

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai - 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)
BEFORE THE BENCH OF

- (1) Shri. Dipak Gojamgunde, Joint Commissioner of State Tax, (Member)
(2) Smt. Priya Jadhav, Joint Commissioner of Central Tax, (Member)

ARN No.	AD270822014304E
GSTIN Number, if any/ User-id	27ABACS4898Q1ZB
Legal Name of Applicant	M/s. SHENWA INFRASTRUCTURE PRIVATE LIMITED
Registered Address/Address provided while obtaining user id	303, THIRD FLOOR, LOTUS B WING, NEAR MAHARASHTRA ELECTRICITY BOARD, SHAHAPUR, THANE, MAHARASHTRA, 421601.
Details of application	GST-ARA, Application No. 53 Dated 23.08.2022
Concerned officer	Raigad, Bhiwandi-603, Maharashtra
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Works Contract
B Description (in brief)	Road construction contractor
Issue/s on which advance ruling required	<ul style="list-style-type: none"> ➤ Classification of goods and/or services or both. ➤ Whether any particular thing done by the applicant with respect to any goods and/ or services or both amounts to or results in a supply of goods and/ or services or both, within the meaning or that term.
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. SHENWA INFRASTRUCTURE PRIVATE LIMITED, the applicant, seeking an advance ruling in respect of the following questions.

- (1) Is interest receivable on deferred payment in Equated Yearly Installment as per tender terms under Annuity Model is liable for payment of GST or Not?
- (2) If Yes Classification of service and applicable rate of GST payable?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further



to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

1. FACTS AND CONTENTION - AS PER THE APPLICANTS:

1.1 The applicant is incorporated to execute concessioner agreement awarded by Public Works Department, Government of Maharashtra on Hybrid Annuity Basis.

1.2 The terms of Concession Agreement requires the appellant to undertake, Construction, improvement, widening of the Project Highway together with provision of Project Facilities in conformity with the Specifications and Standards, namely at:

- The section of Major District Road 64 commencing from km 0+000 (19°26'35.27"N73°27'0.32"E) to km 32+400 (19°12'14.43"N 73°31'58.28"E) i.e. section from Shenva to Dehari.
- The section of Major District Road 49 Arjunoli Aamne Titwala Goveli Rayta Dahagaon Dapiwali Yeranjad Badlapur Road, (Km 0.00 to Km 32.500) commencing from km 9/670 (19°26'35.27"N73°27'0.32"E) to km 25/360 (19°12'14.43"N 73°31'58.28"E) i.e. section from Titwala to Eranjad.

1.3 As per the terms of concessioner agreement, the Bid Project cost (BPC):

(a) to the extent of 60% will be funded by PWD in 5 Equal installments during period under construction till COD (Commercial Operation Date) as under:

I.	1 st Payment Milestone	On achievement of 10% Physical Progress
II.	2 nd Payment Milestone	On achievement of 30% Physical Progress
III.	3 rd Payment Milestone	On achievement of 50% Physical Progress
IV.	4 th Payment Milestone	On achievement of 75% Physical Progress
V.	5 th Payment Milestone	On achievement of 90% Physical Progress

(b) and the balance 40% of BPC will be paid after completion of construction with interest as stipulated in tender (clause 23.6.4) as Annuity in 19 bi-annual installments for 10 years.

1.4 Thus applicant company is entitled to receive balance 40% biannually with interest.

2. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

Considering the section 15 of MGST Act we are of the view that the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply. Accordingly, interest received is taxable at the same rate as applicable on supply made.

3. CONTENTION - AS PER THE CONCERNED OFFICER:

3.1 Is interest receivable on deferred payment in Equated Yearly Instalment as per tender terms under Annuity Model is liable for payment of GST or Not?



The Jurisdictional Officer's contention: - Yes. In view of the Para No. 4 of the Circular No.221/15/2024- GST, dated 26-06-2024 which clarifies that:

"As the instalments/annuity payable by NHAI to the concessionaire also includes some interest component, the amount of such interest shall also be includible in the taxable value for the purpose of payment of tax on the said annuity/instalment in view of the provisions of section 15(2)(d) of the CGST Act."

