

GOODS & SERVICES TAX

IMPACT OF GST ON FMCG AND PHARMA SECTOR



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TRENDS - FMCG



Figure 44: Industry growth has significantly slowed from Q2FY19 levels

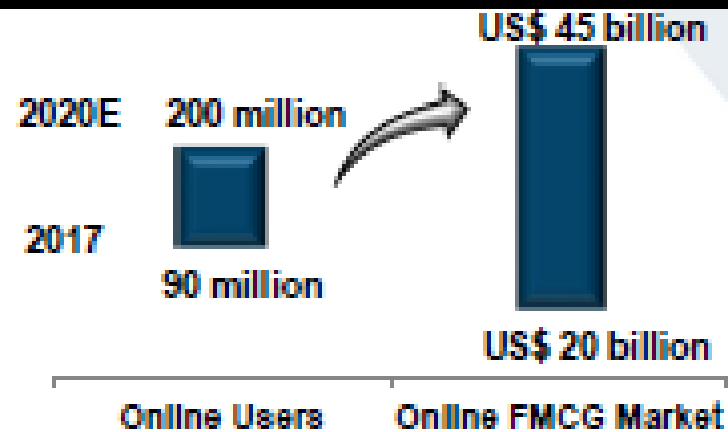


Source: Companies, News articles, Investec Securities Research

TRENDS - FMCG

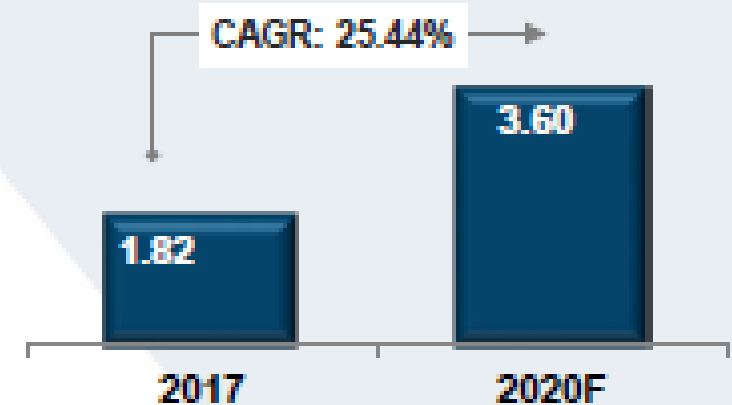
Key Trends

Growth in Online Users to drive Online FMCG Market



Note: E - Estimate, F - Forecast

Final Consumption Expenditure (US\$ trillion)



