

GST NEWSLETTER

ISSUE 26 | AUGUST 2023

INDEX



1. Article [pg 2-6]
a. Impact Of GST On Electric Vehicle



2. Case Laws [pg 7-9]
a. Karnataka High Court Quashes Rule 89(4)(C) Of CGST Rules, 2017
b. Fair Price Shops Supplying Essential Commodities To Ration Card Holders Are Not Liable To Charge GST To The State Government - AAR - West Bengal - GST



3. Notifications And Circulars [pg 10-15]



4. Due Dates [pg 16]

**LEADING FINANCIAL
ADVISORY AND BUSINESS
COUNSULTING FIRM**

ABOUT US

In an era of rapid change, heightened scrutiny, and unprecedented technological change, quality of thinking and delivery are more important than ever. Since inception, our mission has been to provide quality services without compromising on ethics and values.

Quality and integrity is at the heart of everything we do. We are continuously investing in technology, people, and innovation to enhance our professional services. This investment of InCorp Advisory will benefit our organization and clients we serve.

**GST Newsletter:
Compiled And Edited By**

INCORP INDIRECT TAX DIVISION

COMPILED BY
ARTICLE - SHIVANGI PANDEY
CASE LAWS - CA URMI MEHTA
NOTIFICATIONS - SHIVANGI PANDEY

EDITED BY
CA PRASANNA KS

ARTICLE

Impact Of GST On Electric Vehicle

Introduction

India offers the world's largest untapped Electrically operated Vehicles (EV) market, especially in the two-wheeler segment. Thereby, the adoption of electric vehicles (EVs) has lately become an essential part of the Government's sustainable transportation initiatives.

While efforts are being made to promote the EV and to expand the EV infrastructure such as charging stations or batteries and others, the taxability aspects of these charging services remain unclear to the majority.

Through this article, we shall examine and highlight the GST implications for EVs, charging stations and other related aspects.

Table Of Contents

- ✓ **Background - EV in India**
- ✓ **Latest Development in EV Industry**
- ✓ **GST Impact on EV and its components**
- ✓ **GST rates and HSN/ SAC tariffs**
- ✓ **ITC Availability**
- ✓ **GST Exemptions**
- ✓ **Conclusion**



✓ Background

With several automakers rolling out EV vehicles at a rapid pace, the penetration of these vehicles has increased significantly in the past few years. India's electric vehicles (EV) market is likely to cross one crore units' annual sales by 2030, stated Economic Survey 2022-23 on Tuesday.

In December 2022, India became the third-largest automobile market, surpassing Japan, and Germany in terms of sales, said the survey tabled in Parliament on Tuesday.

As business activities gain pace and the Indian economy rebounds its way in 2023, the auto industry is set to enter a new phase of growth, innovation, and investment.

The taxability of the Electric Vehicle (EV) industry is a complex and multifaceted issue that depends on various factors, including government policies, environmental goals, economic considerations, and technological advancements.

However, in consideration with these factors, the policymakers have brought up certain GST implications, to strike a balance between promoting the EV industry, achieving environmental goals, and maintaining fiscal responsibility, that are herein discussed below.

✓ Latest Developments

The 2023-24 Union Budget revealed INR 35,000 crore for vital capital investments to facilitate energy transition and achieve net-zero targets by 2070, also, the support for Battery Energy Storage Systems of 4,000 MWH will be provided through viability gap funding.

Initiatives like Faster Adoption of Manufacturing of Electric Vehicles Scheme – II (FAME – II) and Production Linked Incentive Scheme (PLI) have been introduced for electric vehicle manufacturers.

INR 51.72 billion (\$631 million) is allocated for the FAME-II scheme, an 80% increase from previous years, aiming to incentivize clean energy vehicle adoption.

The custom duty reduction on Lithium-ion EV batteries and excise duty exemptions on natural and biogas aims to boost imports of foreign electric vehicles to India.

