Impact of GST

Automotive Sector

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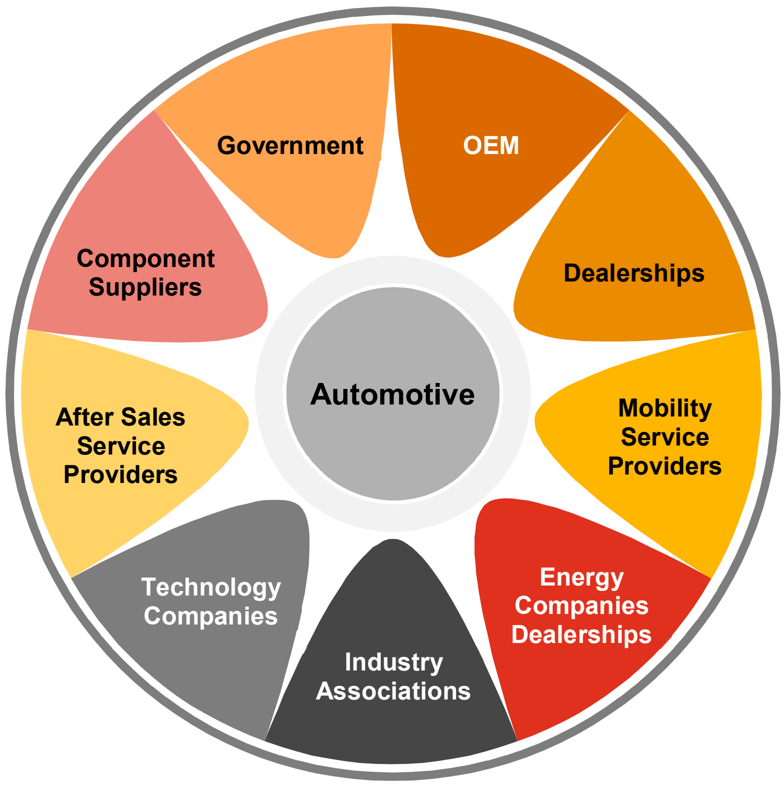
Automotive Sector in India

India has a robust automotive industry which ranges from a two wheelers to four wheelers as well as a presence in varieties of commercial vehicles. It is now heading towards electrification, albeit slowly. With increasing spending capacity, high levels of product awareness, rapidly evolving expectations and demand for personalized products & services, customers are taking the center stage of the entire automotive ecosystem. Understanding changing customer needs and having the ability to serve them differentially will be a key competitive advantage. An overview of the automotive ecosystem is provided below for ease of reference:



In this industry, there is a potential for a significant disruptive impact of technology, primarily at three levels:

- On vehicles (e.g. electric, driverless, connected)
- On supply chain and operations (digitalization, robotics, 3-D printing) and
- On business models (e.g. mobility as a service, vehicle sharing)

Given the above, industry participants are in a process to reinvent themselves and find new ways of creating and delivering value in the future.

Further, major regulatory interventions, such as the accelerated transition from BS IV to BS VI, adoption of electric vehicles, safety rules and stringent vehicle standards are leading to a shift in vehicle technology. This is creating significant challenges, not only for the automotive industry and supplier ecosystem but also in related sectors such as energy, oil & gas, transportation, and urban development. Also, the development of smart infrastructure (e.g. smart cities), alternative modes of transportation and the drive to enable electric vehicle charging infrastructure will change the face of mobility infrastructure.

India is emerging as a priority market for global automotive companies. Indian companies are globalizing as well. Thriving in such an environment will need a clear strategy and the ability to manage risks and build organization capability.

The GST implementation – Teething issues and current state of play

GST has started changing India's perception not just for policy makers in other countries but also for global investors especially in the context of big auto players. With the advent of GST, India has moved the value chain and the tax system is almost on a par with countries that have good indirect tax structures, including those in China.

One of the biggest challenges in the GST implementation was the technology infrastructure and experience of compliance given that since Day Zero; there were bugs, the portal had a slow response rate and performance related issues. The Government constituted a committee to address the issues and it is working on improving the tax payer experience and various steps at simplification of process are being introduced.

