

GST on Stage and Contract Carriage



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Exordium

In GST law the taxation in the business of passenger transportation can be divided under following categories:

- a) Where entire vehicle is not used
- b) Where entire vehicle is used

Where entire vehicle is used further divisions can be made as under:

- a) Distance based Journey
- b) Place to Place Journey
- c) Time based Journey

Time based journey can be further divided into:

- a) Renting with operator
- b) Renting on Leasing without operator

Leasing can be further divided into

- a) Finance Lease
- b) Operating Lease

The discussions in this article has been made on the basis of above conceptual bifurcation

Stage Carriage as per Section 2(40) of the Motor Vehicle Act

2(40) "stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate

fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

Contract Carriage as per section 2(7) of the Motor Vehicle Act:

“contract carriage” means a motor vehicle which carries a passenger or passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum—

(a) on a time basis, whether or not with reference to any route or distance; or
(b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, **and includes**—

(i) a maxicab; and

S.2(22): “maxicab” means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward

(ii) a motor cab notwithstanding that separate fares are charged for its passengers

S.2(25) “motorcab” means any motor vehicle constructed or adapted to carry **not more than six passengers** excluding the driver for hire or reward;

Comparison between Stage Carriage and Contract Carriage

Stage Carriage [S.2(7)]	Contract Carriage [S.2(40)]
Constructed or Adapted to carry more than 6 passengers excluding driver	No such restriction to carry 6 or more passengers excluding driver. It may be for less than 6 passengers . Motor Cab constructed or adapted to carry not more than 6 passengers are also included.

	<p>Maxi Cabs, constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver is also included.</p> <p>Other Motor Vehicles with capacity to carry more than 12 passengers (excluding driver) or more than 13 passengers (including driver shall also be included)</p>
For Hire or reward	For Hire or reward
Separate fares paid by or for Individual passengers	Fare is paid for use of vehicle as a whole on a fixed or agreed rate or sum
No contract for use of vehicle as a whole	Contract is entered with holder of permit or person authorized by him in relation to motor vehicle for for use of vehicle as a whole
Fare is Journey based-whole of Journey of motor vehicle or stages of Journey	<p>a. Time basis (with or without reference to route or distance)</p> <p>b. From one point to Another</p>
Can stop to pick up or set down passengers during the Journey	<p>Can not stop to pick up or set down passengers not included in the contract anywhere during the journey.</p> <p>Passengers included in the contract can be set down or picked up.</p> <p>Section 88(8) of Motor Vehicle Act provides for grant of special permit to any public service vehicle including a stage carriage vehicle for carrying passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole, without stopping to pick up or set down along the line of route passengers not included in the contract.</p> <p>Held in AAR Rajasthan Pawanputra Travels 2019 (21) G.S.T.L. 328 (A.A.R. - GST) that supply of non AC vehicle to army does not fall</p>

	under contract carriage because the essential ingredient of a contract carriage is that it plies under a contract for a fixed set of passengers, and does not allow any other passenger to board or alight from the carriage at will. A 'contract carriage' carries passengers as a group and cannot pick up passengers <i>en-route</i>
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Effect of Conversion of Stage Carriage into Contract Carriage

A vehicle having "stage carriage" permit like buses owned by the appellants, to operate for private persons/marriage parties under a contract, such buses will then necessarily be required to obtain a contract carriage permit or a special permit as aforesaid. In our view, once such a contract carriage permit or a special permit is obtained, the bus will then no longer have the character of a stage carriage but will instead acquire the colour of a contract carriage/special permit carriage. **[Hyd Tribunal in ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION 2018 (10) G.S.T.L. 504 (Tri. - Hyd.)]**

