HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 10055/2024

CNR: RJHC010453722024 | URN: CW / 20214U / 2024

M/s Nagaur Mukundgarh Highways Pvt. Ltd., 80A, Shahi Complex, Hiran Magri, Sector 11, Udaipur, Rajasthan 313002. Through Authorised Person Mr. Sharad Pancholy S/o Mr. Surendra Kumar Pancholy, Aged 54 Years, R/o A 25, Jda, A Block, Near Calgary Hospital Malviya Nagar Jaipur, Rajasthan 302017.

----Petitioner

Versus

1. Central Board Of Indirect Taxes And Customs, Through Chairman, Government Of India, Ministry Of Finance, Department Of Revenue, North Block, New Delhi.
2. State Of Rajasthan, Through Additional Chief Secretary (Finance) To Government, Finance Department (Tax Division), Government Of Rajasthan, 1St Floor, Main Building, Government Secretariat, Jaipur Rajasthan, 302005
3. Chief Commissioner Of State Tax, Commercial Taxes Department, Rajasthan, Kar Bhawan, Jaipur
4. The Joint Commissioner State Tax, Commercial Taxes Department, Rajasthan, Circle - C, Ew - Iii, Rajasthan, Jaipur
5. Shri Tara Chand Megwal, Joint Commissioner State Tax, Circle - C, Ew - Iii, Rajasthan, Jaipur
6. Union Of India, Through Its Secretary Department Of Revenue, Ministry Of Finance North Block, New Delhi.

----Respondents

<u>Connected With</u>

D.B. Civil Writ Petition No. 10057/2024

CNR: RJHC010453772024 | URN: CW / 20223U / 2024

M/s Nagaur Mukundgarh Highways Pvt. Ltd., 80A, Shahi Complex, Hiran Magri, Sector 11, Udaipur, Rajasthan 313002. Through Authorised Person Mr. Sharad Pancholy S/o Mr. Surendra Kumar Pancholy, Aged 54 Years, R/o A 25, Jda, A Block, Near Calgary Hospital Malviya Nagar Jaipur, Rajasthan 302017.

----Petitioner

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5. Shri Tara Chand Megwal, Joint Commissioner State Tax, Circle - C, Ew - Iii, Rajasthan, Jaipur
6. Union Of India, Through Its Secretary Department Of Revenue, Ministry Of Finance North Block, New Delhi.

----Respondents

D.B. Civil Writ Petition No. 10058/2024

CNR: RJHC010453862024 | URN: CW / 20224U / 2024

M/s Nagaur Mukundgarh Highways Pvt. Ltd., 80A, Shahi Complex, Hiran Magri, Sector 11, Udaipur, Rajasthan 313002. Through Authorised Person Mr. Sharad Pancholy S/o Mr. Surendra Kumar Pancholy, Aged 54 Years, R/o A 25, Jda, A Block, Near Calgary Hospital Malviya Nagar Jaipur, Rajasthan 302017.

----Petitioner

Versus

1. Central Board Of Indirect Taxes And Customs, Through Chairman, Government Of India, Ministry Of Finance, Department Of Revenue, North Block, New Delhi.
2. State Of Rajasthan, Through Additional Chief Secretary (Finance) To Government, Finance Department (Tax Division), Government Of Rajasthan, 1St Floor, Main Building, Government Secretariat, Jaipur Rajasthan, 302005

3. Chief Commissioner Of State Tax, Commercial Taxes Department, Rajasthan, Kar Bhawan, Jaipur
4. The Joint Commissioner State Tax, Commercial Taxes Department, Rajasthan, Circle - C, Ew - Iii, Rajasthan, Jaipur
5. Shri Tara Chand Megwal, Joint Commissioner State Tax, Circle - C, Ew - Iii, Rajasthan, Jaipur
6. Union Of India, Through Its Secretary Department Of Revenue, Ministry Of Finance North Block, New Delhi.

