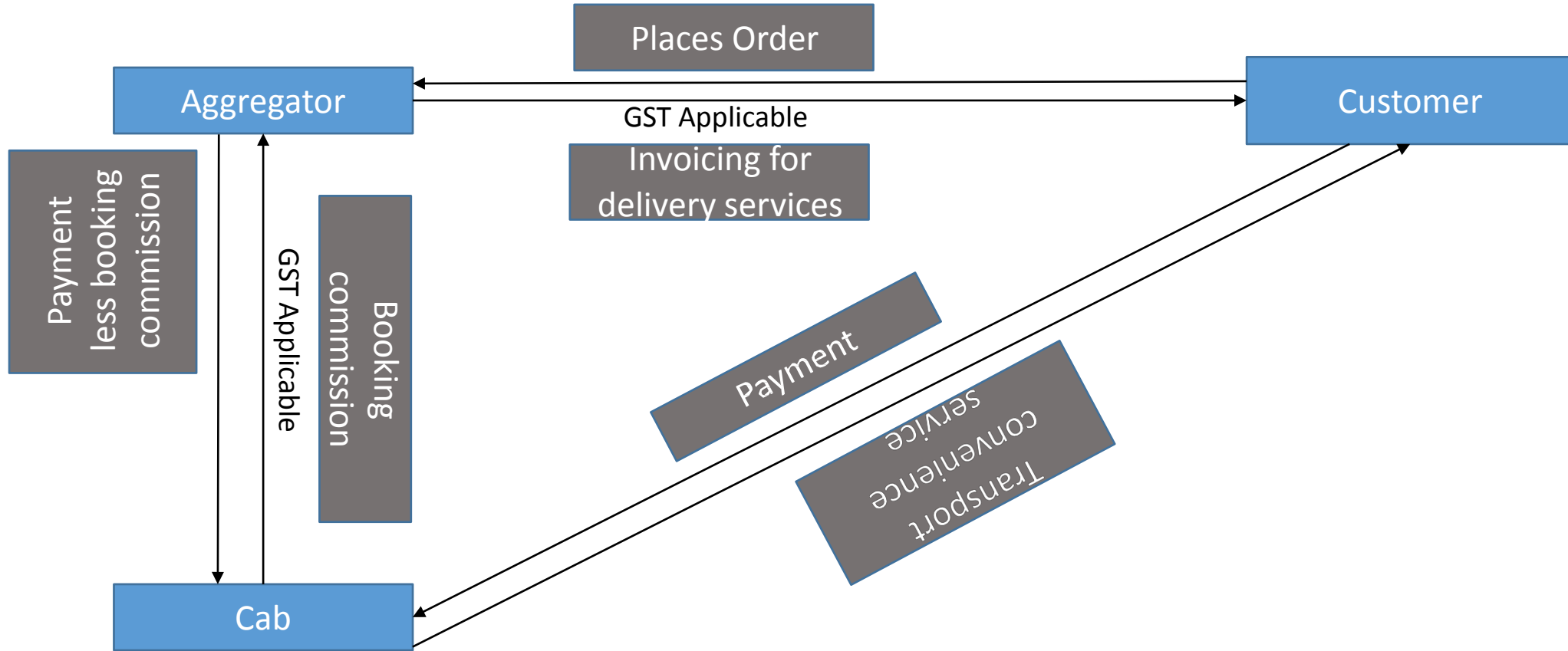
Marketplace Model



Inventory Model



Aggregator Model

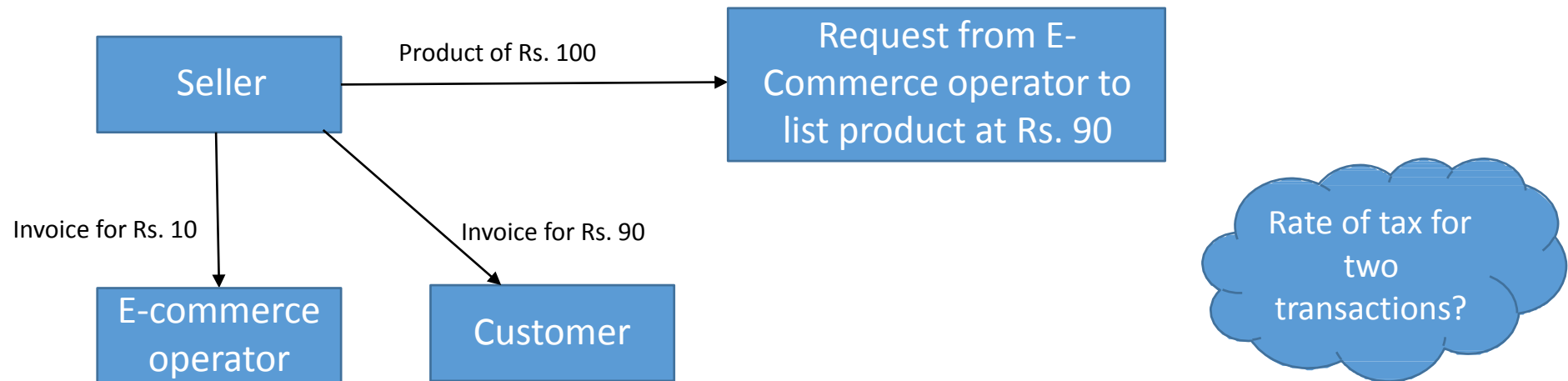


E-Commerce Industry - GST Challenges



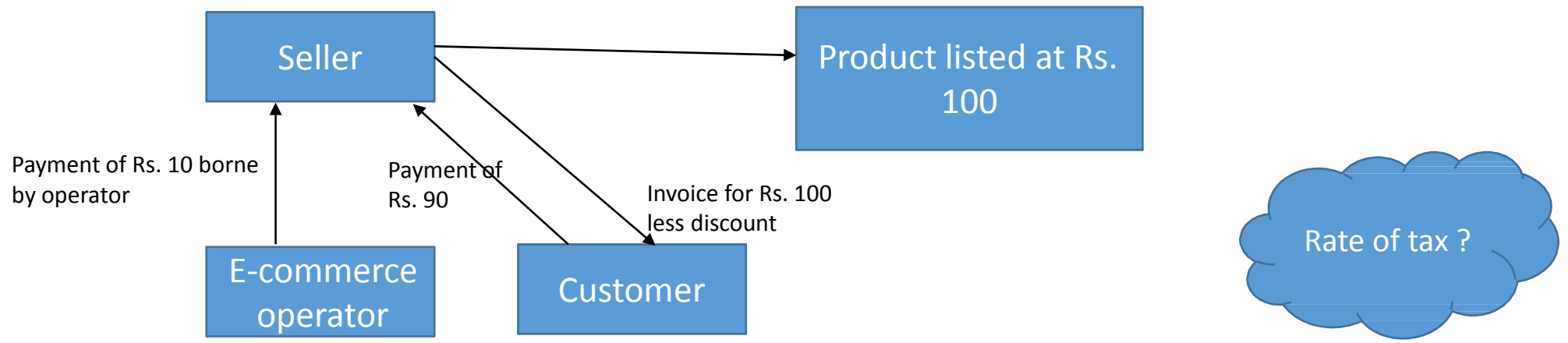
Seller Promotion Programme

Description of Transaction	Issues under GST
<ul style="list-style-type: none"> E-Commerce Operator requests the Seller to list the product at discounted price. For the difference between the discounted price and the actual listing price, Seller raises an invoice on e-commerce operator 	<ul style="list-style-type: none"> SGST / CGST / IGST as the case maybe will be levied by the Sellers at the time of raising invoice on E-Commerce Operator towards promotion of website. Credit will be available to E-Commerce Operator. <p>There exist valuation issues for collection of TCS – whether TCS to be collected on discounted price or the price recovered from E-Commerce Operator should also be included for the purpose of collection of TCS.</p>