3.2 If Yes, classification of service and applicable rate of GST payable?

The Jurisdictional Officer's contention: - Classification of service and applicable rate of GST payable on the interest receivable on deferred payment in Equated Yearly Instalment shall be the same as that of the original taxable supply of "services of construction of road and maintenance".

4. HEARING

Preliminary hearing in the matter was held on 10.01.2025 Mr. Ravi Shah C.A. appeared, and requested for admission of the application. Jurisdictional Officer Mr. Pankajkumar M. Ranalkar Assistant Commissioner of SGST also appeared.

The application was admitted and called for final hearing on 27.03.2025. Mr. Ravi Shah, C.A. Authorized Representative, appeared made oral and written submissions. Jurisdictional Officer Mr. Pankajkumar M. Ratnakar, Assistant commissioner of SGST Appeared. We heard both the sides.

5. OBSERVATIONS AND FINDINGS:

We have gone through the facts of the case, documents on record, oral and written submissions made by the applicant as well as the written submissions made by the jurisdictional officer.

5.1 SHENWA INFRASTRUCTURE PRIVATE LIMITED (hereinafter referred to as the "Concessionaire") is incorporated to execute concessioner agreement dated 08.08.2018 awarded by Public Works Department, Government of Maharashtra (hereinafter referred to as the "Authority") on Hybrid Annuity Basis.

5.3 As per the concessioner agreement, package number 06 is awarded to the Concessionaire which includes-

- A. Improvement to Shenwa-Kinhawali-Nagav-Kalambe-Dehari Road MDR 64 km. 0/00 to 32/400 Taluka Shahapur and Murbad District Thane on design, build, operate and transfer along with Hybrid Annuity basis.
- B. Improvement to Arjunoli-Amne-Titwada Goveli Ryata-Dahagaon-Dapiwali-Yeranjad-Badlapur Road MDR 49 km. 0/00 to 32/500 District Thane on design, build, operate and transfer along with Hybrid Annuity basis.

5.4 As per the concessioner agreement, terms for the payment of Bid Project cost (BPC) are mentioned as under:

Para 23.3 Payment of Bid Project Cost

23.3.1 [60% (Sixty per cent)] of the Bid Project Cost, adjusted for the Price Index Multiple, shall be due and payable to the Concessionaire in 5 (five) equal installments of [12% (Twelve percent)] each during the Construction Period in accordance with the provisions of Clause 23.4.

23.3.2 The remaining Bid Project Cost, adjusted for the Price Index Multiple, shall be due and payable in [20 (Twenty)] biannual installments commencing from the 180th (one hundred and eightieth) day of COD in accordance with the provisions of Clause 23.6.

Para 23.4 Payment during Construction Period:

Upon receiving a report from the Independent Engineer certifying the achievement of the below mentioned Payment Milestones, the Authority shall disburse, within 15 (fifteen) days of the receipt of each such report, an installment equal to 12% (Twelve percent) of the Bid Project Cost, adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of that report.

For the purpose of this Clause 23.4, the Payment Milestone for release of payment during Construction Period shall be as under:

- a) I (first) Payment Milestone - On achievement of 20% Physical Progress
- b) II (second) Payment Milestone - On achievement of 40% % Physical Progress
- c) III (third) Payment Milestone - On achievement of 60% Physical Progress
- d) IV (fourth) Payment Milestone - On achievement of 75% Physical Progress
- e) V (fifth) Payment Milestone - On achievement of 90% Physical Progress

Para 23.6 Annuity Payments during Operation Period:

23.6.1 The (the "Completion Cost" shall be the summation of A, B, C, D, E, and F below:

- A. 20% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 20% Physical Progress.
- B. Another 20% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 40% Physical Progress.
- C. Another 20% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 60% Physical Progress.
- D. Another 15% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 75% Physical Progress.
- E. Another 15% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 90% Physical Progress.
- F. Another 10% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the COD.



