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## Taxability of RTO Tax and RTO Registration Facilitation Charges under GST

Post GST, there has been discussion in many forums that while calculating the taxable value of the vehicle, dealers will have to include RTO tax in its valuation and pay GST on the total value. Some of the reasonings given for its taxability are as under:

1. RTO tax forms part of the price shown to the customer on the price list
2. Dealers collect RTO Registration Facilitation charges over and above the RTO tax amounts, therefore pure agent concept does not apply
3. RTO registration is the responsibility of the dealers
4. RTO registration is routinely done by the dealers for the customers
5. Section 15 (2) (a) and (c) of the CGST and SGST Act provide for specific inclusion of any tax other than GST in the taxable value

In light of the Supreme Court judgment of KTC Automobiles, we have analyzed all the above reasonings. In our opinion RTO tax as well as any charges taken by dealers for registration from customers would not form part of the assessable value of the car.

## I. Facts of the KTC Auto case:

Hyundai dealer had dealerships in Kozhikode Kerala as well as in Mahe Pondicherry. Sales tax rates in Mahe were less as compared to Kozhikode.

Dealer, while selling cars at Kozhikode showroom used to give option to the customers as to whether they wanted to get the cars registered in Kozhikode or Mahe. Many booking forms had customers address at Kozhikode but the invoices were issued disclosing some Mahe address. Cash receipts for sales done at Mahe address were also issued from Kozhikode.

Sales tax officer issued SCN for the Assessment year 1999-2000 for short payment of Sales tax on 263 cars amounting to Rs 86 lacs.


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## II. Issues before the Supreme Court

a. Whether RTO registration of a car is a Post or Pre Sale event ?

b. When does the property in the vehicle passes from the dealer to the buyer?

**Supreme Court Judgement on twin aspects:**

**A. Whether registration of a car with the RTO authorities is a Post or a Pre-Sale event ?**

Supreme Court, in view of section 39 and 41 of the Motor Vehicles Act agreed that application of registration of the car with RTO is required to be made by or on behalf of the Owner. In KTC, Supreme Court relies on the judgement of **Association of Registration Plates v. Union of India, (2004) 5 SCC 364**. Paragraph 28 of that judgment is as follows:

> *"28. Section 2(21-A) defines "manufacturer' and it means a person who is engaged in the manufacture of motor vehicles. Section 2(28) defines "motor vehicles" or "vehicle" and it means any mechanically propelled vehicle adapted for use upon roads. A motor vehicle manufactured by a manufacturer is sold without a registration plate. Thereafter the dealer sells the motor vehicle to a customer again without the registration plate. This position will be clear from the proviso to Section 39 of the Act which says that nothing in the section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government. Section 41 also points to the same position as it enjoins an application on behalf of the owner of a motor vehicle for its registration.* ***The question of issuing a certificate of registration and assigning it a registration mark arises only after sale of a motor vehicle. Therefore, until the motor vehicle has been sold to a person by a dealer, the registering authority would not come into the picture and there is no occasion for assigning it a registration mark….."***

**After going thru certain provisions of the Constitution of India, Central Sales Tax Act and Sale of Goods Act as well as submissions made by the appellant (Dealer), SC in para 13 of the KTC judgement accepted the position that registration of a car is a "Post Sale event"**


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> *"13. From the above submissions and counter submissions of the parties as well as relevant statutory provisions in the Motor Vehicles Act, 1988, Central Motor Vehicles Rules, 1989, Section 4(ii) of Central Sales Tax Act, 1956, Sections 4, 19 and 20 of the Sales of Goods Act and relevant provisions of the KGST Act and Rules noticed earlier,* ***we find no difficulty in accepting the submissions advanced on behalf of the appellant that the application of registration is by law required to be made by or on behalf of the owner whose name is to be mentioned in the registration form along with relevant particulars of the vehicle such as engine number and chassis number and hence, registration of a motor vehicle is a post-sale event****."*
> *Emphasis Supplied*

**B. When does the property in the vehicle passes from the dealer to the buyer?**

Further, SC after analyzing various provisions of the Sale of Goods Act, Motor Vehicles Act and Motor Vehicle Rules (especially rule 41), ruled that the property in the vehicle actually passes or can legally pass to the buyer only when the car is transported by the dealer to the RTO authority premises so as to authorize the buyer to seek registration with RTO. In other words, property in the car doesn't pass at the premises of the dealer in Kozhikode but at the gate of the RTO authorities in Mahe. Accordingly the Supreme Court rules that sale of car was done at Mahe and not at Kozhikode and therefore the dealer had rightly paid the taxes applicable in Mahe. Reasonings given in the order are as under:

1. Section 4 (4) of the Sale of Goods Act contemplates that an agreement to sell fructifies and becomes a sale when the conditions for delivery are fulfilled.

2. As per rule 41 of the Motor Vehicle Rules, only dealer is authorized to move the car without registration. Buyer of the car cannot drive the car until it is registered (temporarily). Hence possession of a motor vehicle can be handed over, only at or near the office of registering authority, normally at the time of registration. In case there is a major accident when the dealer is taking the motor vehicle to the registration office and vehicle can no longer be declared fit for registration, clearly the conditions for transfer of property in the goods do not get fulfilled. Section 18 of the Sale of Goods Act postulates that when a contract for sale is in respect of


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unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained.

3. If the contract for sale is in respect of specific or ascertained goods, the property in such goods is transferred to the buyer only at such time as the parties intend. Even if the motor vehicles were to be treated as specific and ascertained goods at the time when the sale invoice with all the specific particulars may be issued, according to Section 21 of the Sale of Goods Act, in case of such a contract for sale also, when the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

4. As per Motor Vehicles Act and the Rules, dealer is bound to transport the motor vehicle to the office of registering authority and only when it reaches there safe and sound it can be said to be in a deliverable state and only then the property in such a motor vehicle can pass to the buyer

## III. Our view on twin issues of taxability of RTO tax as well as RTO registration facilitation charges are as under:

### A. Inclusion of RTO tax in the assessable value for leviability of GST

Section 15 (2) (a) or (c) of the CGST Act, read as under:

> *15 (2) The value of supply shall include——*
> *(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act,* ***if charged separately by the supplier****;*
>
> *(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged* ***for anything***


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***done by the supplier in respect of the supply*** *of goods or services or both at the time of, or before delivery of goods or supply of services*

Specific question of inclusion of RTO charges in the Sale price for leviability of sales tax was not before the Supreme Court in the KTC case. However, the judgement of KTC Automobiles lays down 3 cardinal principles:

1. Act of doing RTO Registration is the responsibility of the buyer of the car
2. RTO registration is a Post Sale Activity and hence is not part of the act of supply of vehicle per se
3. Supply of car concludes at the RTO office or wherever it the vehicle is deemed good for registration with the RTO authorities.

Based on the law laid down by the Supreme Court in the case of KTC Auto, it can be safely deduced that RTO tax cannot be included in the assessable value of the car for GST as the act of registering the car with RTO authorities is a "Post Sale Activity" and it is the responsibility of the buyer and not that of the dealer. Accordingly provisions of section 15 (2) (a) or (c) of the CGST Act would not come into play.

**B. RTO registration facilitation charges**

As the act of registration itself is a post-sale activity, facilitation thereof by the dealer for an extra fee/charge will also not form part of the assessable value of the car. RTO registration facilitation fee will be taxable under GST as standalone service @ 18%. Having said so, please note that this fee has to be separately declared to the customer and a separate tax invoice must be given after completion of the final registration.

This analogy shall apply in all those cases where the seller is just a facilitator for payment of a tax which otherwise is the responsibility of the buyer.


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