----Respondents

D.B. Civil Writ Petition No. 10062/2024

CNR: RJHC010453652024 | URN: CW / 20229U / 2024

M/s Nagaur Mukundgarh Highways Pvt. Ltd., 80A, Shahi Complex, Hiran Magri, Sector 11, Udaipur, Rajasthan 313002. Through Authorised Person Mr. Sharad Pancholy S/o Mr. Surendra Kumar Pancholy, Aged 54 Years, R/o A 25, Jda, A Block, Near Calgary Hospital Malviya Nagar Jaipur, Rajasthan 302017.

----Petitioner

Versus

1. Central Board Of Indirect Taxes And Customs, Through Chairman, Government Of India, Ministry Of Finance, Department Of Revenue, North Block, New Delhi.
2. State Of Rajasthan, Through Additional Chief Secretary (Finance) To Government, Finance Department (Tax Division), Government Of Rajasthan, 1St Floor, Main Building, Government Secretariat, Jaipur Rajasthan, 302005
3. Chief Commissioner State Tax, Commercial Taxes Department, Rajasthan, Kar Bhawan, Jaipur
4. The Joint Commissioner State Tax, Commercial Taxes Department, Rajasthan, Circle - C, Ew - Iii, Rajasthan, Jaipur
5. Shri Tara Chand Megwal, Joint Commissioner State Tax, Circle - C, Ew - Iii, Rajasthan, Jaipur
6. Union Of India, Through Its Secretary Department Of Revenue, Ministry Of Finance North Block, New Delhi.

----Respondents

D.B. Civil Writ Petition No. 10067/2024
CNR: RJHC010453882024 | URN: CW / 20240U / 2024

M/s Nagaur Mukundgarh Highways Pvt. Ltd., 80A, Shahi Complex, Hiran Magri, Sector 11, Udaipur, Rajasthan 313002 Through Authorised Person Mr. Sharad Pancholy S/o Mr. Surendra Kumar Pancholy, Aged 54 Years, R/o A 25, Jda, A Block, Near Calgary Hospital Malviya Nagar Jaipur, Rajasthan 302017.

----Petitioner

Versus

The Joint Commissioner, State Tax Circle - C, Ew-Iii, Rajasthan, Jaipur.

----Respondent

For Petitioner(s)	:	Mr. Jatin Harjai
For Respondent(s)	:	Mr. Mahaveer Bishnoi, AAG with Mr. Harshwardhan Singh Mr. Rajat Arora

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE PRAVEER BHATNAGAR

Judgment

Date of conclusion of arguments:- 06.08.2026

Date on which the judgment was Reserved:- 06.08.2026

Whether the full judgment or only the operative part is pronounced:- Full Judgment

Date of pronouncement:- 17.08.2026

Per: Praveer Bhatnagar, J.

1. Since the issue involved in the present bunch of writ petitions is common and the questions of law and facts arising therein are akin to each other, all these petitions are being heard and decided together by this common order. However, for the sake of convenience and brevity, the facts are being noticed from D.B.

Civil Writ Petition No. 10055/2024, which may be treated as the lead matter.

2. By way of the instant writ petition, the petitioner has assailed the validity and applicability of Circular No. 150/6/2021 dated 17.06.2021 (Annexure-P/24) issued by Respondent No.1- Central Board of Indirect Taxes and Customs, *inter alia*, on the ground that the said circular is not binding upon the petitioner and cannot override or dilute the statutory exemption granted under the notification issued in exercise of powers conferred by Section 11 of the CGST Act, particularly Notification No.12/2017. The petitioner has further challenged the show cause notice dated 09.12.2022 (Annexure-P/7), contending that the provisions contained in Chapter XVII of the CGST Act/RGST Act expressly provide for the binding effect of an advance ruling upon the applicant as well as the concerned departmental authorities and that, vide advance ruling dated 12.02.2019, Entry-23A was specifically held to be exempted from levy of tax.

2.1 Further, the petitioner has also challenged the recovery order dated 07.07.2023, which has been passed contrary to the statutory exemption available to the petitioner and the binding effect of the advance ruling dated 12.02.2019. The petitioner has, therefore, prayed for quashing and setting aside of the impugned recovery order dated 07.07.2023 and for consequential reversal/refund of the amount recovered from the petitioner pursuant thereto, along with such other reliefs as may be deemed just and proper in the facts and circumstances of the case.