<p>Tourist Vehicle is also contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf. [2(43) of Motor Vehicle Act]. The specifications have been provided under Rule 128 of the Central Motor Vehicles Rules framed under the Motor Vehicles Act. The said Rules apart from the other things provide for the structure of the vehicle, entrance and exit of the passengers, emergency exit, driver entry and exit, windscreen, rear windscreen, windows, ventilation and luggage holds at the rear or at the sides or both, of the vehicle with sufficient space and size, luggage racks, seats and seating arrangements letting etc.</p>

<p>Motor Cycle can also be contract carriage.</p>

<p>Ride sharing arrangements for splitting travel cost such as fuel and toll, if are for fixed or agreed rate or sum, then they shall enter contract carriage. If there is pure sharing of fuel cost and toll, then it shall not be a contract carriage.</p>

<p>House Boat is hotel in water and not contract carriage.</p>

<p>[KERALA BACKWATERS PRIVATE LIMITED 2019 (22) G.S.T.L. 93 (Tri. - Bang.)]</p>

GST on Stage Carriage where operator control is with supplier of service.

Non AC Stage Carriage	15(c) of 12/2017	Exempt	
AC Stage Carriage	8(ii)(b) of 11/2017	5%	No ITC on goods and services used in supplying service is taken

Use of Vehicle as A Whole

Distance based Journey :SAC 9964

GST on Contract Carriage where operator Control is with supplier of service

Non AC contract carriage	15(b) of 12/2017	Exempt	<p>Exceptions:</p> <ul style="list-style-type: none"> a. Radio Taxi b. Contract carriage for Tourism c. Contract Carriage for Conducted Tours [Short Visit to a place in which some one shows you around and tells information about it] d. Contract Carriage for Charter or Hire [Time basis arrangements] <p>Transportation of students and staff of Contractee Institute by Non AC bus is exempt under 15(b) [Bhavik</p>
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			<p>Bhatia 2020 (32) G.S.T.L. 377 (A.A.R. - GST - M.P.)]</p> <p>Transportation by Non AC Buses used for marriage functions, pilgrimages, political parties meetings, transportation of employees and students to different organizations is for charter or hire and hence not exempt under 15(b)[AAR in Andhra Pradesh State Road Transport Corporation on 05-05-2020]</p> <p>Held in AAR Rajasthan Pawanputra Travels 2019 (21) G.S.T.L. 328 (A.A.R. - GST) the “hired” non-air conditioned contract carriage are ‘excluded’ from exemption as specifically mentioned in the said notification.</p>
Service of transportation of passengers, with or without accompanied belongings, by metered cabs or auto rickshaws (including e-rickshaws).	17(e) of 12/2017	Exempt	
AC Contract Carriage other than Motor Cab	8(ii)(a) of 11/2017:	5%	No ITC on goods and services used in supplying service is taken

<p><u>Where the cost of fuel is included in the consideration charged from the service recipient</u></p> <ol style="list-style-type: none"> 1. AC Motor Cab [any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward] 2. Non AC Contract Carriage for Tourism 3. Non AC Contract Carriage for Conducted Tours 	<p>8(vi) of 11/2017</p>	<p>5%</p> <p>OR</p> <p>12%</p>	<p>ITC charged on goods and services used in supplying the service, other than the input tax credit of input service in the same line of business (i.e. service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle), has not been taken</p> <p>ITC available</p>
<p>Where cost of fuel is not included in the consideration charged from the service recipient</p> <ol style="list-style-type: none"> 1. AC Motor Cab 2. Non AC Contract Carriage for Tourism 3. Non AC Contract Carriage for Conducted Tours 	<p>8(vii) of 11/2017</p>	<p>18%</p>	<p>ITC is available</p>

Radio Taxi radio taxi" means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS).	8(ii)(c) of 11/2017	5%	No ITC on goods and services used in supplying service is taken
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Place to Place based Tour operator services: SAC 9985

Tour operator" means any person engaged in the business of **planning, scheduling, organizing, arranging tours** (which may include arrangements for accommodation, sightseeing or other similar services) **by any mode of transport**, and includes any person engaged in the business of operating **tours**.

