

# **AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH**

## **Goods and Service Tax()**

**O/o THE COMMISSIONER, COMMERCIAL TAX,**

**MOTI BUNGALOW,**

**MAHATMA GANDHI MARG, INDORE (M.P.) - 452007**

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### **PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING** **U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017**

#### **Members Present**

1. **Rajiv Agrawal**

**Additional Commissioner,**

**Office of the Commissioner, CGST and Central Excise, Indore**

2. **Manoj Kumar Choubey**

**Joint Commissioner,**

**Office of the Commissioner of Commercial Tax, Indore Division-1**

<b>GSTIN Number. If any/User-id</b>	<b>23AAPCA7784F1ZC</b>
<b>Name and address of the applicant</b>	<b>ANKIT TANDON AND ENTERPRISES &amp; TOLLWAYS PRIVATE LIMITED</b>
<b>Date of Application</b>	<b>30.04.18</b>
<b>Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised</b>	<b>b) Applicability of a notification issued under the provisions of this Act.</b>
<b>Date of Personal hearing</b>	<b>29-06-18</b>
<b>Present on behalf of applicant</b>	<b>Shree Ankit Tandon, Director and CA Abhishek Jain</b>
<b>Case Number</b>	<b>11/2018</b>
<b>Order dated</b>	<b>09-08-18</b>

*order no.*

*09/2018*

#### **PROCEEDINGS**

**(Under section 98 of the Madhya Pradesh Goods and Services Tax Act, 2017)**

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to CGST Act and MPSTG Act respectively) by M/S Ankit Tandon Enterprises & Tollways Private Limited (hereinafter also referred to as applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and MPSTG Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPSTG Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.
3. **BRIEF FACTS OF THE CASE –**
  - 3.1. M/S Ankit Tandon Enterprises & Tollways Private Limited (hereinafter referred to as the Applicant) is engaged in wholesale business, bonded warehouse and leasing business and registered with GSTN with GSTIN 23AAPCA7784F1ZC.
  - 3.2. The Applicant wishes to enter in a contract with an entity. The entity has been allotted Toll Collection work of certain road by NHAI. The said entity wishes to sublet the Toll Collection work to the Applicant.





3.3. The Applicant cites Sr. No. 23 of Notification No. 12/2017-Central Tax(Rate) dated the 28<sup>th</sup> June, 2017 which reads as "Service by the way to access to a road or by a bridge on payment of toll charges" under heading 9967.

**4. QUESTION RAISED BEFORE THE AUTHORITY –**

An entity has been allotted Toll Collection work of certain road by NHAI. The said entity wishes to sublet the Toll Collection work to the company. Now, as the "Service by the way to access to a road or by a bridge on payment of toll charges" is exempted service as per Notification No. 12/2017-Central Tax(Rate) dated the 28<sup>th</sup> June, 2017 (Sr. No. 23)(Heading No. 9967).

Whether the same exemption will apply to services provided by the Applicant, i.e. Service by the way of access to a road or a bridge on payment of access to a road or a bridge on payment of toll charges on subcontract basis.

**5. DEPARTMENT'S VIEW POINT–** The concerned officer submitted that services providing access to a Road or Bridge on payment of toll charge as exempted by notification no. 12/2017 Central Tax(Rate) Dated 28-06-17 issued Under CGST Act and Notification no. FA-3-42/2017/1/V/53 Dated 30-06-2017 issued under MPGST Act, 2017. However the consideration to be received by the sub-contractor from the contractor will be taxable.

**6. RECORD OF PERSONAL HEARING -**

Shree Ankit Tandon, Director along with CA Abhishek Jain Appeared for personal hearing on 29-06-18 and they reiterated the submission already made in the application and attached additional submission which goes as follow -

**6.1.** In terms of the National Highways Authority of India Act, 1988, the National Highway Authority of India (NHAI) is empowered to collect user fees (commonly known as "*toll charges*") from users of highways/roads on behalf of the Central Government for services or benefits rendered under the said Act.

**6.2.** It is however not uncommon for the NHAI to outsource the said activity of toll charges collection to third parties, commonly known as "*toll collection agencies*". In terms of the National Highways Fee (Determination of Rates and Collection) Rules, 2008 (hereinafter referred to as "*NHFR*"), the NHAI is empowered to enter into agreements with any person for the activity of collection of toll charges.

**6.3.** Normally, in terms of the aforesaid agreement, the NHAI appoints a person (known as "*contractor*") for collecting the prescribed toll charges from the users of the road/highways at one or more toll collection plazas. Thus, NHAI transfers the right to collect the toll charges from users through the contractor at the toll collection plazas.

