

# THE GST JOURNAL

**AUTOMOBILE EDITION**

**Issue 03**  
**November 2020**

A fortnightly journal that explores the  
current scenario of GST in India.

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# Note from N J Jain



For our Third Edition, we explore the automotive domain and bring you up to date with the newest reforms and developments in the industry. From the Finance Ministry vs Automotive sector tussle for rate reduction to understanding the GST structure of how cars are taxed, The GST Journal will Unravel the mysteries of this particular sector and understand its ever-changing landscape in our economy.

**Tax is a necessity  
for the government,  
don't make it  
optional for yourself.**

## Nitesh Jain

*Managing Partner,  
N.J. Jain & Associates*

Former minister of Corporate Affairs, Arun Jaitley, once said about GST that- "It is not the end but the start of the journey." The Goods and Services Tax was not only implemented to solve the complex indirect tax system but as a beginning, to the journey, we must take as a country towards a tax system that can enrich our economy. As with any journey, we have faced many hurdles with the GST and its refinement, not least of which is the pandemic's economic impact. To overcome and continue towards our goals of a healthy national economy, we must first understand this complex tax system's nuances.

To help you with that, we present our 3rd edition of The GST Journal. With the latest updates on GST reforms and general discourse among domain experts, The GST Journal hopes to bring consolidated information on GST issues with easy-to-read blogs and case studies.



# GST in conversation

Tata Motors feels government support in GST cut will help PV Industry: Report

Petroleum Industry says it supports including natural gas under GST

No immediate need for GST rate cut: Maruti

Making it Electric: BS Yediyurappa writes to FM to withdraw GST cess on Hybrid Cars

Widespread unemployment leading to increasing distress for tens of thousands of families

Is the Government also facing huge losses amidst COVID-19?

Signs of rebound? Factory growth at decade high; GST, auto, diesel sales rise

Compensation Cess to stay till states' dues are met: Finance panel chief

GST Infra to detect fraud in real time

GST Collections cross Rs. 1 trillion in October for first time in 8 months

# GST in Social media



**Timsy Jaipuria** ✓

@TimsyJaipuria

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[@CNBCTV18News](#) [@CNBCTV18Live](#)  
[@FinMinIndia](#)

borrowers & transfers Rs6,000 cr as first tranche to 16 States on account of #GST compensation under Special Borrowing Window



**GST Tech** ✓

@Infosys\_GSTN

In last one hour more than one lakh returns have been filed. Infosys team is constantly working to ensure better return filing experience. Also we will keep you posted of the developments. Inconvenience caused is deeply regretted. (2/2)



**CBIC** ✓

@cbic\_india

CBIC yesterday crossed a milestone by successfully completing Faceless Assessment of 2 lakh import documents with only about 6000 documents still pending pan India. CBIC is in touch with major trade and Customs Broker associations to make Faceless Assessment a success.



**Ministry of Finance** ✓

@FinMinIndia

Ministry of Finance, under its, "Special Window to States for meeting the GST Compensation Cess shortfall," will be releasing an amount of ₹6000 cr as second tranche to 16 States and 3 Union Territories today. (1/4)  
Read more ➡

<https://pib.gov.in/PressReleaseFramePage.aspx?PRID=1669467>



**Ministry of Finance** ✓

@FinMinIndia

In the 3rd Session on Infrastructure and sustainable finance during the 10th India-UK EFD, Finance Minister Smt. [@nsitharaman](#) said that India and United Kingdom have agreed to establish a bilateral Sustainable Finance Forum. (1/5)



**Ministry of Finance** ✓

@FinMinIndia

This amount was raised at a weighted average yield of 4.42%. This amount will be passed on to the States/UTs at the same interest rate, which is lower than the cost of borrowings for the States and UTs, thus benefitting them.(2/4)



**Ministry of Finance** ✓

@FinMinIndia

Ministry of Finance has facilitated loans of ₹12,000 cr till date under the Special Window to States/UTs. (3/4)



**GST Tech** ✓

@Infosys\_GSTN

The auto-populated GSTR-3B PDF for the month of October 2020 is available now. Watch this video for more details:

[https://twitter.com/infosys\\_gstn/status/1327163854825000961?s=12](https://twitter.com/infosys_gstn/status/1327163854825000961?s=12)



**Ministry of Finance** ✓

@FinMinIndia

21 States and 3 Union Territories till date, have opted for the Special Window under Option I. The loans raised by GoI are released on a back-to-back basis to States/UTs, in lieu of GST Compensation Cess releases. (4/4)





# GST & GSTN Updates

## GSTN Updates

- Auto-population of e-invoice details into GSTR-1

[CLICK HERE TO VIEW](#)

