

GST

PRE-GST TO GST – PERFORMANCE AND PROGRESS GST ON NFT AND CRYPTOCURRENCY

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MULTIPLE TAXES – CENTRAL GOVERNMENT – PRE GST

- Excise Duty
- Countervailing Duty
- Customs Duty
- Duty of 4% under Section 3(5) of the Customs Tariff
- Service Tax
- Primary education cess
- Secondary education cess
- Products specific cess (automobile / tractor / jute / sugar / tea / tobacco / paper / rubber / iron ore / cement)
- Research and Development cess
- National Contingent Calamity Duty
- Clean Energy Cess
- Swachh Bharath Cess
- Krishi Kalyan Cess
- Infrastructure Cess on motor vehicles

MULTIPLE TAXES – STATE – PRE-GST

- VAT
- Purchase tax
- CST by originating State
- Entry tax
- Octroi by Municipality
- Entertainment tax
- Luxury tax
- Stamp duty and Registration fee

VAT – PRE GST

- Multiple rates
- Different rates in different States
- Different definitions
- Multiple forms
- Cascading effect due to CST purchases
- Deviations
- Refunds

CST

- Origin based tax
- No credit on CST purchases leading to cascading effect
- Exempt stock transfer related distortions
- Complex law on stock transfer and transit sales
- CST Vs. VAT

WHY DID INDIA IMPLEMENT GST?

- Tax reform
- Elimination of 'cascading effect'
- Equitable taxation
- Simpler system
- One market

DO GST PROVISIONS FACILITATE THE REFORM OBJECTIVE?

Parameters	Yes/ No	Comments
Tax Reform	Yes	Industry, Government and consumers have gained
Elimination of 'cascading effect'	Yes and No	Recent changes which seems to restrict or make availment of ITC a difficult task would result in the re-introduction of 'cascading effect' of tax
Equitable Taxation	Yes	Entire supply chain is taxed
Simpler system	No	Intended to be one, but has turned out to be complicated
One market	Yes	GST rates are same across the country. 'T' from Tamil Nadu can supply to 'G' in Gujarat without the risk of loss of tax credit to 'G'
Advance Rulings	No	More complications on account of predominantly revenue tilted rulings

GST – THE REFORM ASPECT – GAINS FOR THE INDUSTRY

- Path breaking tax reform
- Harmonization of taxes
- Elimination of cascading effect
- Widening of scope of ITC
- Uniform rate across the country
- Elimination of unwanted business structures
- Better supply chain management
- Goods can be supplied from any part of the country
- Vendor verification by buyers
- Transparency

GST – GAINS FOR THE CONSUMER

- Massive reduction in indirect taxes on goods
- GST Awareness
- Product / Service pricing
- Consumer oriented services at a lower rate
- Anti-profiteering provisions
- **No inflation on account of GST**
- One indirect tax levy

GST – GAINS FOR THE GOVERNMENT

- New assesseees
- Widening of tax base
- Data mining
- Revenue collected from multiple assesseees
- E-way bill and trail
- Consumer awareness
- Many States have shown increase in revenue
- Compensation based on 14% revenue growth rate

INPUT TAX CREDIT

- **Seamless credit or seemingly less credit**
 - GST was brought in as a tax reform and to eliminate cascading effect of taxes
 - The Statement of Objects of the 101st Constitution Amendment clearly states that one of the objectives of GST is to eliminate cascading effect of taxes
 - Amendment after amendment after amendment in the GST law has now ensured that India is one of the most complex input tax credit system and cascading effect is back

INPUT TAX CREDIT

- ABC Ltd. has purchased raw material for Rs.100,000 + GST of Rs.18,000/- and has paid the amount to the vendor.
- The ITC of ABC Ltd. is now dependent upon the following:
 - His vendor correctly filing GSTR-3B
 - His vendor paying the GST to the Government account
 - His vendor raising a proper tax invoice with the correct GSTN of ABC Ltd.
 - His vendor correctly filing GSTR-1 with all details of ABC Ltd.
 - The GST portion should be reflected in the GSTR-2B which is an automated data point from the portal