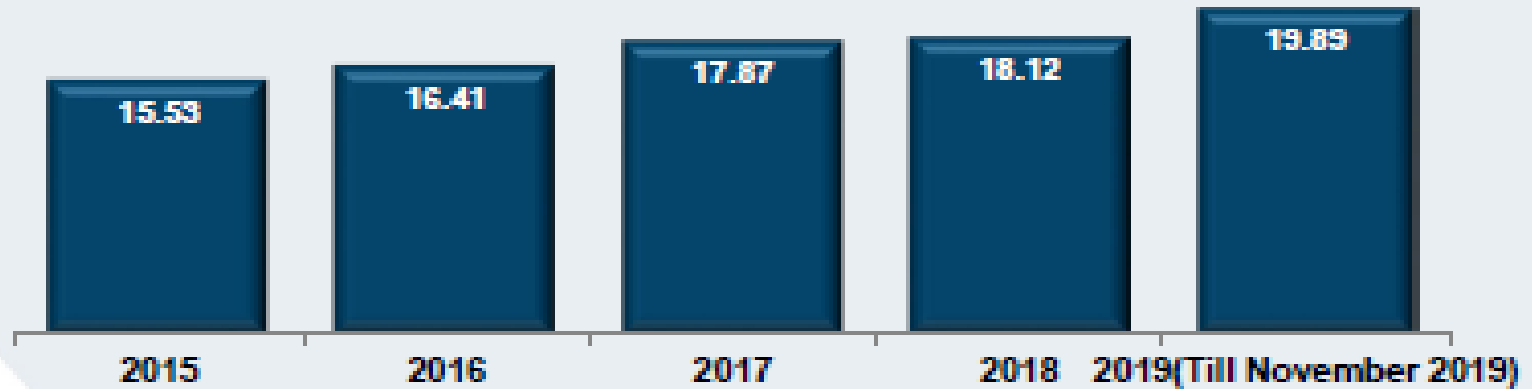
Government Initiatives

The Goods and Services Tax (GST) is beneficial for the FMCG industry as many of the FMCG products such as Soap, Toothpaste and Hair oil now come under 18 per cent tax bracket against the previous 23-24 per cent rate.

TRENDS - PHARMA

Market Size

Revenue Of Indian Pharmaceutical Sector (US\$ billion)



Sector Composition

Top Segments* in Indian Pharmaceutical Market in 2018 (US\$ bn)

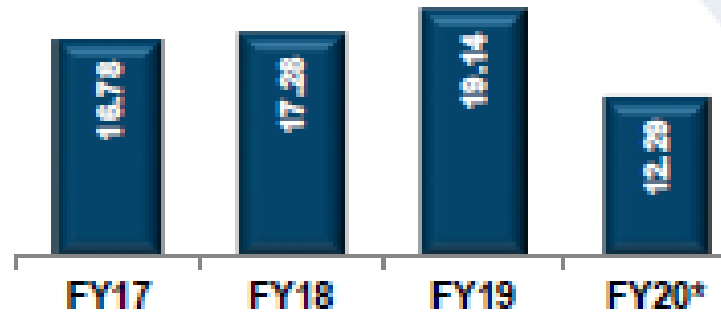


Note: *as per moving annual turnover (MAT)

TRENDS - PHARMA

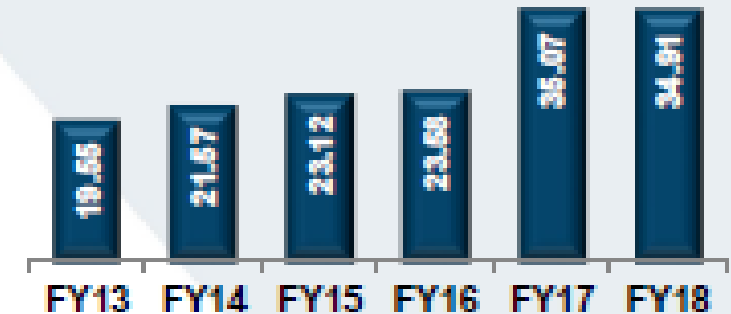
Key Trends

Pharmaceutical Exports From India
(US\$ billion)

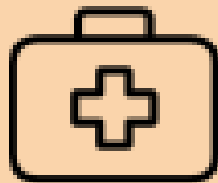


Note: *up to December 2019

Government Expenditure On Health
In India (US\$ billion)



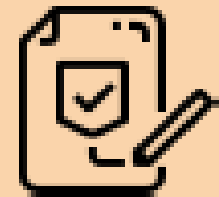
Government Initiatives



Pradhan Mantri
Bhartiya Janaushadhi
Pariyojana (PMBJP)




Pharma Vision 2020



National Health
Policy

COMMON FEATURES OF THESE SECTORS

- Multi State business module,
- Large Marketing and Distribution setup
- Involves large scale wholesale and retail Channel,
- MRP based products,
- Different Schemes to customers and channels
- Domestic as well as Foreign Procurements etc.
- E commerce etc.



