

GST on Renting vs. Transport Of Goods Vehicles

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Shubham Khaitan

Partner, Tax & Regulatory, S. Khaitan & Associates, Chartered Accountants

Classification of goods transport / rental services with GST rates

1. The services of transportation of goods are provided by multiple logistics entities throughout India. Most of this sector is unorganized and do not have any formal contract designed. While providing the services, this sector uses the term 'transport', 'rental', 'hiring' etc. very loosely without mostly being aware of the GST consequences behind the same. Also, the fact whether the vehicles are provided with or without operator also impacts the taxability under GST. This article purports to establish the distinction between various situation based on their GST implications.
2. As per the scheme of classification of services under GST, there are three relevant HSN codes which are applicable to the given case:

1. HSN 9965 - Goods Transport Services
2. HSN 9966 - Rental services of transport vehicles with operators
3. HSN 9973 - Leasing or rental services without operator

3. The taxability under each of these HSN codes are provided below:

HSN Code	Particulars	Rate	Conditions
9965 - Goods Transport Services	(a) GTA does not exercise the option to itself pay GST on the services supplied by it;	5%	The credit of input tax charged on goods and services used in supplying the service has not been taken.
	(b) GTA exercises the option to itself pay GST on services supplied by it.	5%	In respect of supplies on which GTA pays tax at the rate of 2.5%, GTA shall not take credit of input tax charged on goods and services used in supplying the service. [Please refer to Explanation no. (iv)]
		12%	

HSN Code	Particulars	Rate	Condit
Heading 9965	Services by way of transportation of goods- (a) by road except the services of— (i) a goods transportation agency; (ii) a courier agency	Nil	-
HSN Code	Particulars	Rate	Condit
Heading 9966 (Rental services of transport vehicles with Operators)	Renting of goods carriage where the cost of fuel is included in the consideration charged from the service recipient. Rental services of transport vehicles with operators, other than (i) and (ii) Above	12% 18%	-
HSN Code	Particulars	Rate	Condit
Heading 9973 (Leasing or rental services without operator)	Leasing or renting of goods	Same rate as on supply of like goods	
HSN Code	Particulars	Rate	Condit
9966 or 9973	Services by way of giving on hire - (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers (b) to a goods transport agency, a means of transportation of goods.	Nil	-

Rental vs Hiring

4. It can be noted from above that hiring services provided to a goods transport agency is exempt. On the other hand, rental and leasing services are taxable under the HSN codes 9966 and 9973. The question that arises is whether there is a distinction between the two terms. This would determine whether rental / leasing services provided to GTA would also be exempt in nature.

Circular perspective

5. The question whether hiring would cover renting also had been examined in Circular no. 164/20/2021-GST in the case of hiring of vehicles to State Transport Undertakings and Local Authorities. The same entry covers hiring of vehicles to GTA also. Therefore, the clarification through the Circular would be applicable to GTA also.
6. Para 8.4 of the Circular no. 164/20/2021-GST dated 6th October 2021 provides the following clarification:

*"The issue was placed before the 45th GST Council Meeting held on 17.09.2021. As recommended by the GST Council, it is clarified that the **expression "giving on hire" in Sl. No. 22 of the Notification No. 12/2017-CT (Rate) includes renting of vehicles.** Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are **eligible for the said exemption** irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and **under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles.**"*

7. As per the above clarification, hiring of vehicles would also include renting of vehicles and would be covered by the exemption entry. Hence, if the renting services are provided to GTA, the exemption entry will apply. This would be applicable irrespective of whether or not the fuel cost is included in the consideration and whether the vehicle is provided with or without operator.

Explanatory notes perspective

8. For the explanatory notes 997311, the following explanation has been provided:

“This service code includes:

- leasing and rental services of intermodal containers*
- leasing, rental or hiring services concerning other land transport equipment without operator”*

9. From the above, it can be observed that the terms leasing, rental and hiring services have been used interchangeably. Further, it shows that the taxability does not change irrespective of the nature of supply being provided. Thus, hiring would cover renting of vehicles also.

Case laws perspective

10. In the case of CST v. Vijay Travels, the following was held:

“The Legislature has not made any distinction between hiring of vehicle, which the applicant claimed to do so as to be excluded from the tax net, and renting of vehicle for the purpose of levy of service tax - Scheme having been formulated for regulating the business of renting of motor cabs or motorcycles to persons desirous of driving by themselves or through drivers, either for their own use or for matters connected therewith, nature of services provided while hiring and renting is the same such that such services are taxable. Fact that legal possession of vehicle not handed over to person renting the vehicle, such that de jure possession continues with owner/provider of service, would not exclude the service from tax net. Thus, respondent cannot escape tax liability on ground that hiring is different from renting as intention of Government is to tax service provider of a service which involves both hiring and renting of a cab for a longer duration.”

The above judgement was also relied upon in the case of CST v. Vijay Travels

11. In the case of Anil Engineering vs CCE, the Tribunal held that the contrary contention of there being a substantial difference between renting and hiring of a cab was an illusory distinction.
12. Therefore, even from this perspective, it can be stated that renting and hiring can be used interchangeably. Hence, the exemption applicable to hiring would equally be applicable to renting of trucks also.