Also, Budget 2023 extended the BCD exemption on Lithium-ion cells used in manufacturing the battery or battery pack of cellular mobile phones and EVs or hybrid motor vehicles till 31st March 2024.

✔ GST Impact Analysis For Electric Vehicle (EV)

● Spare parts of Electronic Vehicle and its impact on GST

There has been a significant debate regarding the GST rate applied to various spare parts for electric vehicles. Some of these spare parts are currently under scrutiny for potentially being subjected to a 28% tax. However, there hasn't been a definitive response from the governing body on this matter. The reason behind this uncertainty lies in the fact that the GST Council has not formally categorized spare parts for electric vehicles under a distinct tariff classification.

The observation made by the Society of Manufacturers of Electric Vehicles (SMEV) underscores a significant discrepancy within the GST framework concerning electric vehicles and their spare parts.

At present, the imposition of a 5% Goods and Services Tax (GST) on electric vehicles is a laudable step towards incentivizing the adoption of cleaner transportation alternatives. However, the issue arises when it comes to the taxation of spare parts for electric vehicles.

● Batteries For EV


The government aims to lower the goods and services tax (GST) on lithium-ion batteries so that they are taxed at the same rate as electric vehicles (EVs). This move intends to support the government's eco-friendly transportation plans. Currently, lithium-ion batteries are taxed at 18%, while EVs are taxed at 5%. The government also considers simplifying taxes and standardize batteries to ensure they work together smoothly.

The tax on lithium-ion batteries was reduced from 28% to 18% in 2018. Now, there's renewed interest in further reducing the tax as part of the government's efforts to promote electric vehicles.

● Charging Stations

Charging a battery involves using electrical energy to convert it into chemical energy, which is then stored in the battery. When charging an electric vehicle (EV), electricity is consumed within the charging station premises. This process doesn't involve selling electricity to individuals, as it's all used on-site. Therefore, obtaining an electricity license under the Electricity Act isn't necessary for charging stations.

Charging an EV doesn't equate to selling electricity, as it's consumed within the premises of the charging station. The activity is considered a service rather than a sale of electricity or movable property. As a result, the combination of providing electrical energy and service charges is categorized as a service supply. This service supply is subject to an 18% GST rate.



The GST collected, which is treated as output tax, can be set off against the input tax credit received by the applicant on its inputs and input services in terms of Sections 16, 86, and 17 of the CGST Act 2017 read with Rules 42 and 43 of the CGST Rules 2017.

The disparities in tax rates for associated components and services, such as lithium-ion batteries and charging infrastructure, have prompted discussions about the need for a more harmonized taxation structure. The potential reduction in GST for lithium-ion batteries, aligning them with the tax rate for EVs, holds promise for streamlining the sector and promoting battery-driven transportation.

✔ **GST Rate And HSN Tariff For EV**

To boost the electric vehicle market, the reduced GST rates for EVs is hereunder

- **Electric vehicles - from 12% to 5%.**
- **Chargers or charge stations - from 18% to 5%.**
- **Lithium-ion Batteries used for EVs – 18%.**
- **Charging the battery of an EV - 18%.**

(Source: Notification No. 12/2019-Integrated Tax (Rate) New Delhi, the 31st of July 2019/ Circular No. 179/11/2022-GST; Date: 3rd August 2022)

The sale of electric vehicles is covered under HSN code 870240.


✔ **ITC Availability**

The Ministry of Power clarified that providing a license under the Electricity Act, 2003, for charging electric vehicle (EV) batteries can be seen as a service, not a sale of electricity.

Meanwhile, the Hon'ble Supreme Court highlighted that electricity is like a movable thing. As it's sent to customers, its delivery and use are tracked by meters from the electricity company. As the transfer of electricity doesn't have obstacles.

Based on the provided clarifications, it can be determined that charging electric vehicle (EV) batteries is subject to Goods and Services Tax (GST). This means that companies operating EV charging services can utilize input tax credit under certain conditions. This is applicable as long as the goods and services being used are for business purposes and not excluded from the negative list of GST tariff.