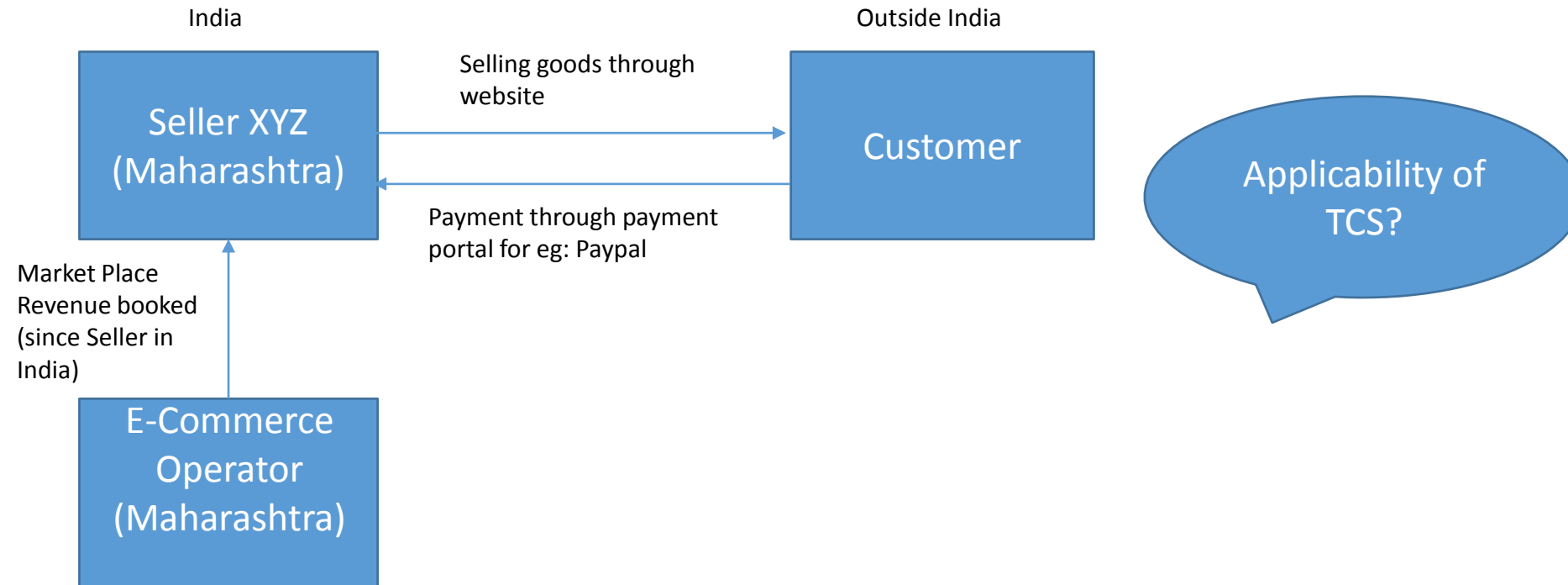


Seller Promotion Programme

Description of Transaction	Issues under GST
<ul style="list-style-type: none"> Seller intends to list the product at Rs. 100. However, E-Commerce Operator asks the seller to list the same at Rs 90. Invoice raised by the seller for Rs 100 on which GST is paid. End customer pays Rs. 90 and remits the same to E-Commerce Operator. E-Commerce Operator remits Rs 100 to the seller (funding Rs 10 on the transactions). Accordingly, E-Commerce Operator bears cost of Rs 10. 	<ul style="list-style-type: none"> There exists ambiguity in relation to whether TCS to be collected on Rs 100 by E-Commerce Operator or on Rs 90. However, in substance, since the invoice of Rs 100 is raised by the seller and an equivalent amount is received in this regard by the seller, TCS should be paid on an amount of Rs. 100. TCS collected to be available as credit to the seller



Cross Border Transactions / International Shipping fees



- Since, amount is never routed through the operator, there arises a question whether TCS is to be collected by the E-Commerce Operator.

Cross Border Transactions / International Shipping fees

Description of Transaction	Issues under GST
<ul style="list-style-type: none">• Indian Seller sells product through website belonging to operator outside India to end customer located outside India.• If the amount is not received through the E-Commerce Operator, details of amount towards such supply of goods is never received by it.	<ul style="list-style-type: none">• Since amount is never routed through the E-Commerce Operator, there exists an ambiguity as to applicability of TCS on the same.• However, a view may be adopted that no TCS is required to be collected by an E-Commerce Operator• LUT to be obtained by seller as there is export

Other Challenges

Composite Vs. Mixed Supply

- Bundling of multiple goods and services is common in e-commerce industry – this leads to questions on rate of tax applicable on the bundle. Such as fees for subscription to various services and offers, goods supply with installation/AMC, Buy one get one offers

Accumulation of credit without refund

- Many e-commerce operators have huge spend of marketing and discounting. This leads to accumulation of credit and no refund allowed under GST for such cases

Goods return in a state different from purchase

- Goods purchased by customer in State A but goods return from State B – Loss of GST charged on sales

Logistics

- Multiple documentation
- Documentation challenges for goods return

Other Challenges

No Composition scheme option

- Composition is not allowed for sellers supplying goods or services through e-commerce operators.

Credit Loss to aggregators

- In case of certain services (transportation of passengers and accommodation service) provided through the e-commerce operator, the e-commerce operator / aggregator is required to pay GST on behalf of the supplier – this can lead to loss of credit in the supply chain
- Credit challenges to aggregator/Service provider and recipient

OIDAR

- Determining when tax is payable by service provider
- Obtaining registration under GST and then regular compliances

Other Challenges

Compulsory registration for irrespective of turnover

- Every E-Commerce Operator is required to obtain registration under GST even where its turnover is below the limit of Rs. 20 Lakhs
- However, post approval of the GST Amendment Act, the E-Commerce Operator whose turnover does not exceed Rs. 20 Lakhs would not be required to obtain registration.

License fee agreement

- Foreign E-Commerce Operator allows their Indian Company to use their brand - Whether GST payable on such free services
- Other notional services – where no consideration charged

Barter Transactions

- Where two companies agree to promote each others services or goods – who is the service provider and service recipient.
- For example, a company providing wallet money on purchase of a certain product.

Action Points - Way forward

Ensure GST registration for yourself as well as your vendors

Dedicated team to ensure invoices are raised and uploaded on GSTN on timely

Identify single point of contact for buyer to address any queries or discrepancies

Ensure compliance towards invoicing, return filing, payments etc

Follow up with the vendors in case of non-compliance by them in filing the returns

Anti Profiteering compliant

Thank you

CA Kirti Oswal