The word '**tour**' has been defined under Section 65(113) of the Finance Act 1994 to mean the journey **from one place to another irrespective of the distance between such places**

Definition of tour operator under Service Tax:

The 'tour operator' has been defined under Section 65(115) of the Act to mean any person engaged in the business of planning, scheduling or organising or arranging tours by any mode of a transport and includes any person engaged in the business of operating tours **in a 'tourist vehicle' or a contract carriage by whatever name called**.

Allahabad High Court in **ALOK PRAKASH 2018 (8) G.S.T.L. 266 (All.)** held that CESTAT was justified in holding that renting of the vehicle by the appellant- assessee to the IFFCO falls within taxable service in the category of 'tour operator', because the luxury bus provided by the appellant not only falls under contract carriage but also meets all requirements of tourist vehicle.

This judgment may apply in GST regime also because the definition of tour operator under gst inspite not specifically including business of operating tours in tourist vehicle still includes business of planning, scheduling, organizing, arranging tours by any mode of transport.

In case of supply of tour operator services tax rate is 5% under Entry 23 of Notification 11/2017, **Provided** that credit of input tax charged on goods and services used in supplying the service ,other than the input tax credit of input service in the same line of business (i.e. tour operator service procured from another tour operator)] has not been taken and the bill issued for supply of this service indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour

Time Based Journey in Contract Carriage

Where the arrangement is not on point to point basis, but on time basis may be covered under the following:

With Operator Rental services of transport vehicles	SAC 9966
Without Operator Financial and Related Services Operating Lease	SAC 9971 SAC 9973

Time based Journey

Rental Service of Transport Vehicles with operators: SAC 9966

[99601 covers Rental services of road vehicles including buses, coaches, cars, trucks and other motor vehicles, *with operator*]

10(i) of 11/2017	Where the cost of fuel is included in the consideration charged from the service recipient	5%	ITC charged on goods and services used in supplying the service, other than the input tax credit of input service in the same line of business (<i>i.e. service procured from another service provider of transporting passengers</i>)
		Or'	

		12%	in a motor vehicle or renting of a motor vehicle) has not been taken ITC is available
10(iii) of 11/2017	Where the cost of fuel is not included in the consideration charged from the service recipient	18%	ITC is available

Maharashtra by SST Sustainable Transport Solutions India Pvt. Ltd [2019 (20) G.S.T.L. 317 (A.A.R. – GST)]

Applicant providing the Buses along with Driver, Fuel & Maintenance for use of General Public at Large. The applicant merely hiring out buses whereas Bus routes, Bus Fares decided by Nagpur Municipal Corporation (NMC). A transaction between applicant and NMC being of the nature of leasing/renting supply would be regarded as a supply of services as per Clause 5(f) of Schedule II appended to both, Central Goods and Services Tax Act, 2017 and Maharashtra Goods and Services Tax Act, 2017. Such renting of Buses by applicant squarely falls under Sr. No. 10(ii), Heading No. 9966 of Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 as rental Service of transport vehicles, in this case with operators and therefore attracts CGST and SGST @ 9% each on the remuneration received for such services rendered by the applicant.

Sharma Transports [2020 (32) G.S.T.L. 74 (A.A.R. – GST – Kar.)]

Assessee providing buses, in terms of agreement, to pick up employees of client from respective pick up stops and drop them in client's factory/office and vice versa . Assessee charging rental charges per month per vehicle which included as fixed cost and variable cost for minimum operation of 2,640 kms. and 22 working days in a calendar month from client for providing transportation services . Assessee not engaged in providing transport services by motor cabs - Service Accounting Code 9964, specifically Code 9964 11 covering local land transport services of passengers by bus .Service covered under Serial No. 8(vii) of Notification No. 11/2017-C.T. (Rate) and taxable at 9% CGST and 9% KGST