If a contradiction arises where the department considers charging EVs as a sale of electricity, the services offered could be exempted from GST. This would mean that EV charging companies wouldn't be eligible to claim input tax credits.



The existing ambiguity surrounding the taxability of Electric Vehicle (EV) charging stations and the availability of input tax credit (ITC) underscores the importance of clarity and consistency within the regulatory landscape. To address this issue, it is strongly advised that the Central Board of Indirect Taxes and Customs (CBIC) takes swift action to issue comprehensive clarifications. Such clarifications would not only streamline the understanding of stakeholders but also foster a conducive environment for the growth and adoption of EV charging infrastructure in the country.

✔ **Exemption For EV Under GST**

Governments offers GST exemptions to promote the adoption of environmentally friendly technologies, such as electric vehicles (EVs), in order to encourage their use in the regular public transportation systems.

The hiring of electric buses (with a seating capacity of more than 12 passengers) to local authorities is exempted under GST.

Conclusion

In conclusion, the impact of the Goods and Services Tax (GST) on the electric vehicle (EV) industry has been both influential and complex. As highlighted throughout this article, the varying tax rates on different components and services related to EVs have created a unique landscape of opportunities and challenges.

As the nation moves forward on its journey towards reduced emissions and enhanced energy efficiency, a well-calibrated GST regime will undoubtedly play a pivotal role. It has the potential to incentivize innovation, spur investments, and ultimately contribute to a cleaner and more sustainable future for the automotive sector in India. While challenges and discussions persist, the GST impact on EVs remains a dynamic narrative that will continue to shape the landscape of the automobile industry in the years to come.

CASE LAWS

Karnataka High Court Quashes Rule 89(4)(C) Of CGST Rules, 2017

M/s. Tonbo Imaging India Pvt Ltd Vs Union of India [WRIT PETITION NO. 13185 OF 2020 (T-RES)] Dated 16.02.2023

Facts Of The Case

M/s. Tonbo Imaging India Private Limited, a developer of micro-optic designs, exported custom products from May 2018 to March 2019, seeking "zero-rated supply" refunds under the IGST Act. The company applied for refunds in 2020, but a rule change limited export refunds to 1.5 times the value of comparable domestically supplied goods.

The Revenue Department raised deficiencies, citing lack of value for domestic goods as per the amended Rule 89(4)(c) of CGST Rules. The Petitioner argued the unamended rule applied to their claim period. Respondent rejected claims on 30.06.2020 via the Impugned Order.

In response, the company filed a writ petition with the Karnataka High Court.

The issue raised was whether Rule 89(4)(c) of the CGST Rules is liable to be held unconstitutional, being violative of Articles 19(1)(g) and 14 of the Constitution and ultra vires to provision of GST law?

Provision Of The Law

It was observed that:

The combination of Section 54 of the CGST Act and Section 16 of the IGST Act aims to make exports tax-free throughout the supply chain. Rule 89(4)(c) imposing a 1.5 times refund limit on exports via the LUT model contradicts this purpose and infringes on established legal principles that rules can't override primary legislation. The rule violates Articles 14 and 19(1)(g) of the Constitution, as it limits refunds of unutilized Input Tax Credit (ITC) for LUT-based exports while IGST model exports have no such limit.

The undefined terms "like goods" and "similarly placed supplier" in Rule 89(4)(c) add to the confusion. When domestic turnover is minimal, the rule reduces refunds for LUT model exports, contradicting the zero-rating principle in Section 16 of the IGST Act. The court ruled Rule 89(4)(c) unconstitutional and arbitrary.

Ruling

The Hon'ble High Court of Karnataka held that the part of Rule 89(4C) in Central Goods and Services Tax Rules, 2017, added by Notification No.16/2020-Central Tax dated 23.03.2020, stating "1.5 times the value of like goods domestically supplied by the same or similarly placed supplier" is deemed unconstitutional, violating both CGST Act and IGST Act, along with Articles 14 and 19 of the Indian Constitution and mentioned that the said rule is nullified and instructed the revenue authorities to approve the petitioner's refund claims and provide refunds with interest within three months of receiving this order.