The implementation of the E-way bill also brought with it operational as well as technology challenges for which the Government took additional time to get the framework up and running. The portal was revamped and was introduced in February 2018 and is completely functional since April 2018 on a pan India basis. The automation of the E-waybill system is a welcome relief from the previous practice of manual checking of way bill information at check posts in different States which led to different interpretations and maintenance of different types of documentation/ records based on State VAT law provisions.

Multiple tax rates (5%, 12%, 18% and 28% excluding cess where applicable) is another aspect which complicates the taxation system and leads to unwarranted classification disputes. The GST law also prescribes for a levy of compensation cess on certain specific goods including certain categories of motor vehicles. Further, the applicable rate also depends upon value-based classification (footwear, apparel etc.), specification based classification and based on status of buyers. The Government has indicated that it will continue to work on rationalization of rates and try to move towards a more simplified tax rate structure, certain initial steps in this regard have already been taken.

An important aspect of the implementation of a new law is to have a quick and robust dispute prevention and restitution mechanism. Acknowledging the need for suitable clarifications, the Authority for Advance Ruling (AAR) has been set up in multiple jurisdictions across India. The AAR has been fairly proactive in disposing off advance ruling applications, especially in Karnataka, Maharashtra, Kerala and Gujarat. However, given that the AAR has been constituted at a State level, there have been contrary rulings by two different AARs. This indicates a need for a central management team. In this regard, the Union Cabinet has recently approved the creation of National Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) which is the forum of second appeal in GST laws and the first common forum of dispute resolution between Centre and States.

Transition from one regime to another is always a difficult process and it was no different in the present case. The Government did allow for transition of all input tax credits in the books of accounts to the new regime, subject to fulfillment of prescribed conditions. This step taken by the Government was appreciated by the industry. However, the nuances for interpreting the conditionals of availing such credit were not appropriately addressed. For e.g. while the Krishi Kalyan Cess ('KKC') was available as input credit under the previous regime, there was no clarity on transitioning it to GST. Further, subsequently, it was clarified in an Advance Ruling [1]that this was ineligible for transition. In the amendments to the law introduced with retrospective effect, this position has been revalidated. The GST law[2] has now been amended in order to clarify with retrospective effect from 1 July 2017 that the cesses levied under the pre-GST laws shall not be a part of the transitional input tax credit under GST. Due to revenue collection challenges in the initial months, the Government also issued numerous notices disputing eligibility of transitional credit, thereby imposing more rigorous documentation/ compliance requirements on players already reeling under transition challenges. Further, in some cases, there was a technology challenge i.e. eligible transitional credit did not reflect on the GST portal or dealers were unable to file the prescribed forms online. The Government has addressed these concerns by extending the due dates for filing transitional return (Form GST TRAN-1) for some taxpayers who have huge amounts that are blocked due to procedural challenges.

Further, even after one year of GST go-live, there had been a deferment of implementation of provisions relating to advances and purchases from unregistered vendors, Tax Collection at Source (TCS) for e-commerce players and Tax Deducted at Source (TDS) for works contractors which led to an atmosphere of ambiguity for existing businesses as well as those looking to set up new ventures. One of the focus areas for

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[1] Kansai nerolac paints limited 2018-TIOL-09-AAR-GST (No GST-ARA-18/2017-18/B-25)
[2] Section 140 of the Central Goods and Services Tax Act, 2017;

India Inc is the **matching concept**, wherein a buyer is required to reconcile its tax payments with the tax collections, deposited and reported by the supplier on the Government portal. Any incorrect or unmatched transaction would lead to denial of credit to the buyer. However, due to IT glitches, this concept was not implementable and the system has been deferred till necessary technological framework is put in place by the Government.