INPUT TAX CREDIT

- **How is ITC affected?**
 - Vendor does not file the GSTR-3B which is his statutory obligation but the buyer ABC Ltd is penalized
 - No action is taken against the vendor but ABC is called upon to reverse the credit with interest and penalty
 - Vendor does not file GSTR-1 and consequently amounts are not reflected in the GSTR-2B. Action against ABC
 - No action is taken against the vendor but ABC is called upon to reverse the credit with interest and penalty. In some cases ITC is blocked
 - Denial of ITC increases the cost in the hands of ABC and affects cashflow and working capital
 - Recipient should not be penalized for defaults of the supplier
 - Once the recipient has paid the vendor, the value of the goods along with GST, any enquiry should be with the vendor

PAYMENT OF TAX BY SUPPLIER

- Conditions in Section 16(2) requiring the buyer to verify whether the supplier has paid the tax to the Government account has been challenged before the Delhi High Court in the case of ***Bharti Telemedia Ltd. Vs. Union of India***
 - Writs have been filed across the country challenging the vires of Section 16(2)(c) on the ground that the buyer cannot be called upon to verify the payment of tax by the supplier
 - No mechanism for the buyer to verify payment of tax by the supplier.
 - Doctrine of Impossibility
 - ***Arise India Ltd. Vs. Commissioner of Trade Taxes [TS-314-HC-2017(Del)-VAT]***

COMPARING GSTR 3B AND GSTR 2A - LEGALITY

- Number of Companies have received notices comparing 3B and 2A
- Notices call for reversal with interest and in some case even penalty
- Mere letters without Section 73 Show Cause Notice
- Summons from DGGI on these aspects
- Notices from State authorities
- ***Can filing of GSTR 1 be a condition for availment of ITC by the recipient?***
 - *For the period prior to 01.01.2022*
 - *For the period after 01.01.2022*

COMPARING GSTR 3B AND GSTR 2A - LEGALITY

- Except for GSTR-1 and GSTR-3B, the filing of GSTR-1A, GSTR-2, GSTR-2A and GSTR-3 were all kept in abeyance
- Matching mechanism as contemplated in GST did not take off
- Payment of GST by the taxpayers is by way of GSTR-3B and not by way of GSTR -1
- GSTR -2A is an auto-populated form and at present, it is only a facilitation measure given to recipient of supply to check whether the corresponding supplier is depositing the taxes collected from him with Government

COMPARING GSTR 3B AND GSTR 2A - LEGALITY

- Section 42, which dealt with matching reversal etc. was never operationalized and ultimately, was omitted
- No GSTR-2 or GSTR-3 or GSTR-1A
- ***Union of India Vs. Bharti Airtel Ltd. (2021) 54 GSTL 257 (SC)***
 - The registered person is obliged to do self-assessment of ITC, reckon its eligibility to ITC and of output tax liability including the balance amount lying in cash or credit ledger primarily on the basis of his office record and books of account required to be statutorily preserved and updated from time to time
 - This he could do so even without the common electric portal as was being done in the past till recently pre-GST regime
 - The common portal is only a facilitator to feed or retrieve such information and need not be the primary source for doing self-assessment
 - The primary source is in the form of agreements, invoices/ challans, receipts of the goods and services and books of accounts which are maintained by the assessee either manually or electronically

MULTIPLICITY OF PROCEEDINGS

- There are seven authorities who ask the same question and the same data for the same period for the same assessee
 - DGGSTI – Centre
 - Audit Team – Centre
 - Assessment Team – Centre
 - Investigation – State
 - Audit Team – State
 - Assessment Team – State
 - CAG