ISSUES AND IMPACTS

MAJOR AREAS OF ISSUES

- Selection of Marketing Policies
- Distribution Channel – Discounts and Schemes
- Credit Blockage – Samples and Losses
- Composite Vs. Mixed Supply
- Goods Return – Defective/Expiry
- Credit Notes
- Classification
- Anti Profiteering
- Transitional Credits
- Multiple Tax Rates
- Advance Rulings – Employee cost and classifications
- Budgetary Support in Specified states

SELECTION OF MARKETING POLICY

- Earlier there were various factors based on which marketing models were selected as-
 - Impact of CST
 - Octroi
 - Non availability of cross sectional credit of Excise and Service Tax Vs VAT
 - Entry Tax
- Now these issues are not there under GST
 - Tax is levied on each stage on every supply
 - Credit of Input Tax is available at each stage
- However still there are some issues in GST
 - GST on Branch Transfer – Involvement of Working Capital
 - Valuation scenario (Inter play of Rule 27 and 28 and their Provisos)
 - Cross Charge

SELECTION OF MARKETING POLICY

- Available Marketing Models
 - C&F Agent
 - Warehouse and Branch Model in multiple states
 - Direct retail trade from designated centres
 - Sale through Franchisees/Brand Stores/Exclusive Stores
 - Sale through subsidiary companies
 - On Line Sales

Each model must be selected with specific emphasis on various aspects and impact of GST on such aspects. The department is going to strictly scrutinize these.

For Ex- Letters sent to Banks for use of Logos and Brands by their subsidiaries by the department. Letters were also sent to some large conglomerates.

DISCOUNTS AND SCHEMES

- There are various types of schemes which may be pre/post of issuance of Invoices.
- All of these schemes need to be analysed with a particular view at various concepts of GST Laws and Circular No 92/11/2019 dated 7-3-2019 and Circular No 105/24/2019 dated 28-6-2019 which was later withdrawn by Circular No 112/31/2019 dated 3-10-2019
- Discount and Promotion Schemes could be classified as 2 types for the purpose of GST.
 - Pre Invoice Discounts
 - Post Invoice Discounts

ISSUES IN DISCOUNTS AND SCHEMES

➤ Taxability -

- Whether they are eligible as Discount u/s 15(3)(b); OR
- They are categorised as Subsidy – Directly linked to the price;
- Treatment as Supply as per Schedule I entry I (Permanent transfer or Disposal of business asset where ITC has been availed)
- Supply by the recipient (Stockist, dealer, retailer) to the supplier (FMCG company)

➤ Availability of ITC

➤ Documentation

RELEVANT PROVISIONS

Sec 15 (3) The value of the supply shall not include any discount which is given—

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

Sec 15 (2) The value of supply shall include—

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Schedule I - ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

- Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
- Sec 17(5)(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;

DISCOUNTS AND SCHEMES – POST INVOICE DISCOUNTS

- Price Discounts
- Purchase Based Schemes
- Turnover target discounts
- Bulk Buy Discount / Corporate Discount
- Special Discounts
 - Festive price discount
 - Liquidation support
 - Seasonal Rebate
- Other Discounts

DISCOUNTS AND SCHEMES – SCHEMES

- Off Take discounts
- Merchandiser Support
- Visibility Allowance
- Loading/Unloading Allowance, Freight Allowance
- Event Support
- Buy more – Save more scheme
- Buy One Get one free
- Buy “This” Get “Other Free”
- Secondary Discounts – Price Revisions

DISCOUNTS AND SCHEMES – FREE SAMPLES AND GIFTS

- Free Samples to Doctors
- Gifts – Gold Coins, Other items
- Foreign trips
- Special Sales Drive
- Employee support

Issues:-

- ITC eligibility
- Reversal of ITC
- Eway Bill - Value

DISCOUNTS AND SCHEMES – COMBO PACKS

Issue –

- is it a?
 - Mixed Supply
 - Composite Supply
 - Individual Supply
- How to prepare Invoice?

Sec 8. The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

(a) a composite supply comprising **two or more supplies**, **one** of which **is a principal supply**, shall be treated as a **supply of such principal supply**; and

(b) a mixed supply comprising **two or more supplies** shall be treated as a **supply of that particular supply** which attracts **the highest rate of tax**.