Given that employer and employees are defined as related parties under the GST law and supplies to related parties even without consideration is a taxable supply, all transactions between employers-employee need to be analyzed *qua* the said provision. Supplies from employee to employer of gifts up to INR 50,000 per employee are exempted from GST. Free benefits such as free food, health check-up, gym, crèche etc. are standard facilities provided to all employees and benefits that form part of employment policy should be akin to consideration to the employee in course of employment and thus, should not be liable to GST. However, wherein there are supplies for which part or full value is recovered from employees (such as subsidized food), the same to be considered as supply and valued at the Open Market Value (OMV). The Kerala AAR in an advance ruling [3], has held recovery of canteen food expenses as taxable supplies.

Tax payers also under various contracts have clauses pertaining to liquidated damages from their vendors i.e. contractors etc. for delay in delivery, performance issues, etc. Such damages may also get adjusted from the invoice, thus resulting in net billing/payment. Taxability of liquidated damages/ cancellation charges have been matter of litigation even under the erstwhile indirect tax regime. Given the wide coverage of the definition of services, the ambiguity on their taxability continues even under the GST regime. While there as ruling of the AAR[4] which holds that such liquidated damages are taxable as a declared supply in the hands of the contractee under the provision Schedule II (5)(e), such ruling is likely to be contested at an appellate stage.

Implementation of the anti-profiteering provisions is one of the key areas of debate within the industry players. While the regulations seek to prevent entities from making profits on account of GST, an overarching anti-profiteering provision under the GST law without clear guidance or explicit rules has led to considerable ambiguity, primarily on account of the following:

a. Lack of clarity on the granularity of anti-profiteering analyses i.e. at aggregate company level, product family or SKU level, impact *qua* price controlled products

b. Can the Indian tax payers resort to mechanism followed by tax payers in other jurisdictions with similar anti-profiteering provisions? Will the tax authorities accept the same?

c. Whether transition costs or increased input costs incurred by the Company on account of GST implementation may be absorbed while computing a revised anti-profiteering compliance price?

d. On which date such price reductions were/ are to be made effective?

The National Anti-Profiteering Authority (NAPA) has issued few orders – eg one for a company dealing in automobiles[5] and another for one engaged in rice business[6]. In both these cases, the authority ruled in the favour of the companies though certain negative rulings. However, it is not clear as to exactly how the revised price computations were carried out by the companies and factors differ basis the nature of the product and business.

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[3] Caltech Polymers Pvt Ltd 2018- CT/531/18-C3 DATED 26/03/2018

[4] Maharashtra state power generation company 2018-VIL-33 AAR (No GST- ARA-15/2017-18/B-30)

[55] Dinesh Mohan Bhardwaj Vs Vrandavaneshwree Automotive Pvt Ltd - 2018-TIOL-01-NAPA-GST – Complaint filed against Honda cars alleging that benefit of reduced rate of cars not passed on. After examining facts of the case, NAA held that the respondent had passed on the duty benefit on account of (i) reduction in the tax rate on motor cars from 31.254% (effective pre GST) to 29% (effective post GST); and (ii) Benefit accrued to the respondent by way of Input Tax Credit on their purchases. NAA declared the respondent anti-profiteering compliance

[6] Kumar Gandharv v. KRBL Limited - TS-173-NAA-2018-NT

Issues – Completely / partially addressed till date

1. GST payable on advances

One of the biggest issues for the sector post implementation of GST was the requirement to deposit GST on receipt of advance which was leading to significant blockage of working capital. It is a common practice in this sector to receive advances from dealers/ distributors as well as customers and thus, taxing the advance was leading to a significant working capital blockage. However, the requirement to pay advances was done away with w.e.f. November 15, 2017[7], which was a welcome relief for the industry players.

2. GST on sale of second hand motor vehicles

GST is leviable only on margin i.e. Sale Price less Purchase Price/ Depreciated Value i.e. no GST in case the margin is negative. Clarity was also provided on Original Equipment Manufacturers ('OEMs') using cars for display, exhibition etc.