3. Before adverting to the rival submissions and the controversy involved in the present petition, it would be apposite

to notice the statutory framework governing the exemption claimed by the petitioner. It is not in dispute that, in exercise of the powers conferred under Section 11 of the CGST Act read with Section 164 thereof, the Central Government issued Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, whereby exemption was granted in respect of specified services. Entry 23A of the said Notification, as relevant for the present controversy, specifically provides for exemption in respect of "Service by way of access to a road or a bridge on payment of annuity", falling under Heading 9967, with the applicable rate of tax being "Nil" and the corresponding condition being "Nil". The relevant extract of the said Notification reads as under:-

"NOTIFICATION NO. 12/2017-CENTRAL TAX (RATE), DATED 28-6-2017;

In exercise of the powers conferred by 1[sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and section 148] of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Sr. No.	**Chapter, Section, Heading, Group or Service Code (Tariff)**	**Description of Services**	**Rate (Per cent)**	**Condition**
(1)	*(2)*	*(3)*	*(4)*	*(5)*
"23A	*Heading 9967*	*Service by way of access to a road or a bridge on payment of annuity.*	*Nil*	*Nil";*

Explanation. For the purposes of this notification,-

(i) Reference to "Chapter", "Section" or "Heading", wherever they occur, unless the context otherwise requires, shall mean respectively as "Chapter, "Section" and "Heading" in the scheme of classification of services.

(ii) Chapter, Section, Heading, Group, or Service Code mentioned in Column (2) of the Table are only indicative"

4. Subsequently, the Respondent-Board issued Circular No.150/06/2021-GST dated 17.06.2021, purporting to clarify the applicability of GST in respect of annuity payments received for construction of roads. The circular records that GST is exempt in respect of services falling under Heading 9967, namely, services by way of access to a road or a bridge on payment of annuity, as covered by Entry 23A of Notification No.12/2017-Central Tax (Rate). However, the circular proceeds to draw a distinction between services falling under Heading 9967 and services relating to construction of roads falling under Heading 9954. It accordingly clarifies that, where the underlying service is construction of a road falling under Heading 9954 and the consideration for such construction is paid partly upfront and partly through deferred annual payments described as annuities, Entry 23A would not be applicable and such annuity payments would not be exempt from GST. The relevant portion of the impugned circular reads as under:-

"*Circular No.150/06/2021-GST CBIC-190354/36/2021-TRU Section-CBEC Government of India Ministry of Finance Department of Revenue ***** North Block, New Delhi, Dated the 17th June, 2021 To, The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioner of Central Tax (All) / The Principal Director Generals/ Director Generals (All) Madam/Sir, Sub–Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity)-reg. Certain representations have been received requesting for a clarification regarding applicability of GST on annuities paid for construction of road where certain portion of consideration is received upfront while remaining payment is made through deferred payment (annuity) spread over years. 2. This issue has been examined by the GST Council in its 43rd meeting held on 28th May, 2021. 2.1 GST is exempt on service, falling under heading 9967 (service code), by way of access to a road or a bridge on payment of annuity [entry 23A of notification No. 12/2017-Central Tax]. Heading 9967 covers "supporting services in transport" under which code 996742 covers* *"operation services of National Highways, State Highways, Expressways, Roads & streets; bridges and tunnel operation services". Entry 23 of said notification exempts "service by way of access to a road or a bridge on payment of toll". Together the entries 23 and 23A exempt access to road or bridge, whether the consideration are in the form of toll or annuity [heading 9967]. Circular No.150/06/2021-GST 2.2 Services by way of construction of road fall under heading 9954. This heading inter alia covers general construction services of highways, streets, roads railways, airfield runways, bridges and tunnels. Consideration for construction of road service may be paid partially upfront and partially in deferred annual payments (and may be called annuities). Said entry 23A does not apply to services falling under heading 9954 (it specifically covers heading 9967 only). Therefore, plain reading of entry 23A makes it clear that it does not cover construction of road services (falling under heading 9954), even if deferred payment is made by way of instalments (annuities). 3. Accordingly, as recommended by the GST Council, it is hereby clarified that Entry 23A of notification No. 12/2017-CT(R) does not exempt GST on the annuity (deferred payments) paid for construction of roads. 4. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board."*

