

GST RATE FOR OLD AND USED MOTOR VEHICLES

This article is written to clear the confusion established in the industry as to what rate of tax is to be applied on the supply of old and used motor vehicles which are purchased pre and post GST regime.

Introduction

When the Goods and Services Tax has rolled out, the entire nation was expecting a single rate of tax across the country as campaigned by the Government with the slogan “Good and Simple Tax” but the Government came up with 4 slab rates by breaking this expectation. The four slab rates have been set at 5%, 12%, 18%, 28% for different goods and services.

The rate applicable for the Motor Vehicles is at 28%. Further in case of luxury vehicles, where there is an additional Compensation Cess at varied rates of 15%, 3% and 1% depending upon the make specifications. The rates of excise duty and VAT on Motor Vehicles were also on a higher side under the pre-GST regime. In addition to these high rates, input tax credit is also not allowed both in pre and post GST regime except in certain specified cases.

Upon sale of old and used motor vehicles (which were subjected to high rates upon their initial purchase), they are again subjected to above specified high rate of GST and compensation CESS. At the time of implementation of GST, Government has not taken cognizance of this hardship of subjecting the same goods to tax on more than one occasion even in the absence of any value addition.

Many representations were made from the industry to reduce the rate of tax on old and used motor vehicles on which no Input tax credit is claimed. Taking the hardship into consideration, Government has issued two notifications to reduce the rates. With the above backdrop, we are dealing with these notifications to clarify the GST rate applicability for various circumstances.

About the Applicable Chapter and Chapter Heading

Chapter 87 of Customs Tariff Act, 1975 deals with various types of Motor Vehicles viz., Tractors, Dumpers, Lorries, Trucks and Passenger transportation related motor vehicles.

Chapter heading 8702 deals with Motor vehicles which are meant for transport **of ten or more** persons, including the driver (Example: Bus). Chapter heading 8703 deals with other types of motor vehicles which are meant for transportation of **less than ten** passengers including driver (Example: Car).

Notification No. 37/2017- Central Tax (Rate) dated 13.10.2017, & Telangana State Notification No.37/2017- State Tax (Rate) [g.o.ms no.253], dated 23-11-2017

As per notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 vide serial No. 17(vi), the rate applicable for leasing of any good is same as if it is supplied. In case of motor vehicles which are supplied on lease during pre-GST regime, no concessional rate was notified earlier, hence the rate applicable is at high as discussed in the introduction.

The above-mentioned notification was issued to reduce the rate of tax applicable on sale of all old and used motor vehicles including the vehicles which are given on lease, which fall under chapter 87 which are purchased pre-GST and no Input tax credit was availed on such purchase and sold in GST regime. The rate applicable shall be 65% of actual rate i.e., the effective tax rate shall be 18.2% (65% of actual rate of tax of 28%). The Compensation CESS applicable is reduced by 65% of CESS originally applicable by way of issue of Notification No. 6/2017- Compensation Cess (Rate) dated 13.10.2017.

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The only two conditions to be satisfied to apply the said notification are:

- The Motor vehicles should have been purchased by the lesser prior to 1st July 2017 and supplied on lease before 1st July 2017
- Supplier of motor vehicles is a registered and had purchased the motor vehicle prior to 1st July 2017 and has not availed input tax credit on such vehicles.

To sum-up the entire notification, when the old and used motor vehicle is purchased during pre-GST regime and no credit has been availed, then the sale or lease of such vehicle during post GST regime shall be subjected to GST at the rate of 18.2%.

Subsequently on 25.01.2018, another notification was issued by prescribing the rate of tax applicable on sale of old and used motor vehicles which fall under chapter heading 8703 and 87 respectively. The same is discussed in the below heading.

Note: This notification shall not apply after 01.07.2020.

Notification No. 9/2018 – Integrated Tax (Rate) dated 25.01.2018

The above-mentioned notification was issued to reduce the applicable rate of tax on old and used motor vehicles which fall under chapter heading 8703 (Ex: Cars) to 18% and on all other motor vehicles which fall under chapter 87 to 12%.

This notification unlike the earlier notification shall be applied not only to motor vehicles purchased in pre-GST regime but also to the motor vehicles purchased in GST regime. The Compensation CESS has also been waived by way of notification No. 1/2018- Compensation CESS(Rate) dated 25.01.2018 for both motor vehicles purchased in pre-GST and post GST regime. The only condition to be satisfied to apply this notification is that, the input tax credit should not have been availed under CGST Act,2017 or under CENVAT Credit Rules,2004 or VAT laws on such motor vehicle at the time of their purchase by supplier.

In case, if depreciation is claimed as per Income Tax Act, 1961 the tax shall be applied on the margin, which is the difference between consideration received and depreciated value or actual purchase price in case no depreciation is charged. If margin is negative no tax shall be implied.

This notification shall not apply in case of motor vehicles given on lease. Hence the rate applicable on such lease of motor vehicle which is purchased and supplied on lease pre-GST shall be 18.2% (65% of 28) as per Notification No. 37/2017- dated 13.10.2017.

Comparative analysis of two notifications:

Scenario	Rate upto 12.10.2017	Rate between 13.10.2017 to 24.01.2018	Rate after 24.01.2018
Car purchased in pre-GST regime and supplied in post GST regime (No credit availed)	28%+ applicable CESS	18.2%+ 65% of applicable CESS	18%
Car purchased in pre-GST regime and lease continued in post GST regime also (No	28%+ applicable CESS	18.2%+65% of applicable CESS	18.2%+ 65% of applicable CESS

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credit availed)			
Car purchased in pre-GST regime and supplied in post GST regime (credit availed)	28%+ applicable CESS	28%+ applicable CESS	28%+ applicable CESS
Car purchased in pre-GST regime and lease continued in post GST regime also (credit availed)	28%+ applicable CESS	28%+ applicable CESS	28%+ applicable CESS
Car purchased and supplied in post GST regime, but no ITC availed	28%+ applicable CESS	28%+ applicable CESS	18%
Car purchased and leased in post-GST regime, but no credit availed	28%+ applicable CESS	28%+ applicable CESS	28%+ applicable CESS
Car purchased and supplied in post GST regime, ITC availed	Determine as per Sec 18 of the CGST Act and Rule 44 of CGST Rules	Determine as per Sec 18 of the CGST Act and Rule 44 of CGST Rules	Determine as per Sec 18 of the CGST Act and Rule 44 of CGST Rules
Car purchased and leased in post-GST regime, ITC availed	28%+ applicable CESS	28%+ applicable CESS	28%+ applicable CESS

Note: In the above cases, it is assumed that supply doesn't include lease.

Conclusion:

Initially, before issue Notification 37/2017-Central Tax (Rate), second hand cars were subjected to high rate of tax at 28%+applicable CESS and even after the issue of the said notification, tax is payable on the transaction value and not on the margin (difference between sale price and book value). This will lead to taxing the same motor vehicle on more than one occasion though there was no value addition thereby paving way to double taxation and cascading effect. Because of these reasons, Notification 9/2018- Central Tax (Rate) has been issued to provide that the value of second-hand motor vehicles shall be the margin and the rate of tax also reduced. However, there was no mention in the notification whether the amendment is retrospective or prospective alone. In view of this reason, the issue whether the tax is payable on the gross amount received for supply of second-hand motor vehicle or on the margin during the period 01.07.2017 to 24.01.2018 is still left to one's own interpretation and is prone to litigation.