3. Valuation

Unlike the erstwhile Indirect tax regime, under GST there is no Maximum Retail Price (MRP) based valuation, which applied to parts sold in the after sales market. For all the OEM and auto component product segments, uniform transaction valuation methodology is to be followed. The automobile industry has seen significant disputes under central excise valuation like:

- Inclusion of State or Industrial Promotion Subsidies (IPS) retained by the manufacturer
- Deducibility of post-sale discounts from the dutiable value under excise
- Treatment of PDI charges and other dealer reimbursements, advertisement charges recovered from dealers etc.,
- Sales through marketing companies and mutuality of interest
- Receipt or payment of subventions in the distribution chain

The GST law continues with the concept of 'Transaction Value' which is a welcome measure. The Transaction value shall be adopted where the supplier and buyer are not related and price is the sole consideration for sale. Some of the significant valuation points arising out of the GST legislation are as follows:

- **Subsidy**: As per the GST law, any subsidy that are provided by the State Government or Central Government are excluded from the levy of GST. The majority of automobile manufacturers enjoy special benefits from the State Government in the form of State IPS. These subsidies are generally given in the form of refund of taxes paid or as a soft loan. Exclusion of subsidy from the taxable value could be considered as a welcome change.
- **Discounts in normal trade practice**: Where a company intends to provide deduction for discounts either before or at the time of supply of goods, the same would be allowed subject to the condition that the amount of discount is shown in the invoice issued by the company.

[7] GST Notification No 66/2017-Central Tax dt 15-11-2017

- **Post supply discounts:** Under GST law, the post supply discounts are allowed as a deduction in the taxable value subject to fulfillment of following conditions:
  - Amount provided as discount should be a direct consequence of an agreement with the customers.
  - Such agreement should have been executed either before or at the time of supply of goods.
  - Proper document evidencing issuance of discount to be provided to the customers.
  - Discount amount should be specifically linked to those relevant supply invoices that were initially issued by the taxable person at the time of supply of goods.
  - Input tax credit should be duly reversed by the customer.

There are practical challenges in claiming post sale discounts especially in the context of practice followed by the automobile industry, as these discounts or incentives are not applied to specific invoices and could be schematic or seasonal.

While all business usually offer different types of marketing schemes and offers, in the automotive sector, the industry is structured in a way that the manufacturers/ importers offer a variety of pre and post-sale discounts to dealers, while the dealers also have various onward schemes/ promotions for customers (where the cost is sometimes fully or partly borne by the dealer, similarly by the automotive company and sometimes shared with third parties, such as financing companies). The secondary market schemes in this sector are distinctive and the players have set up different transaction models (costs being shared by manufacturer/ trading company or distributors). While the industry players, during implementation of GST have taken positions relating to different types of marketing schemes, a conclusive clarification on the same is still not available. Further, in some States, officers at the ground level have also raised queries relating to the positions taken.

4. Valuation in case of supplies to 'Related Parties' -

Under GST Law, any supply of goods or services or both between related persons or distinct persons, as per Section 25, when made in the course or furtherance of business, will be treated as supply even if made without any consideration and such supply would attract GST.

The valuation in case of supply to 'related parties' has always been a key area of litigation under erstwhile excise regime. Under the GST regime also, the valuation in case of related party transactions especially in case of cross border transactions continues to remain a complex area due to open ended valuation rules and lack of clear guidelines.

Rule 28 of the Valuation Rules provides the following sequential options to be adopted in case of supplies between related persons:

- Open Market Value ('OMV') of such supply
- Value of supply of goods or services of like kind and quality
- 110% of the cost of supply of such good services or
- Reasonable means consistent with the principles and general provisions of section 15

Another option available for when goods are intended for further supply 'as such' (such as manufacturing company to trading company), is to value goods are 90 percent of the final sales price.

Further, the second proviso to Rule 28 states that where the recipient is eligible for full input tax credit, the value declared in the invoice is deemed to be the open market value of the goods or services and therefore would be acceptable from a valuation perspective. Whether the declaration of a nominal value in the invoice by the supplier simply due to the availability of input tax credit to the recipient, would be acceptable to tax authorities needs a careful consideration.

5. Export Refund/ Rebate

While there was ambiguity surrounding the mechanism/ process of seeking export related refunds/ rebates at the time of the GST implementation, as highlighted above, the Government has focused on setting up a process for speedy disbursal of pending IGST refund claims and streamlining of the refund process. However, there as various restriction to export rebates claimed under Rule 96(10) which will need to be and analyzed.

