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Annuity for Building a Road is Not Annuity for Access to a Road – GST on Annuity Payments under Concession Agreement Upheld

The Hon'ble Rajasthan High Court, Jodhpur Bench in *M/s Nagaur Mukundgarh Highways Pvt. Ltd. v. Central Board of Indirect Taxes and Customs & Ors. [D.B. Civil Writ Petition No. 10055/2024 dated August 17, 2026]* dismissed the writ petitions assailing Circular No. 150/06/2021-GST dated June 17, 2021, the Show Cause Notice and the consequential recovery order, and held that annuity payments received by a concessionaire under a concession agreement for design, construction, operation and maintenance of a road are consideration for “works contract services” falling under Heading 9954 and not “service by way of access to a road or a bridge on payment of annuity” under Heading 9967, and are, therefore, not exempt under Entry 23A of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017. The Court further held that an earlier advance ruling in favour of the concessionaire does not fetter the Revenue once the Board has clarified the legal position, since taxability has to be determined with reference to the statutory exemption and the true nature of the services rendered under the contract.

Facts:

M/s Nagaur Mukundgarh Highways Pvt. Ltd. (“**the Petitioner**”) entered into a Concession Agreement with the National Highways Authority of India (“**NHAI**”) for a road project on a design, build, operate and transfer basis. In terms of Clause 23.3 of the Concession Agreement, 50% of the Project Cost was payable to the Petitioner during the Construction Period in five equal instalments of 10% each on achievement of specified physical progress milestones, and the remaining 50% was payable in 20 biannual instalments over a period of 10 years from the Commercial Operation Date (“**COD**”), along with interest on the reducing balance of the Completion Cost at the applicable Bank Rate plus 2% (“**Annuity Payments**”).

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The Authority for Advance Ruling, vide advance ruling dated February 12, 2019, held that the annuity received by the Petitioner was covered by Entry 23A of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017 (**"the Exemption Notification"**), which exempts "service by way of access to a road or a bridge on payment of annuity" falling under Heading 9967, and was accordingly exempt from GST. The said advance ruling was not challenged by the Revenue.

Subsequently, the Central Board of Indirect Taxes and Customs (**"the CBIC"**), pursuant to the recommendations of the GST Council in its 43rd meeting held on May 28, 2021, issued Circular No. 150/06/2021-GST dated June 17, 2021 (**"the Impugned Circular"**) clarifying that Entry 23A covers only Heading 9967 (supporting services in transport) and does not exempt annuity (deferred payments) paid for construction of roads, which falls under Heading 9954, even where the consideration for construction is paid partly upfront and partly by way of deferred annual instalments called annuities.

Relying upon the Impugned Circular, the Revenue issued a Show Cause Notice dated December 09, 2022 (**"the SCN"**) and passed a recovery order dated July 07, 2023 (**"the Recovery Order"**), pursuant to which the amount was recovered from the Petitioner. Aggrieved, the Petitioner filed a batch of writ petitions before the Hon'ble Rajasthan High Court assailing the Impugned Circular, the SCN and the Recovery Order, and sought refund of the amount recovered.

The Petitioner contended that (i) the Exemption Notification, issued under Section 11 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**), expressly exempts the annuity and a circular issued under Section 168 of the CGST Act, being administrative in nature, cannot override, modify or dilute a statutory exemption, particularly when no corresponding amendment has been made to the Exemption Notification; (ii) the advance ruling dated February 12, 2019 had attained finality and continued to bind the Petitioner as well as the departmental authorities in terms of Section 103 of the CGST Act, and in the absence of any challenge thereto, the Revenue could not take a contrary view merely on the strength of the

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Impugned Circular; and (iii) the issue stood concluded in favour of the assessee by the Hon'ble Karnataka High Court in ***DPJ Bidar-Chincholi (Annuity) Road Project Pvt. Ltd. v. Union of India*** [2022 SCC OnLine Kar 1829].