CROSS EMPOWERMENT

- Assessee falling under Centre jurisdiction
 - Proceedings initiated by the Centre
 - Notice by the State
- Assessee falling under State jurisdiction
 - Audit by the State and enquiry
 - Summons by the Centre
- **Is cross empowerment sanctioned as on date?**
- Agenda for 22nd GST Council Meeting had proposal for issue of notification on cross empowerment
- Draft notifications were proposed under CGST, IGST and SGST for enabling cross empowerment and conferring jurisdiction on the other authority if the authority having main jurisdiction does not initiate proceedings within a period of 1 year from intelligence based action
- None of these notifications were approved or cleared in the 22nd GST Council Meeting
- The only notification approved was with reference to conferring powers on both State and Central authority on refunds
- Notification No. 39/2017 – CT dated 13.10.2017 under Section 6(1) of the CGST Act, 2017 only for refunds
- **No notification as on date on cross empowerment**

JURISDICTION

- The Andhra Pradesh High Court in the case of ***Sri Balaji Rice Co. Vs. Commercial Tax Officer (1984) 55 STC 292*** has held that if plurality of officers are invested with the powers of assessing the same dealer it will result in great hardship and inconvenience to the dealers in travelling to offices of different officers and producing accounts before different officers and will greatly handicap the dealers in making their representations and it will also lead to conflicting and contradictory orders of assessment
- The Kerala High Court in the case of ***Sivaramakrishnan Vs. State of Kerala (1995) 1 ILR 92*** held that conferment of concurrent jurisdiction on several officers in respect of the same area was likely to result in discriminatory consequences resulting in violation of Article 14

TOO MANY CHANGES

- 159 CGST notifications (rate of tax) (*as on date*)
 - Matching SGST Notification from each State
 - Matching IGST Notification
- 445 CGST notifications (non rate)
 - Matching SGST Notifications
- 175 IGST notifications (rate of tax)
- 33 IGST notifications (non rate)
- 201 Circulars as on date
- 16 Removal of Difficulty Orders under CGST
- 14 amendments to CGST Act through Finance Act, 2023
- 15 amendments to CGST Act through Finance Act, 2022
- 15 amendments to CGST Act through Finance Act, 2021
- 14 amendments to CGST Act through Finance Act, 2020
- 20 amendments to CGST Act through Finance Act (No. 2), 2019
- 31 amendments to CGST Act through CGST (Amendment Act), 2018

GST REFORMS

- **5 Trillion dollar economy needs the following**
 - Reform in input tax credit system in GST
 - Elimination of cascading effect of taxes
 - Bridging the trust deficit
 - Faster refunds for exports
 - Reduction in compliance points
 - Better understanding of law to avoid reconciliation queries
 - Creation of GST Appellate Tribunal
 - Abolition of Authority for Advance Ruling or Strengthening of the same by making it as a judicial body
 - Single regulatory interface

WHAT ARE CRYPTOCURRENCIES?

- Financial Action Task Force (FATF) defines Virtual currency as a “digital representation of value” that can be digitally traded and functions as
 - a medium of exchange; and/or
 - a unit of account; and/or
 - a store of value.
- As on date, they do not have legal tender status
- Virtual currency or crypto-currency is different from fiat currency

MYTHS AND FACTS

Myth

- Cryptocurrency and blockchain are the same
- Cryptocurrency means 'Bitcoins'
- Cryptocurrency looks like a gold coin/ bar
- No country in the world has recognised cryptocurrency as legal tender