6. Abolition of multiple cesses and transition credits

In the erstwhile Indirect tax regime, the automotive sector was required to pay certain duties/ surcharges on over other Indirect tax levies. Some such duties were National Calamity Contingency Duty, Infrastructure Cess, Tractor Cess, Automobile Cess etc. Under GST, the only additional cess relevant for the industry is the GST Compensation Cess.

Further, the Industry followed a practice of availing the credit of Education Cess and the Secondary and Higher Education Cess (‘cesses’) in Form GST TRAN-1, but the Government has recently but retrospectively amended the GST Law with effect from 1 July 2017 to exclude these cesses from the eligible duties to be transitioned to GST. As a result, the Department is issuing notices to recover the cesses, the credit of which was taken in Form GST TRAN-1 along with interest. This step is a point for many industries to start reversing the Education Cess and the Secondary and Higher Education Cess, the credit of which was taken in Form GST TRAN-1.

7. Job Work

There are various job work models relevant for this sector and at the onset of GST there was considerable ambiguity surrounding aspects such as the procedure for principal – job work related transactions, valuation etc. An extensive clarification on clearance of goods from job worker premises issued vide Circular[8] highlighting the appropriate treatment in case of different types of job work transactions. A quick summary of the key aspects clarified is as follows:

- **Use of own goods by Job worker:** The job worker, in addition to the goods received from the principal, can also use its own goods for providing the job work services. However, there have been Advance Rulings issued on this point, which raises a few questions around the final treatment of the same.
- **Registration of job worker:** Job worker is required to obtain registration only in cases where its aggregate turnover *(to be computed on pan-India basis)* in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State.
- **Supply of inputs/ capital goods by job worker**
  - Sending goods to a job worker is not a supply as such. However, it acquires the character of supply when the inputs/ capital goods *(other than moulds and dies, tools etc.)* sent by the principal for job work are not received back or further supplied by the principal within the specified time i.e. one year and three years respectively from the date when it was sent out to the job worker.
  - In such cases, return of goods by the job worker would also be treated as a supply and would be liable to GST. The job worker would be liable to pay GST if it is liable to be registered *(if over the threshold limit for registration)*, else, the principal has to pay GST on reverse charge basis.
  - Further, in such cases, the principal would need to consider such goods delivered to the job worker as a supply made on the date of original delivery of the goods to the job worker and to be disclosed in the

[8] Circular No 38/12/2018 dated 26 March 2018

return for the period in which the period of one year/ three year expires. The principal will be required to pay tax along with interest for the intervening period.

- **Documents for movement of goods**
  - The principal has to issue a delivery challan for sending the goods to a job worker. Subsequent dispatch of goods from one job worker to another job worker can be done on the basis of fresh delivery challan issued by the first job worker or by endorsing the original delivery challan issued by the principal to next job worker.
  - In case of direct delivery by the supplier of the goods to the job worker on behalf of the principal, the job worker's name and address should be mentioned as consignee on the supply invoice.
- **Input tax credit on inputs/ capital goods procured**
  - The principal would be eligible to claim credit of GST charged on the inputs/ capital goods, irrespective of whether such goods are received by the principal and delivered to the job worker by its or directly delivered to the job worker by the original supplier.
  - The job worker can claim credit on inputs etc. used by it to supply job work services.
- **Direct supply of goods from job worker's premises**
  - Direct supply of goods from job worker's premises by the principal would be regarded as supply by the principal and not by the job worker. In such cases, all the compliances would need to be made by the principal, as if it is the supplier.
  - Waste and scrap generated during the job work can be supplied by the job worker directly from its place of business if it is registered. If it is unregistered, the principal can also supply such waste and scrap from job worker's premises.