5. Learned counsel appearing for the petitioner assailed the validity and applicability of the impugned circular on the ground that the same is neither binding upon the petitioner nor can it override, modify or dilute the statutory exemption granted under the notification issued in exercise of powers conferred under Section 11 of the CGST Act. It was submitted that the statutory notification expressly exempts the services rendered by the petitioner from payment of tax on the annuity and, therefore, a subsequent circular issued by the Board cannot be relied upon to impose a tax liability contrary to the express language and effect of the statutory notification.

5.1 Learned counsel further submitted that although the Board is empowered under the Act to issue instructions, orders or circulars for the purpose of implementing and ensuring uniformity in the provisions of the Act, such administrative instructions cannot override the substantive provisions of the statute or the exemption granted under a statutory notification. It was contended that the power to issue instructions is essentially administrative in nature and cannot be exercised so as to curtail, negate or retrospectively withdraw a statutory exemption, particularly when no corresponding amendment has been made in the statutory notification itself.

5.2 Learned counsel further contended that the issue involved in the present case had already been considered and conclusively determined by the Advance Ruling Authority vide its order dated 12.02.2019, whereby the relevant Entry-23A was held to be exempted. It was submitted that the said advance ruling was not challenged by the Revenue and, therefore, attained finality and continued to bind the petitioner as well as the concerned departmental authorities in terms of Section 103 of the CGST Act.

5.3 He states that in the absence of any challenge to or setting aside of the advance ruling, the Revenue could not subsequently take a contrary view and fasten a tax liability upon the petitioner merely on the strength of the impugned circular.

5.4 Learned counsel for the petitioner, while elaborating his submissions, placed reliance upon Sections 11, 103, 164 and 168 of the CGST Act and submitted that the power vested in the Board under Section 168 to issue instructions or directions for securing uniformity in the implementation of the Act cannot be construed as a power to nullify or render ineffective a statutory exemption granted under Section 11. It was urged that the Board cannot, under the guise of issuing a circular, legislate upon the subject or interpret an exemption entry in a manner contrary to its plain and unambiguous language.

5.5 Learned counsel submitted that the impugned circular, insofar as it seeks to fasten a tax liability upon the petitioner despite the statutory exemption and the binding advance ruling, travels beyond the scope of the powers conferred upon the Board. In support of his submissions, he placed reliance upon the judgment rendered by Karnataka High Court in ***DPJ Bidar-Chincholi (Annuity) Road Project Private Limited & Anr. Vs. Union of India & Ors., reported in 2022 SCC OnLine Kar 1829.***

6. *Per contra*, learned counsel appearing for the Union GST and State GST authorities supported and justified the action of the respondents and submitted that the Board is duly empowered under Section 168 of the CGST Act to issue orders, instructions and directions for the purpose of securing uniformity in the implementation of the provisions of the Act. It was contended that the impugned circular has merely clarified the correct position of law and has been issued in exercise of the statutory powers vested in the Board. He submits that Section 168 specifically authorises the Board, wherever it considers it necessary or expedient for securing uniformity in the implementation of the Act, to issue such orders, instructions or directions to the central tax officers as it may deem fit, which are required to be observed and followed by the officers and other persons employed in the implementation of the Act. Reliance was placed upon the judgment rendered by a Coordinate Bench of this Hon'ble Court in D.B. Writ Petition No.15048/2025, titled ***CG Tollway Ltd. Vs. Union of India & Ors.***, the judgment rendered by Meghalaya High Court in ***Jorabat Shillong Expressway Ltd. Vs. Union of India; (2026:MLHC:518-DB)*** and the judgment rendered by Telangana High Court in ***GMR Pochanpalli Expreessways***

Limited Vs. Additional Director, Directorate General of GST Intelligence & Ors., reported in 2024 SCC OnLine TS 3988.