Fact

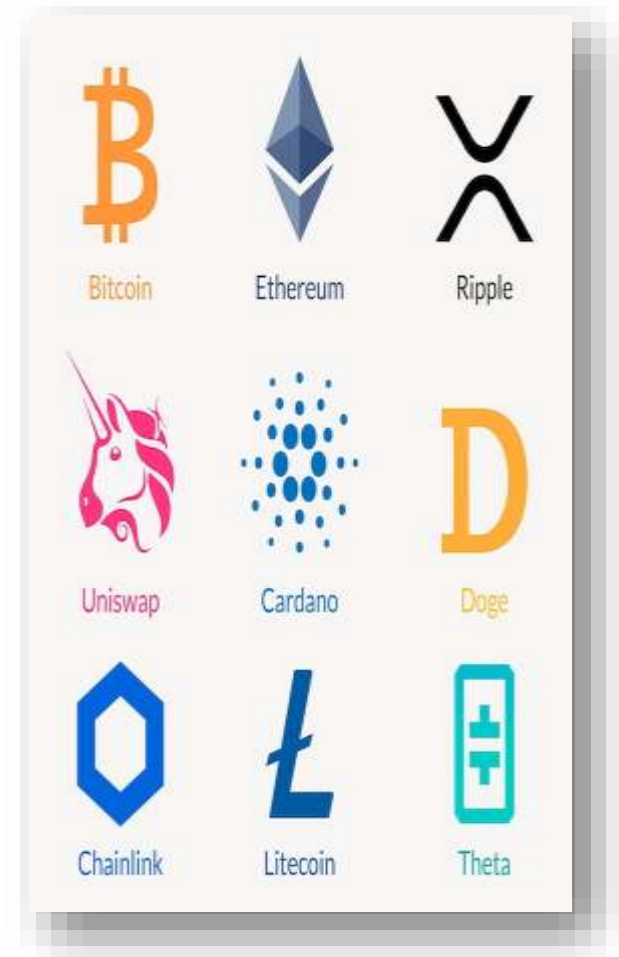
- Cryptocurrencies exist on a blockchain
- Bitcoin is only one type of crypto. There are over 10,000 cryptocurrencies
- Cryptocurrency has no physical form
- El Salvador has officially recognised Bitcoin. Some countries accept other forms of cryptocurrency as transactional currency.

WHAT MAKES BITCOINS ATTRACTIVE?

- Satoshi Nakamoto (still anonymous)
- Scarcity by design – total number of Bitcoins that can be created is 21 million
- **Increased difficulty in mining Bitcoins**
- The system is designed to gradually increase difficulty for solving a block which would ensure a cap on the number of Bitcoins in circulation
- **What drives the demand ?**
 - People who understand and buy
 - People who do not understand and buy
 - People who buy on account of advertisements and brand ambassadors
 - Success stories
 - FOMO effect
 - Speculation
 - HODL

KINDS OF VIRTUAL ASSETS

- Broadly Referred to as 'Tokens'
- Utility tokens (serves a utility on native blockchain)
 - *Recently launched \$Gari token for the Chingari App on the Solana Network*
- Security Tokens (Tradable financial instruments)
 - *traditional securities like stocks, bonds, ETFs may be tokenized to become a Security token*
- Payment/ Exchange tokens (Bitcoin, stable coins)
 - USDT, USDC, DAI, etc.
 - Stable coins means crypto-currency whose value is pegged against any identified fiat or even a commodity like gold
- **Non-Fungible Tokens (NFT)**



WHAT ARE NON FUNGIBLE TOKENS?

- 21st Century (Digital) collectibles
 - Unique; digitally available & accessible; verified and secured using blockchain technology
 - NFTs also use blockchain technology
 - The value of NFTs relies on their authenticity and scarcity
 - Biggest use case is in the field of (digital Art) may also be used for land registry etc.
 - Simply put, a non-fungible token cannot be faked but clearly can be copied (however it is not authentic)
 - Some NFTs used as tradable items 'in-game'
 - NFTs are bought with and sold for other crypto assets

WHAT IS NON – FUNGIBLE?

- Non- fungible essentially means non-interchangeable or *unique*
 - *Example – the exchange value of one rupee coin for another one rupee coin is equal, their values do not differ, therefore they are fungible*
- NFTs are non-fungible and they cannot be used as currency
- Each NFT is unique. There is only one original, just like an artwork/ painting
- *A screenshot/picture of a ‘Marvel Comics NFT’ is not the same as the NFT itself*



NFT IN ACTION (AUCTION)

TECH \ FEATURED STORIES \ CRYPTOCURRENCY \

Beeple sold an NFT for \$69 million

Through a first-of-its-kind auction at Christie's

NFT NEWS

Bored Ape NFT sold for an impressive 696.969 ETH

By James Kim - October 28, 2021 2 mins read



*NFTs released by
Amitabh Bachchan*



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Amitabh Bachchan's NFT Series Records India's Highest-Ever NFT Bids at Nearly \$1 Million

Commenting on the overwhelming response to his NFT collection, Bachchan said this is a new-age way for him to be in touch with his fans.