8. Vendor Tooling

The Central Board of Indirect Taxes and Customs (CBIC) has issued Circular no. 47/21/2018-GST dated 8th June 2018 contemplating the following tax implications on vendor tooling transactions between OEM and a component manufacturer:

S. No	Scenario	GST applicability to OEM on FOC supplies	Credit reversal for OEM on FOC supplies	Amortization of tool cost for component manufacturer in part price
1.	OEM owns tool and supplies free of cost to component manufacturer	No GST	No reversal required	No amortization required
2.	The contract between OEM and component manufacturer is for supply of components made by using the moulds / dies belonging to the component manufacturer, but the same is supplied by the OEM to the component manufacturer on FOC basis	No GST	OEM to reverse credit as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the OEM's business	Amortization of tool cost required for component manufacturer

Points yet to be clarified

- Practical difficulties in distinguishing between the above scenarios
- GST implications on tooling scenarios where the tool is developed by the component manufacturer and ownership transferred to OEM;
- Availability of ITC on GST charged by the component manufacturer in instances where the OEM and component manufacturers are in two different states;
- GST implications on tooling transactions where OEM and component manufacturer are related parties.

Clarifications have been provided on scenarios for inclusion/ non-inclusion of amortization cost on child parts made out of moulds supplied on FOC basis. In the industry, it is a general practice that for tools, moulds, dies, jigs and fixtures manufactured by a vendor/ component manufacturer, the ownership is transferred to the OEM whereas the possession remains with the vendor. Such tools are then used to manufacture parts and components by the vendor. Under the previous regime, the value of tools provided by an OEM to a tool vendor/ component manufacturer was includible in the value of manufactured components for payment of excise duty. Under GST, these may be construed as two supplies i.e. supply of tool by vendor to the OEM and supply of components manufactured using those tools. As per the clarification[9] issued by authorities, value of moulds and dies, jigs and fixtures need not be included in the value of job work services provided its value has been factored in the price for the supply of job work services by the vendor. In this regard, there are some additional aspects to be assessed, such as what would be the flow of documentation when multiple parties (OEM, tool vendor, manufacturer/ job worker) are involved. Some companies structure these transactions as a sale and lease back, the GST implications of which also need to be carefully evaluated.

Other Focus Areas and Open Issues

9. Classification of completely built units vs. kits

A long standing issue in this sector pertains to the classification of vehicles in kit form at the stage of imports. Typically, vehicles can be imported as Completely Built Units ('CBUs'), Semi Knocked Down ('SKD') kits, Completely Knocked Down ('CKD') kits OR as parts and components. Moreover, there can be various levels of SKD / CKD kits, depending on the level of dis-assembly. The fundamental difference in import at varying stages of construct of the vehicle are the extent of localization or element of processing/ manufacture in India. In case of CBUs, there is little or no processing required on the vehicles in India. In SKDs, there is limited assembling activity required to be undertaken in India. In case of CKD kits, there is assembling activity required to be undertaken in India, while in case of import of parts and components only, the entire manufacturing of the vehicle is undertaken in India. For various historical policy reasons, typically the customs duty rates on vehicles imported in CKD/SKD form depends on the varying stages of construct differs, with Customs duty on CBUs being the highest, whereas duty on import of only parts and components being relatively lower. This issue of classification of imported auto parts has come up for consideration before various forums numerous times and now the stakes are considerably high given that the effective Customs duty on import of such vehicles could be over 180% of the import value. Given the same and tribunal level rulings on the same, it is imperative that there is absolute clarity around classification and rationalization of duty rates in relation thereto.

[9] Circular Number 38/ 2018 dated 26 March 2018

10. Classification of parts

While a number of auto parts and components are built for specific purposes, there could be more than one way of application of such parts/ components, in absolutely different ways. Chapter 87 of the GST rate schedule has a distinct heading for automobile parts, along with a corresponding (higher) rate whereas such items (based on their use) could also be classifiable under other more specific Chapter headings. This could lead to considerable ambiguity surrounding applicable rate, for e.g.: bearings may be classifiable under Chapter 82 (18%, whereas, automobile parts are classifiable under Chapter 87 (28%). Similarly, classification of other items such as windshields, fasteners, nuts bolts, locks etc. could also be disputed. In such a case, the industry players have two options i.e. adopt the highest rate on a conservative basis (which could lead to an increased price in the hand of the final customer) or seek an advance ruling on classification in such cases. Also, refund on account of invested duty structure could be explored. However, this is one area in which clarifications would be welcome.