6.1 Learned counsel for the respondents further submitted that the advance ruling relied upon by the petitioner cannot be treated as binding in perpetuity and that, in view of the subsequent change in circumstances and the issuance of the impugned circular clarifying the applicable legal position, the said advance ruling no longer operates as an impediment to the Revenue in determining the tax liability in accordance with the prevailing position of law. It was argued that an interpretation adopted by the departmental authorities at an earlier point of time, or any misunderstanding of the existing legal position, cannot create a binding precedent against the Revenue or prevent the competent authority from applying the correct position of law subsequently.

6.2 Learned counsel for the respondents placed reliance upon Section 103(2) of the CGST Act and submitted that an advance ruling remains binding only so long as the law, facts or circumstances supporting the original advance ruling remain unchanged. Once there is a change in the law, facts or circumstances forming the foundation of the advance ruling, the binding effect contemplated under Section 103 ceases to operate.

6.3 He argued that the petitioner cannot seek to rely upon the advance ruling dated 12.02.2019 as an absolute bar against the respondents, particularly in view of the subsequent developments and the clarification issued by the Board through the impugned circular.

7. In the aforesaid backdrop, we have heard the rival contentions and perused the material available on record.

8. We may first examine the controversy in the light of the judgment rendered by the Division Bench of this Court in D.B. Civil Writ Petition No.15048/2025, titled *CG Tollway Ltd. v. The Union of India & Others*, decided on 22.05.2026. In the said case, the Division Bench considered the scope and effect of Sections 2(31), 2(119) and 7 of the CGST Act, along with Schedule II thereto and Rules 27 and 28 of the CGST Rules, 2017, in the context of a concession agreement entered into between the petitioner therein and NHAI. Upon examination of the contractual arrangement and the reciprocal obligations undertaken by the parties, the Division Bench held as under:

> *32:- The definition of "works contract" as provided under Section 2(119) of the Act of 2017, and as included in Schedule II, Entry 6, would apply to the present case. Inasmuch as the petitioner supplies the works contract services to the NHAI and, in return, receives the right to demand and collect fees from the users, licence of the site, and right of way, thus all the ingredients of 'barter' are clearly available in the contract at hand. Moreover, the right to receive premium, as specified supra, itself shows that consideration forms part of the contract. Thus, the agreement in hand would fall within the definition of "supply" as defined under Section 7 of the Act of 2017. 34:- It is further relevant to note that, as per the terms of the agreement itself, the valuation of toll collection rights undertaken by the petitioner has been assessed at around Rs. 2590 million, and as rightlly quoted by the Deputy Commissioner, the petitioner has been awarded the right to collect the toll by the NHAI in consideration of the construction services rendered by the petitioner on a DBFOT basis. The service encompasses direct and indirect expenses related to construction of roads, bridges, infrastructure, etc. and other assets at the toll plaza. Thus, the agreement in question falls within the definition of "works contract services" and has rightly been treated as taxable.*
> *34:- Since, as there is a promise of fulfilling the obligation on the part of the petitioner to construct and maintain the road, vis-à-vis the corresponding promise of NHAI to permit the petitioner to collect toll for the road in question during the subsistence of the contract, the transaction squarely falls within the statutory framework of 'supply' and "consideration. 39. A comparative analysis of both the circular and the clarification reveals that the work undertaken for construction of roads falls under Heading 9954 and not under Heading 9967, as tried to be claimed by the learned counsel for the petitioner. Only Entry No. 9967, with regard to collection of toll, has been exempted. However, where construction of roads is undertaken and, pursuant thereto, as a reciprocal arrangement*
> *under the agreement, the toll is being collected, there is no exemption under that heading whatsoever. This is further clarified by the Circular*

dated 17.06.2021 issued by the Ministry of Finance. More particularly, when the payment for construction of roads is made in deferred annual instalments, it may be called an annuity. In the present case, the collection of toll is essentially one of the consideration, which is being received by the petitioner and essentially amounts to annuity. Thus, the same does not fall within the ambit of the exemption clause in this regard.