NATURE OF NFTS

- Lifetime Passes Sold as NFTs
- Digital Art/ Collectibles – these include images, videos, audios, books, GIFs, etc.
- In game items – Skins, weapon wraps etc
- Digital Trading Cards
- Domain Names
- Bored Ape NFTs also act as membership cards into Internet Yacht Club – Access to digital bathroom for graffiti



jack ✓
@jack

just setting up my twttr

MUSIC NEWS

Coachella Announces NFT Sale Featuring Lifetime Festival Passes & More

The sale, launching Feb. 4, marks the launch of a longterm partnership between the festival and cryptocurrency exchange FTX.

By Katie Bain
02/1/2022

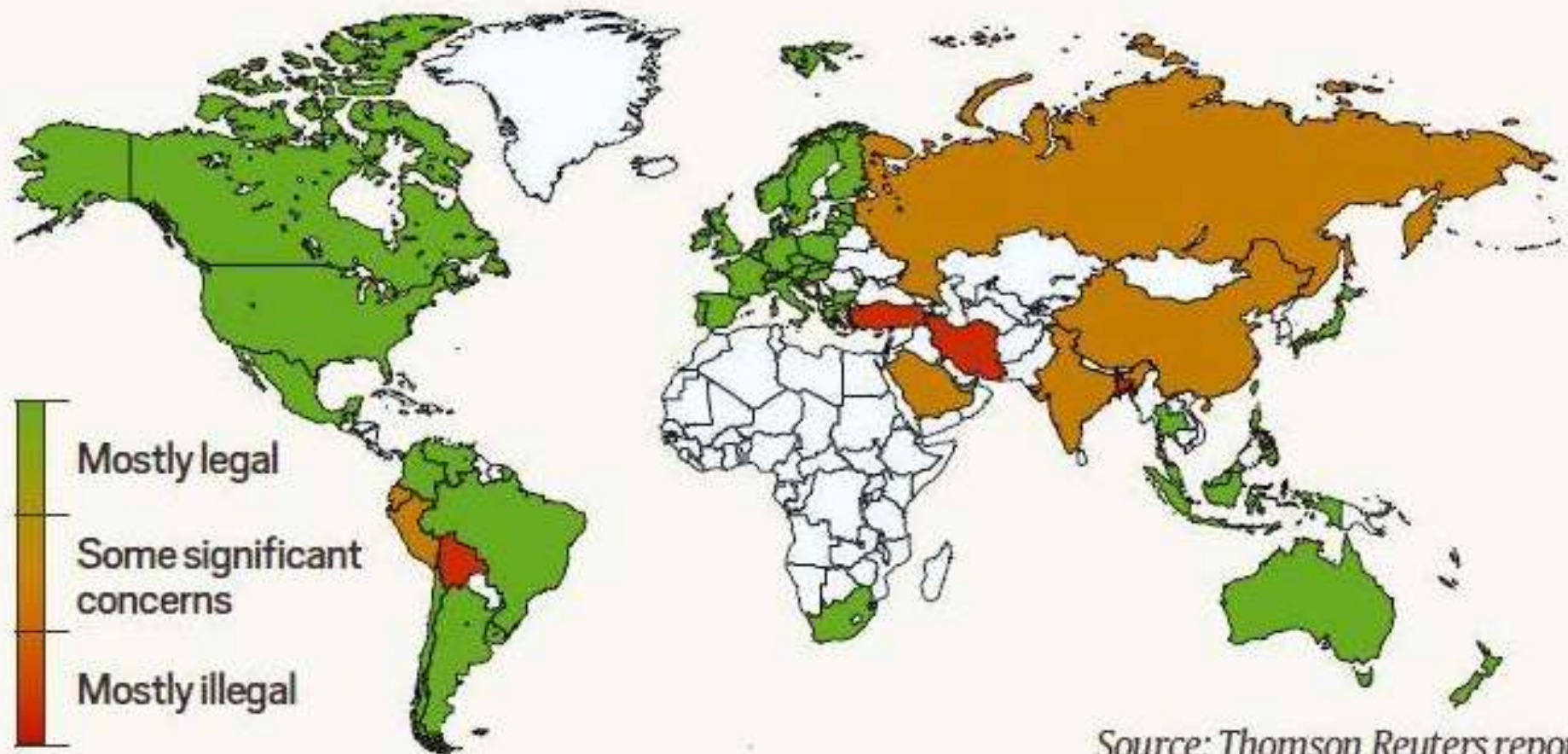


VALUE OF NFT

- Do NFTs have value?
 - *The market seems to think so based on some recent fancy high-value auctions*
 - *Jack Dorsey's first tweet was sold for \$ 2.9 million (currently trading ~ \$ 4)*
- The scarcity drives the speculative demand
- Like any other tangible collectibles, NFTs have their own group of enthusiasts driving up its value
- NFTs can facilitate fractional ownership of an original (say, a work of art)

RING FENCING

WHO ACCEPTS, WHO REJECTS, WHO HAS CONCERNS



INDIA STORY



- RBI kept issuing warnings
- Dealing in virtual currency was prohibited through a Notification
- *Notification struck down by Supreme Court in the case **Internet and Mobile Association of India vs. RBI (2020) 10 SCC 274***
- Finance Act, 2022 institutes a framework for taxing VDA's by amending Income Tax Act
- No regulation on cryptos as on date
- No special provisions in GST Law though VDA identified as consideration in online gaming from 01.10.2023.

INTERNET & MOBILE ASSOCIATION DECISION

- *It is clear that Governments and money market regulator through out the world have come to terms with the realities that virtual currencies are capable of being used as real money, but all of them have gone into the denial mode (like the proverbial cat closing it eyes and thinking that there is complete darkness) by claiming that VCs do not have the status of a legal tender as they are not backed by a central authority. But what an article of merchandise is capable of functioning as, is different from how it is recognized in law to be. It is as much true that VCs are not recognized as legal tender as it is true that they are capable of performing some or most of the functioning of real currency.*