23.6.2 The Completion Cost remaining to be paid in pursuance of the provisions of Clause 23.6.1 shall be due and payable in biannual installments over a period of [10 (ten)] years commencing from COD, (the “Annuity Payments”). The 1st (first) installment of Annuity Payments shall be due and payable within 15 (fifteen) days of the 180(one hundred and eightieth) day of COD and the remaining installments shall be due and payable within 15 (fifteen) days of completion of each of the successive six months (“the Annuity Payment Date”).

23.6.3 Each of the Annuity Payments due and payable during the years following the COD shall be as under:

Annuity following the COD	Percentage of Completion Cost remaining to be paid on COD
1st Annuity	3.00%
2nd Annuity	3.00%
3rd Annuity	3.00%
4th Annuity	3.00%
5th Annuity	3.00%
6 th Annuity	3.00%
7 th Annuity	5.00%
8 th Annuity	5.00%
9 th Annuity	5.00%
10 th Annuity	5.00%
11 th Annuity	5.00%
12 th Annuity	5.00%
13 th Annuity	5.00%
14 th Annuity	5.00%
15 th Annuity	7.00%
16 th Annuity	7.00%
17 th Annuity	7.00%
18 th Annuity	7.00%
19 th Annuity	7.00%
20 th Annuity	7.00%

Each of the biannual installments payable hereunder shall be paid along with interest as specified in Clause 23.6.4.

23.6.4 Interest shall be due and payable on the reducing balance of Completion Cost at an interest rate equal to the applicable Bank Rate [plus 3% (three per cent)]. Such interest shall be due and payable biannually along with each installment specified in Clause 23.6.3. Thus, applicant company is entitled to receive balance 40% biannually with interest.

5.5 Now Question arises that, interest receivable on deferred payment in Equated Yearly Instalment as per tender terms under Annuity Model is liable for payment of GST or Not?

5.6 With all this proceeding, we have to find out whether interest receivable is a part of taxable supply.



Section 15 - Value of Taxable Supply

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include....

a).....

b).....

c).....

d) interest or late fee or penalty for delayed payment of any consideration for any supply.

Considering the section 15 of MGST Act, the value of supply shall include interest or late fee or penalty for delay payment of any consideration for any supply.

5.6 A CBIC has issued a Circular No.221/15/2024- GST, dated 26-06-202 regarding clarification on time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model and clarification given at para 4 is reproduced here as -

"It is also clarified that as the installments/annuity payable by NHAI to the concessionaire also includes some interest component, the amount of such interest shall also be includible in the taxable value for the purpose of payment of tax on the said annuity/installment in view of the provisions of section 15(2)(d) of the CGST Act."

5.7 In view of the above discussions, we hold that, the amount of such interest shall also be includible in the taxable value for the purpose of payment of tax on the said annuity/installment in view of the provisions of section 15(2)(d) of the CGST Act and Classification of service and applicable rate of GST payable on the interest receivable on deferred payment in Equated Yearly Instalment shall be the same as that of the original taxable supply of "services of construction of road and maintenance".

5.8 Similar view is also taken by applicant as well as jurisdictional officer.

6. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 53/2022-23/B- 202 Mumbai, dt. 28.04.2025

For reasons as discussed in the body of the order, the question is answered thus -

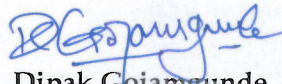
Question 1: Is interest receivable on deferred payment in Equated Yearly Installment as per tender terms under Annuity Model is liable for payment of GST or Not?

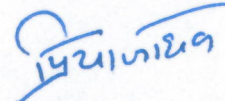
Answer: - Yes. Interest receivable on deferred payment in Equated Yearly Installment as per tender terms under Annuity Model is liable for payment of GST

Question 2: If Yes Classification of service and applicable rate of GST payable?

Answer: - Service is classified same as that of the original taxable supply of "services of construction of road and maintenance "and applicable rate of GST shall be the same as that of original taxable supply.




Dipak Gojamgunde
(MEMBER)


Priya Jadhav
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.