40. Even otherwise, as far as the exemption notifications are concerned, in case of any ambiguity the same are to be interpreted in favour of the revenue and not in favour of the assessee. The law in this regard is no longer res integra, in view of the judgment pronounced by the Hon'ble Apex Court in Commr. of Customs v. Dilip Kumar & Co.; (2018) 9 SCC 1, followed in Commr. (CGST) v. Safari Retreats (P) Ltd.;(2025) 2 SCC 523."

9. Thus, the Court clarified that the concession agreement constituted a taxable supply of works-contract services. Section 7 of the CGST Act broadens the definition of 'supply' to include barter, licensing, and exchange transactions, emphasising the expansive scope of taxable activities. The court found that the petitioner undertook construction, maintenance, and operation duties in exchange for toll collection rights, land licenses, and highway management responsibilities. Toll collection rights qualify as 'consideration' under Section 2(31) of the CGST Act, which encompasses payment in the form of money or other valuable considerations. Entry 23 of Notification No. 12/2017-Central Tax (CG) exempts certain services related to toll roads under Heading 9967; however, the petitioner's activities fall under Heading 9954, which pertains specifically to construction services.

10. In the present case also, the contractual arrangement between the petitioner and NHAI is contained in Annexure-P/2. The relevant provisions of the agreement, which govern the payment of the Project Cost and the subsequent annuity payments, read as under:-

23.3 Payment of Project Cost

23.3.1 50% (fifty per cent) of the Project Cost, adjusted for the Price Index Multiple, shall be due and payable to the

Concessionaire in 5(five) equal instalments of 10% (Ten per cent) each during the Construction Period in accordance with the provisions of Clause 23.4.

23.3.2 The remaining 50% (fifty per cent) of the Project Cost, shall be due and payable in 20 (twenty) biannual instalments commencing from the 180th (one hundred and eightieth) day of COD in accordance with the provisions of Clause 23.6.

23.4 Payment during Construction Period

Upon receiving a report from the Independent Engineer certifying the achievement of the below mentioned payment milestones ("Payment Milestones"), the Authority shall disburse, within 15 (fifteen) days of the receipt of each such report, an instalment equal to 10% (ten per cent) of the 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 Milestones 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

Provided that in case of Change of Scope, the physical progress shall be recalculated to account for the changed scope.

23.5 Bonus on early completion

In the event that the Concessionaire shall achieve COD more than 30 (thirty) days prior to the Scheduled Completion Date, the Authority shall pay to the Concessionaire a bonus equal to 1/30% (one by thirty per cent) of the Completion Cost for every day by which COD shall precede the Scheduled Completion Date.

23.6 Annuity Payments during Operation Period

23.6.1 An amount equal to the product of the Project Cost and the Price Index Multipl applicable as on COD shall be deemed to be the cost of the Project as on COD (th "Completion Cost"). The Parties agree that 50% (fifty per cent) of the Completion Cost shall be deemed to have been paid during the Construction Period and th balance remaining shall be due and payable during the Operation Period accordance with the provisions of Clause 23.6.2.

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 instalments over a period of 10 (ten) years commencing from COD, along with interest thereon (the "Annuity Payments"). The 1" (first) instalment of Annuity Payments shall be due and payable within 15 (fifteen) days of the 180th (one hundred and eightieth) day of COD and the remaining instalments shall be due and payable within 15 (fifteen) days of completion of each of the successive six months.

21.6.3 Each of the Annuity Payments due and payable during (a) the 1st (first), 2nd (second) and 3rd (third) years following the COD shall be equal to 1.5% (one point five per cent) of the Completion Cost;(b) the 4th (fourth), 5th (fifth), 6th (sixth) and 7th (seventh) *years following the COD shall be equal to 2.5% (two point five per cent) of the Completion Cost; and (c) the 8th (eighth), 9th (ninth) and 10th (tenth) years following the COD shall be equal to 3.5% (three point five per cent) of the Completion Cost.Each of the biannual instalments 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 2% (two per cent) Such interest shall be due and payable biannually along with each instalment specified in Clause 23.6.3. For the avoidance of doubt and by way of illustration, the Parties agree that interest on 50% (fifty per cent) of the Completion Cost, calculated from COD and until the 180th (one hundred and eightieth) day of COD, shall be due and payable to the Concessionaire along with the first Annuity Payment and interest on 48.5% (forty eight point five per cent)of the Completion Cost, calculated for the period commencing from the 181" (one hundred and eighty first) day from COD and until the 1st (first) anniversary of COD, shall be due and payable along with the second Annuity Payment due and payable under this Agreement. The Parties further agree that interest shall be calculated at monthly rests in accordance with the normal practice followed by banks for calculation of interest on outstanding loans.