IS CRYPTO CURRENCY MONEY?

- Section 2(i) of FEMA defines 'currency notes' to mean and include cash in the form of coin and bank notes.
- Section 2(aiv) of the RBI Act inserted by FA 2022 defines 'bank notes' to mean bank note issued by the RBI whether in physical or digital form under Section 22 of the RBI Act.
- **Central Bank digital currency would fall within bank notes.**
- Indian currency is defined to mean currency expressed or drawn in Indian rupees but does not include special bank notes and special rupee note under Section 28A of the RBI Act.
- **Foreign currency is defined to mean any currency other than Indian currency.**
 - As on date FEMA has not notified crypto as currency.
 - Transactions in crypto currencies as well as using crypto currency for procuring goods and services take place in the market.
 - Whether crypto can be considered as 'money' in the absence of any definition of money.

IS CRYPTO CURRENCY MONEY?

- Bitcoins carry value – that is their purpose and function – and act as a medium of exchange. Bitcoins may be exchanged for legal tender be it USD, Euro or some other currencies – ***US Vs. Ulbricht*** (District Court, New York)
- Bitcoin clearly qualify as money or funds under the plain meaning definitions – ***US Vs. Faiella*** (District Court, New York)
- Bitcoin is a payment instrument – ***State Vs. Espinoza*** (Florida Court of Appeal)

GST

ITS
GOODS

ITS
SERVICE

ITS
NEITHER

ITS
MONEY

ITS NOT
IN THIS
WORLD



GOODS AND SERVICES TAX

- **Can Cryptocurrency be considered as money**
 - Goods exclude money
 - Money means Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, travelers cheque, money order, postal or other electronic remittance *or any other instrument recognized by RBI* when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value.
 - **RBI has not recognized cryptocurrency as legal tender**

GOODS AND SERVICES TAX

- There are websites which accept cryptocurrency for issue of gift cards.
 - Mr.A transfers 0.5 bitcoins and obtains gift card of equal value issued by Amazon or any other platform.
 - The website would have paid legal tender and obtained these gift cards.
 - When Mr. A uses the gift card and procures the goods or services from the supplier, the underlying supply would suffer GST.
 - Cryptocurrency has been indirectly used for purchase of goods.