- Due dates for filling of FORM GSTR-3B for tax periods from October, 2020 till March 2021

[CLICK HERE TO VIEW](#)

- Auto-populated Form GSTR 3B for the taxpayers, from the month of October 2020 onwards

[CLICK HERE TO VIEW](#)

- Filing NIL Form CMP-08 statement through SMS on GST Portal

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## GST Updates

### GSTR-1 related:

- Quarterly return filers can file their first and second month B2B invoices in Invoice Furnishing Facility (IFF) on or before 13th of 1st month in next qtr
- Total value for such B2B invoices is capped to 50 lakhs per month
- No need to report invoices again in GSTR-1 if already reported in IFF
- Due date of GSTR-1 for quarterly filers is 13th of 1st month in next qtr
- HSN/SAC codes shall be mentioned mandatorily in GSTR-1 ( <5Cr- 4 digit, >5Cr- 6 digit)

### GSTR-2 related:

- The invoices reported in IFF shall be made available to recipient in their GSTR-2A/2B
- Notified FORM GSTR-2B

### GSTR-3B related:

- Rule 61(6) was inserted to provide due date for filing GSTR-3B for the months of Oct 2020 to Mar 2021 as 20th of next month if TO > 5 Crores
- Quarterly return filers shall deposit tax in electronic cash ledger on or before 25th of next month for first and second months
- **87/2020:**
- Due date for filing ITC-04 (Job worker return) for the period July 2020 to September 2020 is extended to 30th November 2020
- **88/2020:**
- E-invoicing is mandatory from 01.01.2021 for every taxpayer (other than SEZ unit) whose aggregate TO in any of the FY from 17-18 exceeds 100 Crores

# Judicial Review

## ★ 2016 (1) TMI 1046 - SUPREME COURT

Other Citation: [2016] 88 VST 257 (SC)

### COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM, KERALA VERSUS M/S K.T.C. AUTOMOBILES

#### Facts:

- Department after obtaining office copies of the sale invoices of M/s K.T.C. Automobiles, Mahe (branch office) for the relevant period as well as some additional period and also cash receipt books, cash book, etc. maintained in the head office, he issued a show-cause notice dated 10.8.2000 proposing to levy ₹ 1 crore by way of penalty under Section 45A by the KGST Act on the alleged premise that the respondent had wrongly shown 263 number of cars as sold from its Mahe Branch, wrongly arranged for registration under the Motor Vehicles Act at Mahe and wrongly collected and remitted tax for those transactions under the provisions of Pondicherry Sales Tax Act. According to the Intelligence Officer, the sales were concluded at Kozhikode, and hence the vehicles should have been registered within the State of Kerala. Therefore, by showing the sales at Mahe, the respondent had failed to maintain true and complete accounts as an assessee under the KGST Act and had evaded payment of tax to the tune of ₹ 86 lakhs and odd during the relevant period. The respondent submitted a detailed reply, denied the allegations, and raised various objections to the proposed levy of penalty. By his order dated 30.3.2001, the Intelligence Officer stuck to his views in the show cause notice but instead of ₹ 1 crore, he imposed a penalty of ₹ 86 lakhs only.

#### Held that:

- In the light of circumstances governing motor vehicles which may safely be gathered even from the Motor Vehicles Act and the Rules, it is obvious that the seller or the manufacturer/dealer is bound to transport the motor vehicle to the office of registering authority and only when it reaches there safe and sound, in accordance with the statutory provisions governing motor vehicles 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 once he has been given notice that the motor vehicle is fit and ready for his lawful possession and registration.
- The allegations and facts made or noted by the Intelligence Officer for sure create some doubts, but they do not lead to a conclusive inference that the sales under controversy had taken place at Kozhikode, Kerala. On the contrary, in view of propositions of law discussed hereinbefore, the judgment of the High Court gets reinforced and deserves affirmation. - Decided against the revenue.



# Judicial Review

## ★ TALWAR MOBILES PRIVATE LTD VS COMMISSIONER OF SERVICE TAX, MEDCHAL COMMISSIONERATE, HYDERABAD

**ORDER DATE:** 28.06.2019

**Principal Commissioner:** M. Srinivas  
**Represented by:** Nitesh Jain (C.A.)

### Facts:

- Based on intelligence developed by the Officers of the Directorate General of Goods and Services Tax Intelligence, Hyderabad Zonal Unit (DGGI, for short) regarding non-payment of Service Tax in relation to certain payments received from Hyundai Motor India Limited as discounts, which were apparently in the nature of consideration for service, an investigation was initiated.
- The dealer, having agreed to implement the schemes issued by HMIL by which customers may benefit and in turn promote the business of HMIL, thus carries out an activity for the manufacturer. Dealer appeared to have carried out an activity as defined under Section 65B (44) of the Finance Act, 1994 discussed supra. For HMIL for a consideration, which is taxable service in terms of Section 65B (51) of the Finance Act, 1944. The pre-decided quantum paid by the manufacturer to the dealer in terms of the exchange/ loyalty/ corporate etc. schemes appears to be a consideration for the aforesaid activity, carried out by dealer for HMIL, and thus appears to be the gross amount charged by the dealer for provision of said taxable service. The said pre-specified quantum decided at the time of issuing the scheme itself, which appears to be in the nature of rendering a declared service.

