

Electric Vehicle Sans Battery Still an EV: Recent Advance Ruling Boosts Prospects of Battery-as-a-Service?

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1. Introduction and backdrop

Today, it is common knowledge that electric vehicles (EV) are the future, especially in the two/ three-wheeler space. Internal combustion engine technologies, which prevailed and dominated for more than a century, are on the cusp of being replaced by their electric and battery counterparts, for combating a host of issues – climate change, pollution and efficiency in general. Therefore, it is not surprising that most jurisdictions have developed a policy framework to bolster adoption of electric vehicle mobility technologies, and through a range of regulatory and tax measures – the central as well as several state governments in India too have taken concrete steps in this direction.

An overview of the scenario in India can be gleaned from the following excerpt^[1]:

“Manufacturing incentives for industry and demand side incentives for users include the Faster Adoption and Manufacturing of Hybrid and EV (FAME I & FAME-II), Production Linked Incentive (PLI) schemes and scrappage policy as well as the Make in India initiative, enhancement of e-charging infrastructure, and reduction of Goods & Services Tax (GST) on EV purchases. As of April 15, 2021, 38 OEMs (Original Equipment Manufacturers) have registered 114 models with the Department of Heavy Industry and around 69,500 EVs have been sold in India. Nevertheless, this represents only a small fraction of the number of vehicles sold, and most of these are two or three-wheeled vehicles.”

The thrust of these policy initiatives is to lower the upfront cost of acquisition of EVs as well as optimize the running costs – to encourage greater consumer interest in acquisition of EVs.

It is in this context that the impact of GST assumes relevance and leads us to the encouraging recent ruling by the Odisha Authority for Advance Rulings (Authority) In **Re: Anjali Enterprises [TS-377-AAR(OD)-2021-GST]** on the GST rate applicable to EVs sans battery packs. The question before the Authority in this case was - “...whether fitting of battery is mandatory in battery powered electric vehicles while selling the same to the dealers for getting the benefit of 5% GST rate applicable for electrically operated vehicles?”

2. The business context of EVs without batteries and Battery-As-A-Service

But before adverting to this advance ruling, it is pertinent to outline the business context of this ruling as is clear from the excerpt below^[2]:

“The battery accounts for nearly 35-40% of the overall cost of an EV.....latest plan aims to delink it from a vehicle’s cost and promote battery swapping. The battery could either be provided separately by vehicle makers or by charging service providers, as a service model. That will reduce price.....boost sales and fast-track the electric ecosystem....”

Thus, if EVs can be sold without the batteries, and batteries are made available under a battery-as-a-service model to users, the upfront cost as well as the running cost for EVs can be reduced significantly. To that end, the Ministry of Road Transport and Highways (MoRTH), on 12 August 2020, allowed registration of electric vehicles without pre-fitted batteries^[3].

However, one of the biggest impediments vis-à-vis widespread adoption of EVs sans battery coupled with battery-as-a-service was the doubt apropos eligibility towards the concessional GST rate of 5% even for EVs sans batteries. It is in this business context that the Odisha advance ruling in Anjali Enterprises needs to be perused.

3. The Odisha advance ruling in Anjali Enterprises

To reiterate, the issue before the Authority was whether the concessional rate of GST (of 5%) was applicable to two and three-wheeler EVs supplied without the battery. After a detailed analysis, the Authority concluded that the EVs need not be mandatorily fitted with batteries to be eligible for the concessional rate of GST of 5%. The Authority reasoned that the language of the taxing entry requires fulfilment of a singular factum, viz., that the EV must be such that it can only be operated by batteries and no other source of energy whatsoever. Therefore, so long as it can be proven that the vehicle in question is purely operable on battery power, the concessional rate of GST will be available to suppliers. The relevant portion is extracted below:

“An Electric Vehicle with battery pack uses electric motors and motor controllers instead of internal combustion engines (ICEs) for propulsion. It derives all power from battery packs and thus has no internal combustion engine etc. Electrically operated vehicles are designed to run only on electrical energy. As such, they will run on battery as and when put to use. Hence, for vehicles to be classified as electrically operated vehicles, it must be such that it would run solely on electrically energy derived from one or more electrical batteries, as and when put to use. In this regard, it would be relevant to refer the judgment passed by the Department of Revenue- Revisionary Authority in the case of Reva Electric Car Company Pvt. Ltd. Reported in [2012 (275) E.L.T. 488 (G.O.I.)], which holds that if electrically battery operated cars exported, though not fitted with batteries at the time of export, the same is still classifiable ‘battery powered road vehicles’ and would run on battery when put to use. Hence, we hold that fitting of battery in the vehicle, at or before the time of supply, is not a precondition for the same to be classified as electrically operated vehicle.”

This order should provide much needed clarity and should come as a relief apropos adoption of EVs sans battery coupled with battery-as-a-service.

4. Caution point - earlier contrary advance ruling from West Bengal

However, one needs to be mindful of the fact that the West Bengal Authority for Advance Rulings in an earlier order In **Re: M/s. Hooghly Motors Pvt. Limited [TS-830-AAR-2020-NI]** had held that sans a battery pack, the core characteristics of an EV are absent and therefore, such an item will be treated only as a chassis and consequently, be liable to a GST of 28%. The Authority in Anjali Enterprises, while it took note of this adverse ruling, did not spell out a detailed reasoning for disagreeing with the same - possibly because the jurisdictional officer from the GST department, in his comments before the Authority on this matter, himself disagreed with the ruling in Hooghly; the relevant portion is excerpted below:

“...the said Jurisdictional Officer has taken a opposite stand that even without the battery, if the e-rickshaw has a motor fitted on a chassis along with the body and is capable of transporting people, it remains its original character. The chassis of an e-rickshaw is the basic skeletal or structural framework fitted with an axle, motor and other parts. Just because there is no battery, it may not be termed as

‘chassis’, as there is a body mounted on the chassis, which gives it the characteristic of a vehicle along with the chassis.”

While the above may be construed as a tacit acceptance by the Authority of the position taken by the jurisdictional GST officer, it would have been ideal if detailed reasoning was documented by the Authority itself as a part of its ruling.

Assessee/businesses in the EV/ battery-as-a-service space should be aware of this adverse ruling and have legal strategies in place so as to mitigate any adverse action by the jurisdictional GST authorities based on the ruling in Hooghly.

5. Concluding remarks

Given the criticality of this issue vis a vis long term sustainability of EVs and battery-as-a-service model in India, it is imperative that the Government, which has focussed extensively on encouraging EVs in India, issues a detailed clarification in this regard, as the same would go a long way to ensure certainty of tax positions in this sector.

The EV industry/ stakeholders should represent to the Government in this regard to ratify and crystallize the favorable ruling in Anjali.

[1] From the article “Electric Vehicle Policy Framework in India” dated June 6, 2021 available at <https://medium.com/batterybits/electric-vehicle-policy-framework-in-india-6bdc3ed64ed7>

[2] From the article in Bloomberg/Quint, “Industry Confused As India Takes The Battery Out Of EVs To Boost Demand” dated September 15, 2020 available at <https://www.bloombergquint.com/business/industry-confused-as-india-takes-the-battery-out-of-evs-to-boost-demand>

[3] Refer the press release available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1645394>