Fair Price Shops Supplying Essential Commodities To Ration Card Holders Are Not Liable To Charge GST To The State Government - AAR - West Bengal - GST

Applicant's Name: Chanchal Saha [WBAAR 32 of 2022] Dated 26.06.2023

Facts Of The Case

The applicant is in the business as a holder of a licence issued by the West Bengal Government, authorising him to carry on trade in Super Kerosine Oil, which is issued by the Department of Food and Supplies, Government of West Bengal.

The applicant sought an advance ruling on the issue of whether the applicant, being a Fair Price shop, is liable to charge GST from the State Government against the supply made by them.

Yet another issue raised was whether the other charges like dealer commission, dealer Transport Charges, Stationery Charges, H&E loss, etc. would be chargeable to GST or treated as exempt. Whether the supply of "S.K.Oil" along with charges would be treated as a composite supply in which the principal supply would be the supply of "S.K.Oil".

Provision Of The Law

Entry 11A of Notification No. 12/2017-Central Tax (Rate), which offers a nil tax rate for FPS supplying services to the state government against commission or margin, does not apply since no consideration is provided by the government and the entire consideration is paid by ration card holders.

Ruling

The AAR held that no supply is made by the applicant to the State Government. In the absence of any supply being made to the State Government, no tax would be leviable, and thus no tax should be charged to the State Government.

The Authority clarified that other charges, such as dealer commissions, transport charges, stationery charges, and H&E losses, will be subject to GST because they are considered a part of the value of the supply under Section 9(1).



NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF JULY 2023

- ✓ Central Tax Notification. [Click here](#)
- ✓ Central Tax (Rate) Notification. [Click here](#)
- ✓ Integrated Tax (Rate) Notification. [Click here](#)
- ✓ Union Territory Tax (Rate) Notification. [Click here](#)
- ✓ Compensation Cess (Rate). [Click here](#)
- ✓ Circular (GST). [Click here](#)

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to appoint common adjudicating authority in respect of show cause notices in favour of against M/s BSH Household Appliances Manufacturing Pvt Ltd.	35/2023-Central Tax Dated: 31-07-2023
2.	Seeks to waive the requirement of mandatory registration under section 24(ix) of CGST Act for person supplying goods through ECOs, subject to certain conditions.	34/2023-Central Tax Dated: 31-07-2023
3.	Seeks to notify "Account Aggregator" as the systems with which information may be shared by the common portal under section 158A of the CGST Act, 2017.	33/2023-Central Tax Dated: 31-07-2023
4.	Seeks to exempt the registered person whose aggregate turnover in the financial year 2022-23 is up to two crore rupees, from filing annual return for the said financial year.	32/2023-Central Tax Dated: 31-07-2023
5.	Seeks to amend Notification No. 27/2022 dated 26.12.2022.	31/2023-Central Tax Dated: 31-07-2023
6.	Seeks to notify special procedure to be followed by a registered person engaged in manufacturing of certain goods.	30/2023-Central Tax Dated: 31-07-2023
7.	Seeks to notify special procedure to be followed by a registered person pursuant to the directions of the Hon'ble Supreme Court in the case of Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018.	29/2023-Central Tax Dated: 31-07-2023