MIXED SUPPLY – COMPOSITE SUPPLY

- (74) “mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.
- (30) “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;
- (90) “principal supply” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

GOODS RETURN INCLUDING EXPIRED GOODS

- Defective Goods
- Treatment of Expired Goods - Letter 349/57/2017-GST dated 26 December 2017 issued by CBEC in response to Pharma Association queries
- Time Limit
- What happens if the time limit is over?
- In case of the goods are to be destroyed – Credit eligibility
- Goods sold from one state and returned to another state
- Goods sold from the state where branch is closed – Return of material
- Money refunded to Customers
- Credit notes – Multiple Invoices

CLASSIFICATION

- Classification is to be based on the true nature of the product and not on how they are offered;
- Classification is to be done on the settled principle of the Twin Test;
 - Common Parlance Test
 - Are the ingredients used in the product mentioned in the authoritative text books
- Sole reliance on labels for classification is not lawful;
- Mere mention of a product in Chapter 33 is not sufficient for classification of a product as cosmetic
- VAT authorities treat the products as medicaments two wings of the Government cannot treat a product differently;
- Uniformity of classification;
- Classification beneficial to the assessee is to be adopted;
- The medicinal products are substantial and not subsidiary

ANTI PROFITEERING

- Issues-
 - Frequent Rate Changes by Govt
 - MRP already fixed
 - Frequent upper band set up on medicines
 - Reaffixing of New Labels of prices
- Some Cases:-
 - Patanjali Ayurveda Ltd.
 - Bajaj Electricals Ltd
 - Jubilant Foods Works Ltd
- Points raised
 - Benefit passed on must be visible with affixation of new labels or Reduced Invoice price
 - Profiteering to be calculated SKU wise not on recipient as whole.
 - No profiteering where base price of the product was kept unchanged.
 - Price increased more than the amount of ITC denied. Thus, the assessee indulges in the profiteering.

TRANSITIONAL CREDITS

- Issues-
 - Denial of ITC of KKC, SBC, EC and SHEC
 - Denial of VAT credits for want of C forms
 - Taxation by VAT authorities for non declaration of stocks
 - Entry Tax notices on the closing stocks declared as on 30.06.2017
- Important Cases:-
 - SUTHERLAND GLOBAL SERVICES PVT. LTD [2019 (30) G.S.T.L. 628 (Mad.)]
 - Adfert Technologies Pvt. Ltd Vs Union of India & Ors. (Punjab & Haryana High Court)

AMENDMENT TO SEC 140

- (a) in sub-section (1), after the letters and word “CENVAT credit”, the words “of eligible duties” shall be inserted and shall always be deemed to have been inserted;
- (b) in the *Explanation 1*—
 - (i) for the word, brackets and figures “sub-sections (3), (4)”, the word, brackets and figures “sub-sections (1), (3), (4)” shall be substituted and shall always be deemed to have been substituted;
 - (ii) clause (iv) shall be omitted and shall always be deemed to have been omitted;
- (c) in the *Explanation 2*—
 - (i) for the word, brackets and figure “sub-section (5)”, the words, brackets and figures “sub-sections (1) and (5)” shall be substituted and shall always be deemed to have been substituted;
 - (ii) clause (iv) shall be omitted and shall always be deemed to have been omitted;

ADVANCE RULING RELATED ISSUES

- Employee Cost
 - Caltech Polymers P Ltd [2018 (18) G.S.T.L. 373 (App.A.A.R. - GST)]
- Cross Charge
 - Columbia Asia Hospitals P Ltd [2019 (20) G.S.T.L. 763 (App.A.A.R. - GST)]
- Applicability of RCM on Directors' Remuneration
 - Clay Craft India Pvt Ltd (AAR - Rajasthan)
- Liquidated damages
 - Maharashtra State Power Generation Company

OTHER ISSUES

- Use of Logos by Subsidiaries
- Taxation of Loyalty Redemption points
- Vouchers
- Publicity items – Branch transfers and provided to dealers and distributors
- Excess Collection of Money – Rounding off
- Multiplicity of tax rates with clarity issues
- GSTR-2A Problems – 36(4) scenario
- TCS – Ecommerce transactions
- Liquidated damages
 - Maharashtra state Power generating company (AAR) – Schedule II – Declared Service
- Budgetary Support in Specified states

THANK YOU

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