GOODS AND SERVICES TAX

- **If cryptocurrencies are not legal tender, can they be considered as goods?**
 - Supreme Court in the case of ***Associated Cements*** held that '*know-how*' put in a machine readable format becomes '*chattel*'
 - Supreme Court in the case of ***TCS*** held that "*The test is whether the concerned item is capable of abstraction, consumption and use and whether it can be transmitted, transferred, delivered, stored, possessed etc. Admittedly in the case of software, both canned and un-canned, all of these are possible*"
- **When cryptocurrency serves as a mechanism or a tool or an instrument for settlement of debt, can it be said that it is akin to money or yet to be recognised money and hence neither goods nor services?**
- The ECJ in the case of ***Skatteverket*** has held that transactions which consist of exchange of traditional currency for units of virtual currency or vis a vis constitutes a supply of service for consideration. The Court observed that cryptocurrency is used as means of payments and functions as a legal tender.
- The Texas District Court in the case of ***Trendon*** has held that bitcoin is a currency or a form of money.

GOODS AND SERVICES TAX

■ German Court Ruling

- The Federal Finance Court of Germany in the case of *Bundesfinanzhof, BFH* has held that mere participation in a game and 'in game sales' which shapes the gaming experience in interaction with other game participants does not constitute participation in real economic life.
- Thus, renting of 'virtual land' in a game was not considered to be a service liable to VAT.
- However, when the in-game currency is exchanged against real fiat money the same is taxable.

GOODS AND SERVICES TAX

- **Exchange of crypto currencies**
 - *Definition of supply includes barter*
 - *Whether supply is in the course or furtherance of business?*
 - *If supply is in the course or furtherance of business, how to determine place of supply?*
- **Can sale of NFTs and other virtual assets attract GST?**
 - *If considered as goods based on TCS decision*
 - *Is it a supply in the course or furtherance of business?*
 - *Jurisdiction issues*
 - *Location of supplier/ recipient/ place of supply*

GOODS AND SERVICES TAX

- **Can sale of NFT be considered as a supply of service?**
 - Spanish Tax Administration has given a ruling to the effect that transfer of NFT is not a supply of goods as NFT does not entitle their holder to the purchase of any tangible property.
 - Transaction is in the nature of digital certificate of authenticity representing the NFT without physical delivery of image file.
 - Transaction is a supply of service.
 - Since the service is automated requiring minimum human intervention and not feasible without IT, it is in the nature of electronically supplied service.
- **GST on crypto exchanges?**
 - *Identification of consideration for crypto exchanges*
 - *Transaction through foreign crypto exchanges?*

FIVE DIMENSIONS IN TAXING NFTs

- **Cross border transactions**
 - If goods whether there is a physical import for levy?
 - If service whether it is OIDAR?
 - If virtual currency is not money, is it consideration for supply?
 - Whether NFT is the consideration for cryptocurrency or vice versa?
 - Where does the wallet exist?

MINING

- Supply requires reciprocal obligations
- There must be 'supply for consideration' and 'consideration for supply'
- Mining
 - No Supplier/Recipient
 - Network confers the reward
 - No reciprocal obligations

OPTIONS FOR INDIA

- Mining' should be explicitly kept out of GST
- Crypto-currency could be considered as money and hence excluded from the ambit of GST
 - *Current thinking indicates that this is unlikely*
- Deeming fiction can be introduced to consider crypto currencies as securities only for the purpose of GST
- Crypto currencies could be statutorily excluded from the definition of goods, but the service fee or transaction fee for facilitating sale or exchange of crypto currency could be taxed
- Transfer of crypto assets could be taxed.
- Applicability of OIDAR to overseas crypto exchanges
- When goods or services are procured in exchange for crypto currency, statutory mechanisms can be introduced for valuation

THANK YOU

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