11. After market transactions

In this industry, there are different kinds of aftermarket transactions in which different roles are played by the OEM, Indian National Sales Company, dealer and customers (depending on of supply chain model and marketing schemes adopted). The after-market transactions may consist of warranty, extended warranty, annual maintenance contracts (AMC), paid services, etc. The issue of composite supply vs. mixed supply vs. single supply needs to be tested in case of warranties, AMCs, repair works, painting jobs, body-building works, etc. For instance, in case of comprehensive AMCs contracts, the dominant intent is to keep the vehicle in a running and well-maintained condition and not to merely supply parts used in repair. Therefore, even though the supply of goods may be of high value, these are still incidental to the overarching requirement of maintenance and thus, it is to be seen whether the same may be termed as a composite supply of service attracting GST accordingly.

However, in a GST circular on ‘Clarifications of certain issues under GST’ dated 8 June 2018 issued by CBIC, one of the issues addressed was “How is servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, to be treated under GST?” In this regard, it was clarified that the taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case. Thus, where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately. Thus, the after-market transactions in automobile industry need to be analyzed properly in terms of facts of each case and the manner in which the transactions are undertaken.

An advance ruling on this issue is while reviewing a comprehensive annual maintenance service, which also involved incidental supply of spare parts/ goods, the authority ruled that since the supply of service is for one and fixed price – is naturally bundled with the incidental supply of goods and thus, should be construed as a composite supply of service.

Every registered person under GST is entitled to take credit of the input tax charged on supply of goods or services or both which are used or intended to be use in the course or furtherance of his business. However, availment of the ITC is subject to four conditions namely, possession of tax invoice/debit note/such other tax paying document; receipt of goods and /or services ; payment of tax appropriately to the Government; and filing of the GST return.

A peculiar situation in auto industry exists where dealers make warranty replacements to customers on behalf of the OEMs and charge the same to OEMs, the same would be subject to levy of GST. Since, the OEMs would not receive the goods, the credit of the GST charged by the dealers may not be available to the OEMs as one of the four conditions of availing ITC is that the registered person should have received the goods. The industry is exploring several options such as “Bill to OEM and Ship to customer”, treating the warranty replacement as composite supply of service and availing the credit as services without actual receipt of goods etc.

12. Free Services

For overseas auto manufacturers, overseas headquartered companies are heavily involved in activities relating to research & development, brand marketing, region wise marketing initiatives, central procurements (especially on Information Technology such as software). While, in some cases there is a clear charge for these transactions, from a Transfer Pricing perspective, certain activities may qualify under the head of 'stewardship function' with no identifiable charge. It is to be reviewed, however, from a GST perspective, as to whether such transactions would qualify as free services being provided by the overseas entities to the Indian entities. If yes, the same would be liable to GST under a reverse charge mechanism. It is imperative to analyze all such transactions to evaluate as to whether some of these could be construed as free services being provided by the overseas entities to the Indian company. In case such services qualify as taxable services, the valuation of the same needs to be agreed and practical steps to be taken (such as Chartered Accountant certificate certifying cost allocation) to mitigate potential disputes.

13. Exemption for Export under FTP 2015 - 2020

The Foreign Trade Policy 2015-20, as notified by the FTDR Act, 1992, would continue under the GST legislation thereby facilitating exporters to procure goods under special export incentive schemes like Advance Authorization scheme (AA) and Export Promotion Capital Goods Scheme (EPCG), etc. Further, under GST, the incentive schemes would provide exemption to exporters from payment of IGST and the compensation cess leviable thereon. The said exemption was initially available till 31 March 2018 which was further extended up to 31 March 2019. The industry is expecting that the said exemption should be continued even after 31 March 2019 for various reasons. Furthermore, the possibility to convert into an EOU could be explored by the OEMs after getting a feasibility analysis done qua a long-term intention to engage into exports.

