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GST on sale of old cars

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It is estimated that every one car out of four cars sold in India would be against exchange of old car. Market for used cars has increased in recent years in our country. As per the report by Frost and Sullivan research organisation, the used car market is pitted to grow at a CAGR of 12.5 percent from 3.94 million units in 2016 to 7.1 million in 2021. Sale of old cars were generally taxed at rates ranging from 5% to 15% depending on State laws. However, with introduction of GST, rate was way higher than earlier. There have been many developments with respect to taxation of old cars under GST which has led to lot of confusions as well. In this article, we have tried to address few of them.

Taxation of old cars earlier

In Karnataka state, sale of old vehicles was also subject to tax of 14.5%. However, if the seller had not taken VAT input tax credit on purchase of such vehicles and State registration had been taken, the rate of tax was 5.5%. There was a restriction for taking credit on motor vehicles therefore many of the registered persons would not have taken the credit to be eligible for paying lower rate of VAT.

Dealers in motor vehicles also had the benefit of paying VAT at lower rate subject to fulfilment of similar conditions. The tax was payable only on the margin amount. The main issue in case of such dealers was requirement of paying VAT on purchase of vehicles from unregistered persons. If VAT was paid on such purchases, dealers would not have been eligible to pay tax at lower rate of tax only on margin amount.

GST applicable on sale of old cars

GST is payable on supply of goods or services. Unless exempted, all goods are subject to tax at the specified rates. Most of the vehicles are subject to GST at the rate of 28%. In addition to this, applicable compensation cess was also payable at applicable rates which varies from 15% to 22%. If a SUV (vehicles of more than 1500 cc) which was procured before July 2017 was sold in GST regime, the tax rate applicable would have been around 43% as against 5% to 15% earlier. This resulted in reduction in margin for sellers. Especially for dealers in sale of used vehicles. Many dealers had to sell vehicles at loss or could not find the buyers due to higher prices due to tax rate of around 43%.

Purchase price for valuation of goods

Similar to VAT benefit, the margin scheme for payment of tax is available in GST as well. Rule 32 (5) provides for payment of GST only on margin on sale of used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods. If such margin is negative, no GST to be paid. Margin is nothing but difference between selling price and purchase price of goods. In VAT provisions, the benefit of paying tax was mostly provided for vehicles whereas in GST it is applicable for all used goods.

Used car dealers would undertake minor repair/ reimbursement of vehicles procured before selling such vehicles. The main issue is whether purchase price could include expenses incurred towards such minor processing. If it is included, then the GST payable would also get reduced as it is payable only on margin. Prima facie reading of the words does not indicate such inclusion in purchase price as such price can include only the amounts paid to seller of vehicle to dealer. A clarification on this from CBEC could help thousands of dealers engaged in sale of old goods.

In case of banking companies or NBFCs, purchase value of goods repossessed from a defaulting borrower be deemed to be the purchase price of such goods by the defaulting borrower reduced by 5% for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

Except in case of dealer of used goods, GST was payable on entire consideration by other sellers at applicable rates.

Various notifications on rate of taxes and issues

Tax exemption of 35%

Notification no.37/2017-CT (Rate) dated was the first notification issued providing relief of 35% of tax payable to sellers of motor vehicles. If GST rate if 43%, then tax payable applicable was 65% of 43% which is around 28% tax. This benefit is available up-to year 2020 and subject to fulfilment of following conditions:

a) Supplier of vehicle is a registered person
b) Such supplier had purchased the vehicle prior to 1st July, 2017 and has not availed input tax credit of central excise duty, VAT or any other taxes paid on such vehicles.

Entry tax could fit into other taxes paid category. This provided an alternative option to dealers of used vehicles. They had to compare the tax payable on margin versus tax payable at around 28% on total consideration to choose the better option. Rate of 28% is still higher which did not provide any respite to dealers.

Reduction in GST rate for all old vehicles

The much-awaited bigger relief has been given through notification no.8/2018-CT (rate) dated 25th January 2018 by reducing the rate of tax on old vehicles as below:

Sl.No.	Particulars of vehicles	Effective GST
1	Old and used, LPG or CNG driven motor vehicles of engine capacity of 1200 cc or more and of length of 4000 mm or more	18%
2	Old and used, diesel driven motor vehicles of engine capacity of 1500 cc or more and of length of 4000 mm	18%
3	Old and used motor vehicles of engine capacity exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles.	18%
4	All Old and used Vehicles other than those mentioned from S. No. 1 to S.No.3 above	12%

A normal registered person could pay GST at above rates only on his margin which would be the difference between sale price less depreciated value as per income tax provisions. A dealer engaged in sale of used vehicle can pay GST at above rates on his margin which is difference between sale and purchase price. Complete exemption from compensation cess is also provided on sale of all kinds of used vehicles.

The important question which arises now is whether benefit of notification no.37/2017 and no.8/2018 be claimed simultaneously i.e, if tax can be paid only at 65% of applicable GST. It is relevant to note that the benefit of notification no.37/2017 would not be applicable for vehicles purchased after 1st July 2017 or for vehicles sold after 1st July 2020. The notification no.8/2018 exempts tax above the regular rate specified. This can be applied only for vehicles purchased and sold after 1st July 2017. It would be ideal for the dealers to opt for the later notification as effective tax amount would be much lesser compared to option of paying tax of 65% of actual tax applicable. There are various dealers who would not have paid tax on sale of old vehicles as the rate was too high including compensation cess. Unless specifically provided, the new rates would be applicable only for transactions from 25th January 2018. For the past, the GST liability would still exist.

Conclusion

GST law is still evolving and as expected there have been regular amendment in the law with notifications being issued very often. It is critical for the tax payers to be aware of all important changes. The professionals need to be well prepared with regular updation of their knowledge which could impact client’s business. There are still few issues such as computation of purchase price under margin scheme which needs clarification from CBEC. Professionals could also assist the clients in seeking advance ruling if stake involved is high.

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