Sl. No	Subject	Notifications/Circulars No. Date of Issue
8.	Seeks to notify the provisions of sections 137 to 162 of the Finance Act, 2023 (8 of 2023).	28/2023-Central Tax Dated: 31-07-2023
9.	Seeks to notify the provisions of section 123 of the Finance Act, 2021 (13 of 2021).	27/2023-Central Tax Dated: 31-07-2023
10.	Seeks to extend amnesty for GSTR-10 non-filers	26/2023-Central Tax Dated: 17-07-2023
11.	Seeks to extend amnesty for GSTR-9 non-filers.	25/2023-Central Tax Dated: 17-07-2023
12.	Seeks to extend amnesty scheme for deemed withdrawal of assessment orders issued under Section 62.	24/2023-Central Tax Dated: 17-07-2023
13.	Seeks to extend time limit for application for revocation of cancellation of registration.	23/2023-Central Tax Dated: 17-07-2023
14.	Seeks to extend amnesty for GSTR-4 non-filers.	22/2023-Central Tax Dated: 17-07-2023
15.	Seeks to extend the due date for furnishing FORM GSTR-7 for April, May, and June 2023 for registered persons whose principal place of business is in the State of Manipur.	21/2023-Central Tax Dated: 17-07-2023
16.	Seeks to extend the due date for furnishing FORM GSTR-3B for quarter ending June 2023 for registered persons whose principal place of business is in the State of Manipur.	20/2023-Central Tax Dated: 17-07-2023
17.	Seeks to extend the due date for furnishing FORM GSTR-3B for April, May, and June 2023 for registered persons whose principal place of business is in the State of Manipur.	19/2023-Central Tax Dated: 17-07-2023

Sl. No	Subject	Notifications/Circulars No. Date of Issue
18.	Seeks to extend the due date for furnishing FORM GSTR-1 for April, May, and June 2023 for registered persons whose principal place of business is in the State of Manipur.	18/2023-Central Tax Dated: 17-07-2023
19.	Corrigendum to notification no. 10/2023 Central Tax (Rate).	Dated: 31-07-2023
20.	Seeks to amend No. 26/2018- Central Tax (Rate) to implement the decisions of 50th GST Council.	10/2023-Central Tax (Rate) Dated: 26-07-2023
21.	Seeks to amend No. 01/2017- Central Tax (Rate) to implement the decisions of 50th GST Council.	09/2023-Central Tax (Rate) Dated: 26-07-2023
22.	Seeks to amend notification No. 13/2017- Central Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11.07.2023.	08/2023-Central Tax (Rate) Dated: 26-07-2023
23.	Seeks to amend notification No. 12/2017- Central Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11.07.2023.	07/2023-Central Tax (Rate) Dated: 26-07-2023
24.	Seeks to amend notification No. 11/2017- Central Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11.07.2023.	06/2023-Central Tax (Rate) Dated: 26-07-2023
25.	Seeks to notify all goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid.	06/2023-Integrated Tax Dated: 31-07-2023
26.	Corrigendum to notification no. 10/2023 Integrated Tax (Rate).	Dated: 31-07-2023

Sl. No	Subject	Notifications/Circulars No. Date of Issue
27.	Seeks to amend No. 27/2018- Integrated Tax (Rate) to implement the decisions of 50th GST Council.	10/2023- Integrated Tax (Rate) Dated: 26-07-2023
28.	Seeks to amend No. 01/2017- Integrated Tax (Rate) to implement the decisions of 50th GST Council.	09/2023- Integrated Tax (Rate) Dated: 26-07-2023
29.	Seeks to amend notification No. 10/2017- Integrated Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11.07.2023.	08/2023- Integrated Tax (Rate) Dated: 26-07-2023
30.	Seeks to amend notification No. 09/2017- Integrated Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11.07.2023.	07/2023- Integrated Tax (Rate) Dated: 26-07-2023
31.	Seeks to amend notification No. 08/2017- Integrated Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11.07.2023.	06/2023- Integrated Tax (Rate) Dated: 26-07-2023
32.	Corrigendum to notification no. 10/2023 Union Territory Tax (Rate).	Dated: 31-07-2023
33.	Seeks to amend No. 26/2018- Union Territory Tax (Rate) to implement the decisions of 50th GST Council.	10/2023-Union Territory Tax (Rate) Dated: 26-07-2023
34.	Seeks to amend No. 01/2017- Union Territory Tax (Rate) to implement the decisions of 50th GST Council.	09/2023-Union Territory Tax (Rate) Dated: 26-07-2023
35.	Seeks to amend notification No. 13/2017- Union Territory Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11.07.2023.	08/2023-Union Territory Tax (Rate) Dated: 26-07-2023