14. Input Service Distributor vs. Cross Charge

Under GST, supplies between State registrations of an entity are subject to tax, even if the same is without consideration. In view of this, companies are required to undertake analysis of activities undertaken by head office for its branches and vice versa; identify the value of such services and discharge tax liability thereon or distribute it in by obtaining an Input Service Distributor registration. The said exercise involves huge effort and time. Further, it leads to complexities and additional GST compliances.

15. Area based exemptions

In pre-GST regime, industry used to enjoy fiscal benefits in the North Eastern region, Himachal Pradesh, Uttarakhand and J&K in the form of excise duty exemptions/ refunds. Under GST, those refund benefits have been withdrawn and are proposed to be compensated/refunded as budgetary support. The current proposal restricts refunds to the extent of prescribed percentage of CGST / IGST payout in cash (i.e. after adjusting all input credits) for units in the fiscal benefit zones for area based exemptions whereas percentage of SGST benefit for State Industrial policy. This may result in substantial reduction of the quantum GST refunds as compared to the present benefit available or extend the period required to accrue the benefit and may make units unviable. Further, it is to be highlighted that the proposed refund model seems to restrict the eligibility of refund to only actual manufacturers, thereby not addressing concerns related to principal manufacturers who operates through business models such as third party manufacturer (3Ps) and job working arrangements, mainly in Himachal & Uttarakhand. Thus, the quantum impact of such change in the benefit schemes should be carefully evaluated to ensure that the principle of promissory estoppel is upheld. Further, some industry players have also filed writ petitions against this reduction in the quantum of benefits, which are currently pending.

16. State Incentives

The investments by automobile companies are significant and have a multiplier effect on the State's economy. As highlighted above, majority of the automobile manufacturers enjoy special benefits from the State Government in the form of State IPS, which are given in the form of refund of VAT/GST paid or as a loan. With the introduction of GST, taxes move from the originating State to consumption State. This would result in significant reduction of flow-back of IPS since GST on interstate sales is not credited to the originating state. The OEMs are seeking the SGST paid to the State as subsidy from the Government. Unless there is a compensation mechanism to the States or to the OEMs with regard to the impact on the IPS due to GST, the effect on project viability for some of the (newer) projects could be severe. A similar impact of the period required to extend the period to accrue the IPS would in all likelihood be experienced here.

17. Supply of cars/ parts/ components on FOC basis for testing purposes

The cars manufactured in the plant are registered in the Company's name in the same State. In such a case, no GST should be payable on self-billed cars. However, in case the cars are transferred from one State's registration to another, given that branches in different States would qualify as distinct taxable entities, GST would be payable on such stock transfer. However, it is unclear if temporary movement of such cars should attract GST as a supply, and it so, on what value? FOC supplies to third parties should not be liable to GST. Position on the same should be confirmed by the authorities.

18. Sale of old car by customer to the dealer not in exchange of any car

The term supply includes supplies for a consideration in the course of furtherance of business. Given the same, the question is whether the customer is not selling these old vehicles in the course of furtherance of business, and thus, the transaction should not be subject to GST liability in the hands of the customer. However, such a position needs to be confirmed by the authorities. Further, in case it is a registered taxable entity (such as a company), GST would be payable.

19. Cars sent for exhibitions/ events

In case cars are moved for the purpose of exhibition or event, the same remains within ownership and control of the Company and applied for self useand thus, should not be liable to GST. In needs to be analyzed as to whether such supplies should be treated as FOC supplies between distinct persons/ related parties and should be subject to GST.

20. Free Service Coupon vouchers

These coupons will be issued at the time of sale of the vehicle. As per the time of supply rule, GST on such coupons needs to be paid immediately on the date of issue of such vouchers. As per the policy of some manufacturers, the amounts in respect of such coupons will be redeemed to the dealers only once the customer brings the vehicle for repair to the workshop. Therefore, dealers would have to pay tax on such coupons immediately on its issue but the said taxes can be collected from the automobile manufacturers only when the vehicle comes for the repair leading to unnecessary blockage of funds in taxes.

Disclaimer: The above-mentioned updates are intended for informational purposes only. They constitute some select important points in the GST law. There could be other additional features that too may be important.

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