The Revenue contended that (i) the Board is duly empowered under Section 168 of the CGST Act to issue orders, instructions and directions for securing uniformity in the implementation of the Act and the Impugned Circular merely clarified the correct position of law; (ii) an advance ruling is not binding in perpetuity and, in terms of Section 103(2) of the CGST Act, ceases to bind once the law, facts or circumstances supporting the ruling undergo a change, and a misunderstanding of the legal position by the departmental authorities at an earlier point of time cannot create a binding precedent against the Revenue; and (iii) the issue was squarely covered by the decision of the Coordinate Bench of the Hon'ble Rajasthan High Court in ***CG Tollway Ltd. v. Union of India*** [D.B. Civil Writ Petition No. 15048/2025 dated May 22, 2026]. Reliance was also placed on the Hon'ble Meghalaya High Court in ***Jorabat Shillong Expressway Ltd. v. Union of India*** [2026:MLHC:518-DB] and the Hon'ble Telangana High Court in ***GMR Pochanpalli Expressways Ltd. v. Additional Director, Directorate General of GST Intelligence*** [2024 SCC OnLine TS 3988].

Issues:

1. Whether annuity payments received under a concession agreement for design, construction, operation and maintenance of a road are exempt under Entry 23A of the Exemption Notification as "service by way of access to a road or a bridge on payment of annuity"?
2. Whether the Impugned Circular issued under Section 168 of the CGST Act can restrict or override the exemption granted under the Exemption Notification issued under Section 11 of the CGST Act?

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3. Whether the Revenue continues to be bound by the advance ruling dated February 12, 2019 in terms of Section 103 of the CGST Act after issuance of the Impugned Circular?

Held:

The Hon'ble Rajasthan High Court in ***D.B. Civil Writ Petition No. 10055/2024*** held as under:

- Observed that the Division Bench in *CG Tollway* (supra), on examination of Sections 2(31), 2(119) and 7 of the CGST Act read with Entry 6 of Schedule II, held that a concession agreement under which the concessionaire constructs and maintains a road for NHAI in return for the right to collect toll constitutes a 'supply' of 'works contract services'; that construction of roads falls under Heading 9954 and not Heading 9967; that only access to a road on payment of toll under Heading 9967 stands exempted; and that, in view of *Commissioner of Customs v. Dilip Kumar & Co. [(2018) 9 SCC 1]*, any ambiguity in an exemption notification is to be resolved in favour of the Revenue.
- Noted that the terms of the Concession Agreement clearly indicate that the contract between the Petitioner and NHAI is essentially a design, build, operate and transfer project, partially funded by the Petitioner, who has the right to recover costs from NHAI through annuity payments. The only distinction from *CG Tollway* (supra) is the investment burden: in a BOT contract the entire investment risk is borne by the concessionaire, whereas in the instant case the concessionaire has invested approximately 50% of the required funds, with the remaining 50% payable by NHAI on an annuity basis.
- Held that the nature of the Concession Agreement is also "works contract services" and hence taxable. It is not the Petitioner's case that its services were confined only to access to a road or a bridge on payment of annuity; rather, the terms of the contract essentially include construction, design and maintenance of the roads, with payments at intervals.

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- Held that Entry 23 and Entry 23A of the Exemption Notification pertain exclusively to transport services, whereas the services rendered by the Petitioner constitute a works contract; the principles and analogy applied in *CG Tollway* (supra) are directly applicable and there is no justified reason to adopt a differing view. Although the Single Bench of the Hon'ble Telangana High Court in *GMR Pochanpalli* (supra) struck down the Impugned Circular, the said decision was distinguished by the Division Bench in *CG Tollway* (supra), and there is no strong or convincing reason to disagree with the view taken by the Coordinate Bench.
- Held that had works contract services been intended to be exempt, the Exemption Notification would have explicitly included such exemption.
- Held that the challenge to the authority of the Impugned Circular to amend the Exemption Notification is unfounded, as its purpose is only to clarify terminology and prevent misinterpretation by the authorities implementing the Act, which is within the domain of the Board under Section 168 of the CGST Act.
- Held that the submission that the Revenue should not have acted against its own advance ruling is not tenable; the Exemption Notification itself is binding and, if the revenue officers or the advance ruling authority have misread the legal provisions, such interpretation does not bind the implementing authority once the Board issues a clarification, particularly where the misinterpretation results in significant revenue loss. The Revenue's action pursuant to the Impugned Circular is justified as Section 103 of the CGST Act permits such measures where the law does not specifically prohibit them.
- Held that the challenge based on the earlier advance ruling does not alter the position, since taxability has to be determined with reference to the statutory exemption and the true nature of the services rendered under the contract.