Sl. No	Subject	Notifications/Circulars No. Date of Issue
36.	Seeks to amend notification No. 12/2017-Union Territory Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11.07.2023.	07/2023-Union Territory Tax (Rate) Dated: 26-07-2023
37.	Seeks to amend notification No. 11/2017-Union Territory Tax (Rate) so as to notify change in GST with regards to services as recommended by GST Council in its 50th meeting held on 11.07.2023.	06/2023-Union Territory Tax (Rate) Dated: 26-07-2023
38.	Seeks to amend No. 1/2017- Compensation Cess (Rate) to implement the decisions of 50th GST Council.	03/2023-Compensation Cess (Rate) Dated: 26-07-2023
39.	Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.	CGST Circular No. 199/11/2023 Dated: 17-07-2023
40.	Clarification on issue pertaining to e-invoice.	CGST Circular No. 198/10/2023 Dated: 17-07-2023
41.	Clarification on refund-related issues.	CGST Circular No. 197/09/2023 Dated: 17-07-2023
42.	Clarification on taxability of share capital held in subsidiary company by the parent company.	CGST Circular No. 196/08/2023 Dated: 17-07-2023
43.	Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period.	CGST Circular No. 195/07/2023 Dated: 17-07-2023
44.	Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction	CGST Circular No. 194/06/2023 Dated: 17-07-2023

Sl. No	Subject	Notifications/Circulars No. Date of Issue
45.	Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021.	CGST Circular No. 193/05/2023 Dated: 17-07-2023
46.	Clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof.	CGST Circular No. 192/04/2023 Dated: 17-07-2023

DUE DATES OF GST FOR THE MONTH OF AUGUST 2023

AUGUST

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9	GSTR-7, GSTR-8 10	* GSTR-1 11	12
* GSTR-1, * GSTR-5/GSTR-6 * IFF (Optional) 13	14	15	16	17	CMP-08 18	19
* GSTR-3B GSTR-5A 20	21	* GSTR-3B (G-1) 22	23	* GSTR-3B (G-2) 24	25	26
27	GSTR-11 28	29	30	31		

2023

- * Monthly return for taxpayers with Annual Turnover more than 1.5 Crore or Taxpayer who has opted Monthly return option.
- * Monthly return for taxpayers with Annual Turnover up to 1.5 Crore or Taxpayer who has opted Quarterly return option (October 2022- December 2022).
- * Quarterly returns, with Annual Turnover less than Rs. 5 Crores and opted for quarterly return monthly payment option (QRMP).
- * Monthly return for taxpayers with Annual Turnover of up to or more than INR 5cr in Previous FY, Monthly Filing – December 2022
- * As per POB, QRMP scheme with Annual Turnover of up to INR 5cr.



CONTACT US

Mumbai Address

B-1602, ONE BKC,
Mumbai - 400051

Bangalore Address

No.8, 3rd Floor,
VK COMMERCE, 3rd Main
Rajajinagar 6th Block,
Opp. IT Park, Bangalore - 560010

 +91 77380 66622

 info@incorpadvisory.in

 www.incorpadvisory.in

Disclaimer :

The conclusions reached and views expressed in the Newsletter are matters of opinion based on our understanding of the facts, existing and anticipated tax laws and existing and anticipated rules. There can be no assurance that the tax authorities' or regulators may not take a position contrary to our views. Further, the content of this newsletter should not be used as a supporting to frame any opinions. All queries and clarifications on the content stated in this newsletter should be directed to InCorp Advisory Pvt. Ltd. through phone or email.

The information cited in this newsletter has been drawn from various sources & every effort has been made to keep the information cited in this newsletter error free. InCorp Advisory Pvt. Ltd.

InCorp Advisory Pvt. Ltd. does not take any responsibility for typographical or clerical errors which may have occurred while compiling this newsletter.