Renting and Hiring are Synonym

Allahabad High Court in case of **Anil Kumar Agnihotri vs C.C.E Kanpur [2018 (10) G.S.T.L. 288 (All.)]**- Renting or hiring the two terms has not been specifically defined under the Act and as such, they have to be assigned the meaning which is acceptable in common parlance. Ordinarily, in common usage, there is hardly any distinction between 'renting' or 'hiring', and both the terms are usually used as a synonym. Irrespective of whether he retains possession and control of the vehicle or passes it to the consumer, the service so rendered by him would fall within the taxable service as defined under Section 65(105)(o) of the Act and is chargeable to tax under Section 66 of the Act. Any person providing service of renting a motor cab would be amenable to service tax under the Act.

Renting and Leasing Without Operators: SAC 9971 and 9973

Financial and Related Services: SAC 9971

[997114 covers financial leasing]. In finance leases by the nature of substance of the transaction the operator control is missing.

What is finance Lease ?

A finance lease is a lease that transfers substantially all the risks and rewards incident to ownership of an asset. Title may or may not eventually be transferred.

Examples of situations which would normally lead to a lease being classified as a finance lease are:

- (a) the lease transfers ownership of the asset to the lessee by the end of the lease term;
- (b) the lessee has the option to purchase the asset at a price which is expected to be sufficiently lower than the fair value at the date the option becomes exercisable such that, at the inception of the lease, it is reasonably certain that the option will be exercised;
- (c) the lease term is for the major part of the economic life of the asset even if title is not transferred;
- (d) at the inception of the lease the present value of the minimum lease payments amounts to at least substantially all of the fair value of the leased asset; and

(e) the leased asset is of a specialised nature such that only the lessee can use it without major modifications being made.

Indicators of situations which individually or in combination could also lead to a lease being classified as a finance lease are:

(a) if the lessee can cancel the lease, the lessor's losses associated with the cancellation are borne by the lessee;

(b) gains or losses from the fluctuation in the fair value of the residual fall to the lessee (for example in the form of a rent rebate equalling most of the sales proceeds at the end of the lease); and

(c) the lessee can continue the lease for a secondary period at a rent which is substantially lower than market rent

Sale and Lease Back

A sale and leaseback transaction involves the sale of an asset by the vendor and the leasing of the same asset back to the vendor. The lease payments and the sale price are usually interdependent as they are negotiated as a package. Normally Sale and lease back transactions shall fall in the category of finance lease.

GST Rate on Finance Lease

Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration. [Schedule II Para 5(f)]	Same rate of central tax as on supply of like goods involving transfer of title in goods
Any transfer of right in goods or of undivided share in goods without the transfer of title thereof. [Schedule II Para 1(b)]	Same rate of central tax as on supply of like goods involving transfer of title in goods
Leasing of motor vehicles purchased and leased prior to 1st July 2017;	65 per cent of the rate of central tax as applicable on supply of like goods involving transfer of title in goods.

Nothing contained in this entry shall apply on or after 1st July, 2020.

Leasing or Renting without operator SAC 9973

997311 covers Leasing or rental services concerning transport equipments including containers, *without* operator. Since finance leasing is specifically covered under 997114 hence leasing under 997311 can only cover leases other than finance leases i.e. Operating lease. An operating lease is a lease other than finance lease. Operating lease does not transfer substantially all the risks and rewards incident to ownership.

What is the difference between Leasing and renting ?

Leases are normally long term arrangements, while renting is short term arrangement. The terms and conditions of the lease cannot be changed until it ends.