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- Accordingly, dismissed the batch of writ petitions and disposed of all pending applications.

Recently, the Hon'ble Supreme Court in *M/s Nagaur Mukundgarh Highways Pvt. Ltd. v. Central Board of Indirect Taxes and Customs & Ors. [Special Leave to Appeal (C) No. 33242/2026 dated September 21, 2026]*, while hearing the Special Leave Petition filed by the Petitioner against the aforesaid judgment of the Hon'ble Rajasthan High Court, issued notice to the Revenue, returnable on December 01, 2026, and directed that "No further coercive steps, in the meanwhile, shall be taken against the petitioner". The Hon'ble Supreme Court is thus examining the correctness of the view taken in CG Tollway (supra), which has been followed by the Hon'ble Rajasthan High Court in the present case, and the levy of GST on annuity payments received under road concession agreements has been stayed qua the Petitioner pending adjudication of the Special Leave Petition.

It is pertinent to note that the issue is presently engaging the attention of various High Courts across the country. The Hon'ble Madras High Court in GVR Ashoka Outer Ring Road Limited directed the Revenue not to pass any final orders, which direction has been extended until further orders. The Hon'ble Telangana High Court in GMR Pochanpalli Expressways Ltd. (supra) had dismissed the assessee's writ petition challenging the levy on annuity. On the other hand, the Hon'ble Andhra Pradesh High Court in Rajahmundry Expressway Pvt. Ltd. granted interim relief to the concessionaire against the demand of GST on annuity paid for construction of roads, and similar interim relief has been granted by the Hon'ble Jammu & Kashmir and Ladakh High Court and the Hon'ble Gauhati High Court. Further, the Hon'ble Karnataka High Court in DPJ Bidar-Chincholi (supra) had quashed the Impugned Circular, against which the Union of India has filed an appeal before the Hon'ble Supreme Court.

Our Comments:

Section 11 of the CGST Act empowers the Government, on the recommendations of the GST Council, to exempt supplies by notification. Entry 23 of the Exemption Notification exempts

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“service by way of access to a road or a bridge on payment of toll charges” under Heading 9967. Entry 23A, exempting “service by way of access to a road or a bridge on payment of annuity”, was inserted vide Notification No. 32/2017-Central Tax (Rate) dated October 13, 2017 pursuant to the recommendations of the 22nd GST Council meeting, with the evident object of placing annuity-based road projects on par with toll-based projects. Both entries are confined to Heading 9967 (supporting services in transport), whereas general construction services of highways, streets, roads, bridges and tunnels fall under Heading 9954. The Impugned Circular, issued pursuant to the 43rd GST Council meeting, took the position that Entry 23A does not extend to Heading 9954 and, therefore, does not exempt annuity (deferred payments) paid for construction of roads.

Section 2(119) of the CGST Act defines “works contract” as a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods is involved in its execution, and Entry 6(a) of Schedule II deems a works contract to be a supply of services. Section 2(31) defines “consideration” expansively to include any payment made or to be made, whether in money or otherwise, in respect of a supply. Section 168(1) empowers the Board to issue orders, instructions or directions to the central tax officers for the purpose of uniformity in the implementation of the Act, which are binding on such officers.

Section 103(1) of the CGST Act makes an advance ruling binding on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant, and Section 103(2) provides that the ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed. The statutory remedies against an advance ruling are an appeal under Section 100 before the Appellate Authority for Advance Ruling within 30 days (extendable by a further 30 days), rectification under Section 102, and a declaration under Section 104 that the ruling is void ab initio where it was obtained by fraud, suppression or misrepresentation of facts.

