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Taxation Of Automobiles -
A discourse on the eternal tug for taxes between states

Background

Humankind moved towards civilization when men ceased to produce all the goods to meet their requirements and instead looked towards others to provide items of need in exchange of other items. With the emergence of one commonly recognized valuable currency, the barter system gave way to the concept of 'sale'. Today, sale of goods forms the backbone of a highly complex economy and nations have implemented taxation systems to efficiently tax these transactions.

In India, the taxation system is based on fiscal federalism i.e. the Centre and State have independent taxing powers. Further, some taxes are levied by the Centre but collected and assigned to States. One such example is that of sales tax. Sales tax is undisputedly, the greatest source of revenue for States. Therefore, States attempt to envelop most sales transactions within their taxing jurisdiction, which at times conflict and compete with other States' taxing powers. This article seeks to discuss these conflicts from the perspective of sale of automobiles.

Legal framework

The Union was empowered to levy tax on inter-state sale of goods under Entry 92 of List I of Schedule VIII to the Constitution of India ('Constitution'). Accordingly, States levied tax on intra-state sale of goods under Entry 54 of List II. The Central Sales Tax Act, 1956 ('CST Act') governed the scope of taxes on inter-state sale of goods and the State Value Added Tax Acts ('VAT Acts') regulated tax imposed on intra-state sales of goods.

The CST Act considered two situations as inter-state sales, viz., where sale occasions movement of goods; and where the sale is affected by transfer of title in goods during their movement from one State to another. Interestingly, the CST Act also defined intra-state sale of goods, so VAT Acts relied on the CST Act to determine whether a sale occurs within one State or another. Section 4 of the CST Act provided the parameters to test whether a sale is made within one State. The relevant excerpt of the provision is as under:

*"**Section 4** (1) ….*
(2) A sale or purchase of goods shall be deemed to take place inside a State, if the goods are within the State—
(a) in the case of specific or ascertained goods, at the time the contract of sale is made; and
(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation…"

The position that emerges is as follows:

Nature of goods	State of sale
Specific / Ascertained goods	Where the goods exist at the time when the contract of sale is made
Unascertained goods	Where the goods are appropriated to the contract of sale

Inter-state disputes on sale of cars

The issue of conflicting VAT levies between States arose most commonly in respect of sale of automobiles specifically in case of cars. Disputes arose when two or more States claimed VAT on the same transaction, primarily in cases where the selling dealer was located in one State, but the customer was located in another. In order to claim benefit of lower VAT rates in neighbouring States, say State A, dealers in State B would route the sale of motor vehicles through their sister dealerships / branch offices in such other States. The dealer in State A would generate the purchase order, invoice and thereafter arrange for the vehicle to be sent to the customer's location or to its sister dealership in State B from where the car would be delivered to the customer. The selling dealer would discharge lower rate of VAT in State A. However, given that the vehicle was delivered to customer located in State B, authorities in State B also demand VAT on the same transaction.

In order to solve such a conundrum, the first step is to determine the nature of goods i.e. automobiles and then proceed to apply the test of situs of sale as provided under Section 4 of the CST Act.

Types of goods

For determination of the nature of goods, one needs to refer to the Sale of Goods Act, 1930 ('SoGA'). Section 2(14) of the SoGA defines the term 'specific goods' as "goods identified and agreed upon at the time a contract of sale is made". 'Ascertained goods' have the additional requirement to be in existence at the time of sale. In contrast, 'unascertained goods' refer to such goods that are only defined by description at the time of the contract of sale. In case of specific or ascertained goods, the seller is bound to deliver the goods actually agreed upon, whereas in case of unascertained goods, the seller may perform the contract by delivering any goods answering to the description given in the contract.

The SoGA recognizes sale of only ascertained goods, therefore, even unascertained goods must be ascertained before property therein can pass from seller to buyer. Section 23 of SoGA states that sale of unascertained goods occurs when the goods in a deliverable state are unconditionally appropriated to the contract of sale. Section 4 of the CST Act, however, requires simple appropriation of unascertained goods to the contract of sale. Therefore, for the purposes of VAT, the 'appropriation of goods to a contract of sale' assumes significance.