GST Rate on Operating Lease and Renting

17(iii)	Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	Same rate of central tax as on supply of like goods involving transfer of title in goods
17(iv)	Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.	Same rate of central tax as on supply of like goods involving transfer of title in goods
17(vi)	Leasing of motor vehicles purchased and leased prior to 1st July 2017	65 per cent of the rate of central tax as applicable on supply of like goods involving transfer of title in goods. Nothing contained in this entry shall apply on or after 1st July, 2020
17(viia)	<i>Leasing or renting of goods</i>	<i>Same rate of central tax as applicable on supply of like</i>

		<i>goods involving transfer of title in goods</i>
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In an application filed before **AAR under GST, West Bengal by Ishan Resins & Paints Limited [2020 (1) TMI 881]**. The applicant intends to lease out vehicles like trucks, tankers, etc. that are designed to transport goods to GTA without an operator. The control and possession of the vehicle will be transferred to the lessee and bear the cost of repair, insurance, etc. It amounts to the transfer of the right to use the goods and taxable under SI No. 17(iii) of the Rate Notification.

RCM on renting of Motor Vehicle

Applicability of RCM on renting of Motor Vehicle as introduced by NN 22/2019-CTR dated 30-09-2019 and modified by NN 29/2019-CTR dated 30-09-2019 and clarified by Circular 130 dated 31-12-2019 is as under

RCM Applicability	With Operator Control					
Provided to	Body Corporate in Taxable Territory			Body Corporate in Non Taxable Territory		
Cost of Fuel	Included		Non Included	Included		Not Included
Provided by	5% w/o ITC	12% with ITC	18%with ITC	5% w/o ITC	12% with ITC	18%with ITC
Non Body Corporate	Yes	No	No	No	No	No
Body Corporate	No	No	No	No	No	No
RCM Applicability	Without Operator Control				RCM is applicable only on renting i.e. Time arrangements. Pick and drop facility falling under SAC 9964 shall be outside the purview of RCM.NN 22/2019 earlier targetted to cover only 10(i) of 11/2017 i.e. 5% without ITC except ITC in same line of business. Later 22/2019 was modified to include all renting arrangements with inclusion of fuel cost except those covered under 12%	
Provided to	Body Corporate in Taxable Territory		Body Corporate in Non Taxable Territory			
Cost of Fuel	Included	Non Included	Included	Not Included		
Provided by	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods					
Non Body Corporate	Yes	No	No	No		
Body Corporate	No	No	No	No		

Availability of ITC to Supplier of Service:

Passenger Transportation of Service SAC 9964:

AC Contract Carriage other than Motor Cab	5%	All ITC on goods and services denied.
Radio Taxi	5%	All ITC on goods and services denied.
Motor Cab up to 6 passengers excluding driver, where cost of fuel is included	5%	ITC available for available services procured from another supplier by way of passenger transportation [SAC 9964] or renting [SAC 9966/SAC 9973].
	OR	All Other ITC on goods and services denied.
	12%	ITC available for : A) Motor Vehicles for transportation of persons having approved seating capacity of not more than 13 passengers including driver. [S.17(5)(a)(B)] B) Renting, leasing or hiring of motor vehicle [S.17(5)(b) proviso] C) All other goods and services
Motor Cab up to 6 passengers excluding driver, where cost of fuel is not included	18%	ITC available for : A) Motor Vehicles for transportation of persons having approved seating capacity of not more than 13 passengers including driver. [S.17(5)(a)(B)] B) Renting, leasing or hiring of motor vehicle [S.17(5)(b) proviso] C) All other goods and services

Renting : SAC 9966 and 9973

With Operator SAC 9966	Cost of Fuel Included	5% without ITC OR 12% with ITC 18% with ITC
	Cost of Fuel Not Included	
Without Operator SAC 9973	Rate applicable to supply of goods	ITC available

Leasing : SAC 9971 and 9973

Finanace Lease SAC 9971	Rate applicable to supply of goods	ITC is available
Operating Lease SAC 9973	Rate applicable to supply of goods	ITC is available

Conclusion:

Input Credit restrictions in passenger transportation business inspite the fact that services are being subscribed from the persons in the same line of business are without any reasonable basis and also appear to be contrary to the provisions of law contained in section 17(5)(a)(B) and 17(5)(b) proviso. Hence such restrictions may be matter of challenge in the court of law.