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. It is partially funded by the petitioner (the Concessionaire), who has the right to recover costs from NHAI through annuity payments, as outlined above.”

11. The only distinction in the case of CG Tollway (supra) was that the petitioner held a Build-Operate-Transfer (BOT) contract bearing full traffic and revenue risk, including toll collection responsibilities. The fundamental difference between BOT and the present contract is the investment burden: in a BOT contract, the entire investment risk—100%—is borne by the concessionaire, whereas in the instant matter, the concessionaire has invested approximately 50 % of the required funds, with the remaining 50% payable by NHAI on an annuity basis.

12. Thus, it is apparent that the nature of the concession agreement between the parties in the present matter is also a “works contract services”, hence taxable. It's not the case of the petitioner that his services were confined only to access to a road or a bridge, by way of payment of an annuity; rather, the terms of

the contract essentially include construction, design, and maintenance of the roads, with payments at intervals.

13. The Court in a matter of CG Tollway (Supra) specifically held that the scope of works for construction services is distinct from that of transport contracts, and that Entry 23 of the Notification pertains exclusively to transport services. Therefore, the petitioner's services in the present case do not qualify for exemption and are taxable under the works contract category. The services provided by the petitioner, as described in the contract, constitute a works contract, and Entry 23A of the Notification relates to transport services, establishing that the same principles and analogy applied by the Division Bench in the CG Tollway (Supra) case are directly applicable here. There is no justified reason for this Bench to adopt a differing view. The Single Bench of the Telangana High Court in the matter of *GMR Pochanpalli Expreessways Limited* (Supra) struck down the impugned Circular, but the Division Bench in the matter of *CG Tollway* (Supra) distinguished this decision. In its judgment, the Division Bench provided a detailed interpretation of the issues at hand. It reached a different conclusion from the analogy adopted by the Telangana High Court and we see no strong or convincing reasons to disagree with the view taken by the Coordinate Bench.

14. Likewise, if works contracts services were intended to be exempt from tax, the notification would have explicitly included this exemption.

15. Additionally, the challenge to the impugned circular's authority to amend the notification is unfounded, as the circular's purpose is to clarify terminology and prevent misinterpretations by

the authorities responsible for implementing the Act. It is in the domain of the Board to issue such instructions under section 168 of the CGST Act. Lastly, it is worth noting the submission of learned petitioners' counsel that Revenue should not have acted against its own advance ruling is also not tenable & suffices to say that the Notification itself is binding & If revenue officers have misunderstood the existing law, their interpretation does not bind the implementing authority once the Board issues clarification. Section 168 of the Act authorises the Board to issue such instructions, orders or circulars to ensure the proper implementation of the law, especially when the advance ruling authority has misread the legal provisions. If such a misinterpretation results in significant revenue loss for the state, the Board has every right to step in and set things straight, as allowing the error to go unchecked would be unacceptable. Moreover, the revenue's actions following the circular in question are justified, as Section 103 of the Act clearly grants the authorities the power to take such measures when the law does not specifically prohibit them.

16. For the aforesaid reasons, we find no merit in the challenge laid by the petitioner to the impugned circular(s) or in the consequential challenge to the levy of GST on the annuity payments received under the concession agreement(s). The challenge based upon the earlier advance ruling also does not alter the position, since the taxability has to be determined with reference to the statutory exemption and the true nature of the services rendered under the contract.

17. In view of the foregoing discussion, we find no substance in the instant bunch of writ petitions. The same is, accordingly, dismissed.

18. All pending applications stand disposed of.

(PRAVEER BHATNAGAR),J (DR.PUSHPENDRA SINGH BHATI),J

67/KP Singh Dewasi / Dhananjay Sharma