Transport vs Rental

13. In a contract for transport, there is a pre-determined route and schedule between the transporter and the supplier. This means that the transporter undertakes the responsibility for point to point delivery along with the risk of safe transport. The effective possession and control of the vehicle remains with the transporter. The route and the timings are decided by the transporter in accordance with the contract entered beforehand between such transporter and the supplier.
14. On the other hand, in a rental contract, the possession and control of the vehicle gets transferred to the renter (person taking on rent). The renter has the option to use the vehicle in the manner and the schedule as per their own requisitions. The route, schedule and timings are also decided by the renter. The effective possession and control of the vehicles gets transferred from the lessor to the person taking on rent. This contract can be with or without operator. Also, whether the cost of fuel would be included in the consideration or not does not affect the nature of contract.
15. Para 8.4 of the Circular no. 164/20/2021-GST dated 6th October 2021 provides the following clarification:

*“The issue was placed before the 45th GST Council Meeting held on 17.09.2021. As recommended by the GST Council, it is clarified that the **expression “giving on hire” in Sl. No. 22 of the Notification No. 12/2017-CT (Rate) includes renting of vehicles.** Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are **eligible for the said exemption** irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and **under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles.**”*

While explaining hiring and renting, the Circular emphasized that the effective control of the vehicles would be with the renter (State Transport Undertaking) in the above case.

16. In the explanatory notes to HSN code 996601 [Rental services of road vehicles including buses, coaches, cars, trucks and other motor vehicles, with operator], the following has been provided:

*“This service code includes rental of buses or coaches, trucks and other motorized freight vehicles, with operators for a period of time, not generally dependent on distance. **The renter defines how and when the vehicles will be operated, determining schedules, routes, and other operational considerations.**”*

17. Therefore, the basic difference between transport and renting is that in the latter situation, the effective possession and control of the vehicle gets transferred to the renter. Also, the transport works on pre-determined schedule and route whereas the renter has the leeway to use the vehicle as per his own requirements during the tenure of leasing.

With operator vs Without operator

18. Renting of trucks or any transport vehicles can either be with operator or without operator. By operator, one can understand ‘driver’.
19. When the vehicle is rented along with the driver, the classification would be warranted within HSN code 9966 - Rental services of transport vehicles with operators.
20. When vehicle is rented without the driver, the HSN code 9973 - Leasing or rental services without operator would be used for classification

HSN 9965 - Goods Transport Services

21. In a contract, where multiple transporters are involved, only 1 transporter can be said to be called as the goods transport agency (GTA). GTA is the transporter who issues consignment note. The other transporter who does not issue the consignment note cannot be called as the GTA but may be referred to as Goods Transport Operators (GTO).
22. The taxability under GST differs depending on whether the transporter is a GTA or a GTO.

By Goods Transport Agency

23. Where the supply is provided by Goods Transport Agency, there are three options for taxability under the GST law from 18th July 2022:
1. Forward Charge with ITC - 12%
 2. Forward Charge without ITC - 5%
 3. Reverse charge without ITC - 5%

Other than by Goods Transport Agency (Goods Transport Operators)

24. Where the supply is provided by a Goods Transport Operator, the said supply would be treated as exempted. As per the above exemption entry, all services of transportation except by the GTA or courier agency is exempted.

HSN 9966 - Rental services of transport vehicles with operators

25. This entry would be attracted where the rental services are provided along with the driver. In the

given case, the transportation is not on pre-determined schedules but on the schedule and timings determined by the person taking on rent.

To GTA vs Not to GTA

26. To GTA - Entry no. 22 of exemption notification no. 12/2017-Central Tax (rate) dated 28th June 2017 clearly covers Services by way of giving on hire any transport vehicles to a goods transport agency. The said exemption entry covers both HSN code 9966 and 9973 within its ambit. Therefore, renting of truck to a goods transport agency would be exempted.
27. Not to GTA - Where the vehicle is rented out to any person other than the GTA, the said supply would be taxable under the GST law. The rate of GST would be 12% / 18% depending on whether or not the fuel cost is included in the consideration.

With fuel vs without fuel

28. With fuel - Where the fuel cost is included in the consideration charged from the recipient, the rate of GST to be charged by the renter would be 12%.
29. Without fuel - In all other cases of renting where fuel cost is not to be included, the rate of GST would be 18%.

HSN 9973 - Leasing or rental services without operator

30. This entry would be attracted where the rental services are provided without the driver. In the given case, the transportation is not on pre-determined schedules but on the schedule and timings determined by the person taking on rent.

To GTA vs Not to GTA

31. To GTA - Entry no. 22 of exemption notification no. 12/2017-Central Tax (rate) dated 28th June 2017 clearly covers Services by way of giving on hire any transport vehicles to a goods transport agency. The said exemption entry covers both HSN code 9966 and 9973 within its ambit. Therefore, renting of truck to a goods transport agency would be exempted.
32. Not to GTA - Where the vehicle is rented out to any person other than the GTA, the said supply would be taxable under the GST law. The rate of GST would be the same as that applicable on the supply of said goods. This means that if the rate of GST on motor vehicles is 28%, renting would also attract the same rate of tax.

Conclusion

From the above, it can be inferred that there are multiple rates of GST for goods transport and renting. Also, based on the involvement of operator / driver, running on pre-determined schedule / timings and the recovery of fuel, the rate of GST may change significantly. Hence, it is pertinent that one should keep robust documentation clearly delineating the nature of services provided based on the aforementioned factors in order to circumvent any possible litigation under GST.