**6.4.** Further, the contractor is generally required to remit a certain agreed amount every week to NHAI in terms of the aforesaid agreements irrespective of the actual amount of toll charges collected by the contractor. The amount remaining, if any, after remittance of the agreed amount from the toll charges to NHAI, is retained by the contractor.

**6.5.** In terms of the agreement between the NHAI and the contractor, the Central Governments' toll fee collection rights under the NHFR are transferred to the contractor in lieu of the contractor remitting an agreed sum to NHAI every week. Therefore, there is a possibility that the contractor may suffer a loss if the actual toll fee collected over the





agreement period is less the amount paid by the contractor to NHAI. Thus, the risk pertaining to collection of toll charges vests with the contractor only.

**6.8.** In view of the above, it could be contended that the contractor and NHAI are acting on principal to principal basis and the contractor is not acting as an agent for the purpose of collecting the toll fee and, therefore, the contractor is not rendering any services to NHAI. In other words, a view could be taken that the contractor is carrying out the activity of toll collection on its own account only and not on behalf of NHAI.

**6.9.** It is however, pertinent to note that NHAI could have very well entered into the aforesaid arrangement only to ensure that NHAI receives an assured sum from the toll collection activity without any need to supervise the agent with respect to performance of duties, leakage of revenue etc. Thus, the contractor, in its own interest would ensure that the toll charges are being properly collected and remitted to NHAI. For the contractor, higher the amount of toll charges collected higher is its own revenue.

**6.10.** In the present case, the Applicant M/s Ankit Tandon Enterprises is a company registered on 07/07/2017 with the main object of providing services of construction of roads, bridges etc and collection of Toll on direct or subcontract basis.

**6.11.** The Applicant company is considering a proposal with another entity for allotment of toll collection work on sub contract basis as the main contract for toll collection has been allotted to the said entity by the Government on the same terms and conditions as main contractor.

Now, as the Toll collection service is exempted from GST vide clause 23 of Notification No. 12/2017 dated 28/06/2017, the company claims that the service provided by it are in the nature of Toll Collection services only and hence are exempt from GST under the said notification.

1. That, an Entity has been allotted contract for maintenance of certain Highways and in turn collect toll charges from the users of the said highways.
2. The said entity has proposed to sub contract the entire work of maintenance of road and collection of toll on the same terms and conditions as has been entered by it with Government.
3. Now, as per the proposed agreement, the Applicant company will undertake the maintenance work of the specified highways and will collect toll charges from the users by using its own infrastructure and man power.
4. Irrespective of amount collected from toll, the Applicant company will pay a fixed sum to the Entity i.e. the main contractor and any excess or deficit at the end of the period would tantamount to its profit or loss.
5. It is pertinent to note that the agreement between NHAI and the Entity, the Entity was to collect toll charges and now due to the sub contract of the said work by the proposed agreement, the Applicant company would collect toll charges on behalf of the Entity. So nature of receipt for all parties i.e. NHAI, the Entity and the Applicant Company is Toll Charges only, i.e. all the parties are engaged into toll collection service through different channels and as the Toll collection service is exempted from GST vide clause 23 of Notification No. 12/2017 dated 28/06/2017, the Applicant





company claims that the service provided by it are in the nature of Toll Collection services only and hence are exempt from GST under the said notification.

6. The services provided by the Applicant Company and by the Entity are clearly falling under the category of toll collection services and cannot be categorised as any other type of service merely because of sub-contact as all the terms of agreement between the NHAI and the Entity as well as the Entity and the Company are same and the company is only entering into the shoes of the Entity by agreeing to accept the toll collection work, hence not liable for GST.
7. Further, as the Applicant company is not entitled to collect GST from the end user due to its exempt nature, the same cannot be levied on it being indirect tax. The Entity is also collecting toll charges indirectly through the Applicant Company; hence it is also exempt from GST.
8. Therefore, it is clear that all the parties i.e. NHAI, Main Contractor and Sub-contractor are providing Toll Collection Service, whether directly or indirectly and are therefore entitled for exemption vide clause 23 of Notification No. 12/2017 dated 28/06/2017.

**6.12** The proposed terms and condition for user fee collection contract between Highway Infrastructure Private Limited(First Party) and the applicant, M/s Ankit Tandon Enterprises and Tollways Private Limited(Second Party) are as follows-

#### **Basic Terms & Conditions of the Contract**

1. Both party with their mutual understanding applied in a 4 years Toll Collection Contract of NHAI advertisement no. Bid/Package on NHAI/13013/CO/RFP/Long Term/Nagpur-Betul/2017 Dated 11-01-2018. APC Rs. 39,70,00,000/-(Thirty Nine Crore Seventy Lac Only).
2. For the above said work we bid for Rs. 46,07,00,000/- (Forty Six Crore Seven Lac Only).
3. Second Party will make the payment of monthly remittance basis and this payment will change every year due to rate revision done by NHAI.
4. Security deposit for 1.5 months remittance basis and bank Guarantee of 3 months Remittance will be make by first Party and advance of a month remittance will be provided by Second Party.
5. All expenses such as interest charge on draft will be @11% P.A. and Bank Guarantee charges actual to be reimbursed by Second Party to First Party.
6. For all liabilities of Taxes and others Second Party will be responsible.