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The present decision marks a significant extension of *CG Tollway* (supra). While *CG Tollway* (supra) concerned a BOT (Toll) concession in which the concessionaire bore the entire investment and traffic risk and received toll collection rights as consideration, the Court has now applied the same reasoning to a part-annuity concession (structurally akin to the Hybrid Annuity Model) where NHAI itself pays 50% of the Project Cost during construction and the balance by way of deferred annuity with interest. The reasoning is essentially classification-driven: the dominant object of the concession is design, construction, operation and maintenance of the road (Heading 9954), and the annuity is merely the mode of deferred payment of the Project Cost rather than a payment for “access to a road”. Notably, the Court did not separately deal with the interest component of the Annuity Payments, which, being consideration for deferred payment of the Project Cost, would ordinarily be includible in the value of the works contract supply under Section 15(2)(d) of the CGST Act.

The more far-reaching aspect of the judgment is the finding that the Revenue is not bound by an unchallenged advance ruling in the applicant's own case once the Board issues a clarificatory circular, thereby treating the circular as a change in “law, facts or circumstances” within the meaning of Section 103(2). This is likely to be debated. The Constitution Bench of the Hon'ble Supreme Court in *Commissioner of Central Excise v. Ratan Melting & Wire Industries* [(2008) 13 SCC 1] held that circulars are binding on the departmental authorities but not on the courts or the assessee, and that a circular contrary to the statutory provisions has no existence in law. Whether an administrative instruction can constitute a “change in law” so as to dislodge the statutory binding effect of an advance ruling, particularly where the Revenue consciously did not avail the remedy of appeal under Section 100, is a question that may require authoritative resolution by the Hon'ble Supreme Court.

Pari materia judgments:

- *CG Tollway Ltd. v. Union of India* [D.B. Civil Writ Petition No. 15048/2025 dated May 22, 2026] – The Hon'ble Rajasthan High Court sustained the demand of GST along with

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interest and penalty on a BOT (Toll) concessionaire, holding that its construction and maintenance obligations undertaken for NHAI constituted taxable “works contract services” supplied in exchange for toll collection rights. The said judgment is under challenge before the Hon’ble Supreme Court, which has issued notice in the Special Leave Petition.

- *Jorabat Shillong Expressway Ltd. v. Union of India* [2026:MLHC:518-DB] – Decision of the Hon’ble Meghalaya High Court relied upon by the Revenue in the present case in support of taxability of annuity payments received under a concession agreement.

Contrary judgments:

- *DPJ Bidar-Chincholi (Annuity) Road Project Pvt. Ltd. v. Union of India* [2022 SCC OnLine Kar 1829] – The Hon’ble Karnataka High Court held that the Impugned Circular, insofar as it clarifies that annuity paid for construction of roads is not exempt under Entry 23A, seeks to override and curtail the exemption granted by the Exemption Notification and is, therefore, beyond the power of the Board, and quashed the Impugned Circular.
- *GMR Pochanpalli Expressways Ltd. v. Additional Director, Directorate General of GST Intelligence* [2024 SCC OnLine TS 3988] – The Single Bench of the Hon’ble Telangana High Court struck down the Impugned Circular; the said decision was distinguished by the Division Bench of the Hon’ble Rajasthan High Court in *CG Tollway* (supra).

In view of the conflicting views of the High Courts, the pendency of the Special Leave Petition in *CG Tollway* (supra) and the notice now issued by the Hon’ble Supreme Court in the present case with a direction that no further coercive steps be taken against the Petitioner, the final word on taxability of annuity under road concession agreements is awaited from the Hon’ble Supreme Court. Concessionaires operating under annuity or hybrid annuity models, particularly those within the jurisdiction of the Hon’ble Rajasthan High Court, should revisit their tax positions, quantify the exposure including interest, and, where demands have been

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raised, keep the issue alive through appropriate appellate proceedings so as to avail the benefit of a favourable outcome before the Hon'ble Supreme Court. Concessionaires relying on advance rulings in their own favour should also note that such rulings may not, by themselves, be treated as a complete answer to a demand once the Board issues a contrary clarification.

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