### Held that:

- I find that the said discount and incentives received from HMIL by TMPL were either compensatory payments or, in the nature of performance-based trade discounts on achieving certain targets, the transaction involved between the HMIL and TMPL is nothing but the sale of vehicles and spares. All the Vehicles and spare parts were purchased by TMPL and then sold. By any stretch of imagination, the activity of sale and purchase of vehicles and spares between HMIL and TMPL cannot be termed as service. With regards to the taxability of the amounts received as discounts and incentives. I find that TMPL was given targets for a specific quantum of sale by HMIL, as per the agreement, on achievement of such target, and in excess of it, TMPL was to receive some amount as an incentive. The notice alleged that such an amount is a consideration and is taxable. I do not find any force in the reasoning given and the argument put forth in the notice. I find that the incentives were linked with the sale of contracted goods and not for undertaking an independent activity. The receipt of incentives/ discounts and sale of contracted goods are to be treated as provision of single activity which gives such bundle its essential character. Accordingly, receipt of incentives/ discounts has to be bundled with the sale of contracted goods, and it should be treated as sale of contracted goods only. The definition of service under Section 65B (44) excludes "transfer of title in goods or immovable property, by way of sale, gift or in any other manner."
- Hence, the sale of contracted goods is covered under the exclusion part of service definition, and the incentives/discounts received by the notices were not leviable to service tax. It is well-settled law that once an activity is a sale, it cannot be a service and vice versa. It is apparent that the said amounts were incentives received by TMPL from HMIL for achieving the target of sales. The same cannot be treated as consideration for levy of service tax; the said incentives were only trade discounts that were extended to TMPL by HMIL for achieving the targets.



# FAQs

## ★ Is the sale of used cars by a registered person, who is not in the business of sale and purchase of used cars, taxable?

A car which is a part of the business assets of the company as the same is capitalized in the books, if transferred, then vide section 7 (1) (d) read with Schedule II clause 4 (a) of the CGST Act, stating:

7. (1) For the purposes of this Act, the expression "supply" includes—
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

### Schedule II

#### 4. Transfer of business assets

- (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;

Thus, the transaction shall be termed as a "Supply" and vide section 9 shall be a taxable supply.

## ★ How will a used car be valued for the purpose of taxation?

Margin Scheme as prescribed in rule 32(5) of the CGST Rule, 2017, would be applicable here and the GST would be payable on Positive difference between Sale Value and WDV as per Income Tax Act, in case the supplier of used car has not taken any ITC (Excise or GST) at time of Purchase of the vehicles.

In case the supplier has availed any ITC at the time of Purchase, in such case he shall be required to pay GST on the Sale Value.



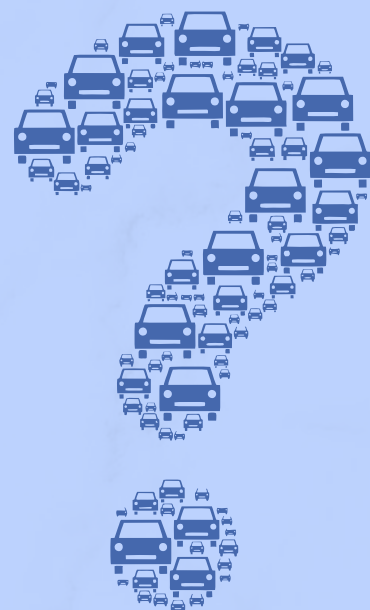
## ★ Is there a difference in valuation mechanism for Used Car Dealers and Other Tax Payers?