Goods are appropriated to the contract of sale when they are identified by the parties as goods about which they are contracting. So, the seller would be in breach of contract by delivering any other goods. Such identification may be done either by the buyer or by the seller. Delivery of identified goods or transfer of property therein do not form relevant events to determine appropriation. The act of separating contracted goods in the warehouse to be specifically delivered to the buyer or his agent or to the transporter would also lead to appropriation of goods.

Nature of cars and point of sale

Cars are sold by description, i.e., the customer offers to buy a car of a specific model, a specific colour and variant, but the seller may have more than one car answering to such description. Any such car can be sold to the customer. Therefore, cars are unascertained goods at the time of contract. They can only be ascertained by recording certain unique features, viz., chassis number and engine number. These alphanumeric codes are unique to each car and once identified by either the dealer or customer, the car becomes identified goods.

However, when it comes to sale of cars, merely recording the chassis number or engine in the invoice or any other document is insufficient as one cannot lose sight of the fact that all motor vehicles and transactions relating thereto are governed by the Motor Vehicles Act, 1988 ('MV Act'). Section 39 of the MV Act prevents any person from driving or allowing another to drive a vehicle until such vehicle is registered. Section 40 of the MV Act requires every owner of a motor vehicle to cause such vehicle to be registered with the registering authority in whose jurisdiction he has residence, place of business where the vehicle is normally kept.

The MV Act also allows motor vehicles to be temporarily registered for a period of one month. At the time of registration (permanent / temporary), the registering authority physically inspects the car to verify the engine and chassis numbers and accompanying documents viz. the tax invoice and issues a registration number, enabling the owner to use the car anywhere in India. Therefore, unless a car is registered, whether temporarily or permanently, the same cannot be considered as ascertained merely by recording the chassis number or engine number in the sale invoice by the dealer.

The Apex Court in CCT v. KTC Automobiles, [2016 (4) SCC 82] considered a very similar issue where a dealer of Hyundai cars was giving an option to its customers who were residents of Kerala to purchase cars from its branch office in Puducherry. The cars were temporarily registered in Puducherry and then delivered to customers in Kerala. The dealer was discharging VAT in Puducherry, which was objected to by the Kerala VAT authorities who demanded VAT on such sales. The Apex Court considered the provision of CST Act, SoGA and MV Act to hold that appropriation of cars to the contract of sale was co-terminus with the registration (temporary or permanent) of the cars in Puducherry. The car became ascertained goods only upon its registration, after which it was in a deliverable state. Therefore, legally, the sale was held to have taken place in Puducherry.

Therefore, taxation of sale of cars requires one to consider the situs of registration of the car (whether temporary or permanent), whichever occurs first. It is only at that stage that a car can be legally sold, irrespective of any stipulations under the SoGA.

Conclusion

With the introduction of the Goods and Services Tax regime, the concept of sale has been morphed into the concept of 'supply'. The Integrated Goods and Services Tax Act, 2017 ('IGST Act') determines the issue of 'place of supply' in case of inter-state supply of goods. GST, being a consumption-based tax, it is the consuming State that receives the tax so collected. Therefore, the determination of the 'place of supply' becomes crucial. In case where the nature of supply is that of 'sale' of cars, the principle laid down by the Apex Court in KTC Automobiles is still equally relevant and applicable. The High Court of Kerala in the case of KUN Motor Company Limited v. ASTO [2019 (21) GSTL 3] relied on the decision of KTC Automobiles to determine the place of supply of cars. In KUN Motor, the customer, a resident of Kerala purchased a car from the petitioner's dealership in Puducherry. The petitioner discharged IGST on such supply. Thereafter, the car was sent to Kerala for delivery to the customer. The Revenue issued notice to the petitioner for failure to upload e-way bill for such inter-state supply. The High Court noted that the car was temporary registered in Puducherry, therefore sale occurred in Puducherry and supply also terminated in Puducherry itself. Therefore, the supply was an intra-state supply and although petitioner incorrectly discharged IGST on such transaction, there was no requirement to upload e-way bill.

Therefore, even when the concept of 'supply' governs the field, it is prudent to remember and actively refer to the settled jurisprudence under erstwhile laws and apply them, wherever possible, to determine these issues which have permeated into the GST regime.

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