#### **7. DISCUSSIONS AND FINDINGS-**

7.1 In the instant case, there are two sets of supply of service –

- a) Supply of service relating to maintenance of Roads as sub-contractor provided by the applicant and;
- b) Supply of service of granting access to road or bridge for a consideration, being Toll Charges, on behalf of Highway Infrastructure (P) Limited.

7.2 The question framed in the application is regarding the taxability of the service of





providing access to road or bridge on payment of “Toll Charges” being done by the applicant on behalf of Highway Infrastructure (P) Limited, where the service recipient is the user of the Toll Road.

**7.3** Under the scheme of exemption under Goods & Services Tax Laws, some exemptions are based on activities, some exemptions are based on recipient of the service, some are based on provider of the service and some are based on a combination of the service /goods being supplied as well as the recipient / provider of service. For example, certain construction services, when provided to the Government are granted exemption. In certain cases, where whole of the supplies being made are under RCM, the service provider is not liable to obtain registration.

**7.4** In case where the exemption is based on the recipient of service, the exemption is at times not available to the sub-contractor since the principal contractor receiving supplies from the sub-contractor may not fulfil the qualification regarding recipient as per the exemption notification. In some cases, specific provision has been given in the Notifications itself to take into its fold, the supply by a sub-contractor. For example in Clause (ix) and (x) of Sl.No.3 in Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 makes provision for lower rate of GST for sub-contractor also.

**7.5** In case of providing access to a Road or Bridge on payment of Toll, the exemption is totally based on service of providing access to a road or a bridge on payment of toll charges. There is no restriction regarding the supplier or the recipient of the supply. In the instant case, therefore, even though the supply of the service to the user of the Toll Road is by the sub-contractor, GST is not payable on the amount of Toll Charges collected.

**7.6** As discussed supra, in the transaction of collection of Toll Charges by the applicant as a sub-contractor, there are essentially two supplies being made; one to the user of the Toll Road, for which charges are paid by the user of the Road and the other by the applicant to Highway Infrastructure (P) Limited.

## **8. RULING**

**(Under section 98 of the Madhya Pradesh Goods and Services Tax Act, 2017)**

**8.1** In case of providing access to a Road or Bridge on payment of toll charge, the exemption is totally based on service of providing access to a road or a bridge on payment of toll charges. There is no restriction regarding the supplier or the recipient of the supply. In the instant case, therefore, even though the supply of the service to the user of the Toll Road is by the sub-contractor, GST is not







payable on the amount of Toll Charges collected. It is exempted by Sr. No. 23 of Notification No. 12/2017-Central Tax(Rate) dated the 28<sup>th</sup> June, 2017 and corresponding notification under MPGST Act,2017. Which reads as:

Chapter, Section or Heading	Description of service	SGST	CGST
Heading 9967	services providing access to a Road or Bridge on payment of toll charge	NIL	NIL

- 8.2 The above ruling in the application is limited to the question stated in Sl. No. 14 of the Application, which relates to the liability of Goods & Services Tax on the “Toll Charges” collected. It has no bearing on the consideration received by the applicant from of Highway Infrastructure (P) Limited for the supplies made by the applicant to Highway Infrastructure (P) Limited.
- 8.3 As per the facts of the case, the applicant receives Toll Charges on behalf of Highway Infrastructure (P) Limited and remits a fixed sum to Highway Infrastructure (P) Limited out of the Toll Charges collected. In other words, the consideration for the supplies made to Highway Infrastructure (P) Limited is retained by the applicant, out of the Toll Charges.
- 8.4 The Toll Charges collected by the applicant are not “Toll Charges” *per se* in the hands of the applicant, but held in fiduciary capacity by the applicant, for onward remittance to Highway Infrastructure (P) Limited. The Ruling does not in any way relate to the Toll Charges retained by the sub-contractor, in terms of its agreement with Highway Infrastructure (P) Limited. 3
- 8.5 This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.

  
RAJIV AGRAWAL  
(MEMBER)

  
MANOJ KUMAR CHOUBEY  
(MEMBER)

No. 11/2018/A.A.R/R-28/36

Indore dt, 09-08-2018

Copy to:-

1. Applicant
2. The Commissioner(SGST)
3. The Commissionerate(CGST),
4. The Concerned Officer
5. The Jurisdictional Officer – State/Central