There is no difference in Valuation mechanism

## ★ What is the Rate GST applicable on Sale of Used Car?

In case of No ITC taken on Purchase:- GST would be payable on Positive difference between Sale Value and WDV as per Income Tax Act @ 12/18% on Such Positive Margin

In case ITC taken on Purchase: - Full Rate of GST applicable to such Category of New Vehicles shall be payable on full Sale value





# Understanding Reforms

Taxability of  
Sale of Used  
Cars by a  
Registered  
Person

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Taxability of  
Inter Branch  
movement of  
Conveyances and  
Goods

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Changes Effectuated  
by 24th GST  
Council Meeting  
held on  
18/1/2018

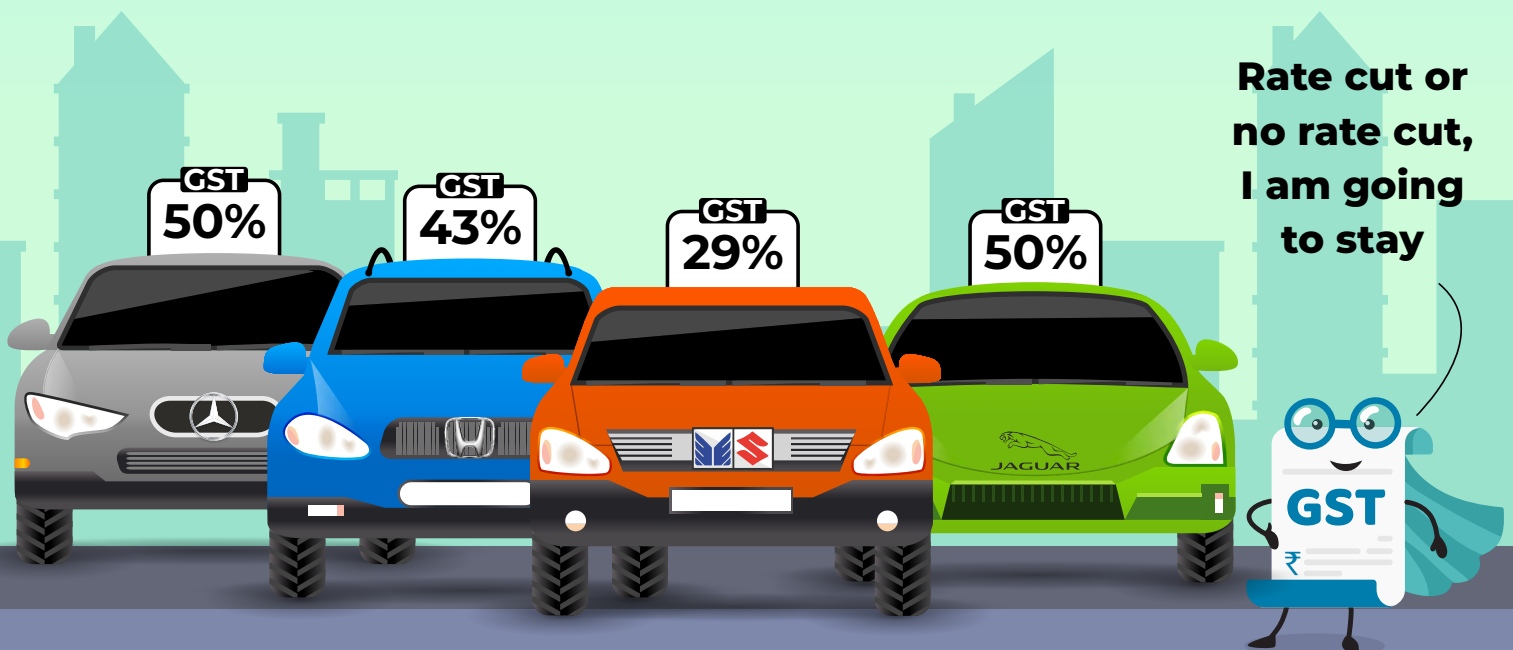
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Taxability of RTO  
Tax and RTO  
Registration  
Facilitation Charges  
under GST

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Comparative  
analysis of  
Effective Tax Rates  
on Motor Vehicles  
pre and post  
11/9/2017

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## IS THE IDEA OF GST RATE CUT IN AUTOMOTIVE SECTOR JUST A MIRAGE?

As the economy stepped out of the lockdown, multiple industries are pleading to the GST Council to reduce their tax rates. One of the major appealers is the automotive sector, which has been a victim of exaggerated tax rates to facilitate the cess collection for the states.

With the recent statement from Maruti Suzuki chairman, R C Bhargav, stating that the demand for cars is reasonably robust and there is no need for immediate rate cuts, people are caught up in the confusing storm of whether the rate cut is necessary and should they be expecting it or not. And this article is an attempt to answer that question.

Factors signaling a need for rate cuts

First of all, let's point out factors that signal towards a need of rate cut:

- Most of the judgments made by industrialists and experts are backed by the impressive GST collection in the month of October, which crosses the Rs. 1 lakh crore mark.
- While most of the sales can be credited to the pent-up expenses and forthcoming festivities, we cannot conclude that the economy is revitalizing just on these arguments.

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We wish you a

# HAPPY NEW YEAR

For this new beginning  
shall bring new opportunities  
and a chance at success



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