

Circular in contradiction to the notifications is bad in law – Karnataka HC

8 August 2022



Summary

The Karnataka High Court (HC) observed that the annuity paid to the concessionaires as a consideration for construction of roads is at par with the collection of toll charges and is exempt under GST. The impugned circular issued pursuant to the 43rd GST council meeting has clarified that the exemption notification does not exempt the annuity from GST. In this respect, the court cited that it is a settled proposition of law that a circular which clarifies the notification, cannot have overriding effect over the notification. The HC stated that in the present case, impugned circular has the effect of overriding the notifications and thus, it has to be held as bad in law. Further, the government can impose GST on annuity paid to the concessionaires, which should be done in a lawful manner.

Facts of the case

- The petitioners¹ have been entrusted with the responsibility of construction of a road². The consideration for the work is paid in the form of 'annuity' payments. Whereas, in certain cases, the consideration for construction and maintenance of roads is made by permitting the private parties to collect tolls from the vehicles plying on the road. Such toll has been exempted from the levy of GST³.
- In the 22nd GST Council meeting⁴, it was proposed to exempt the annuity payments from the levy of GST. Subsequently, the exemption was notified by way of notifications⁵.
- Thereafter, a circular⁶ was issued clarifying that GST would not be exempt on the annuity (deferred payments) paid for the construction of the road. The petitioners were aggrieved by the circular and therefore, filed the present writ petitions.
- The petitioners submitted that GST is exempt on the annuity (deferred payment) for construction of the roads as per the exemption notification and clarification issued by the GST Council.

Karnataka HC observations and ruling⁷:

- **Circular cannot overrule the notification:** The HC stated that it is a settled proposition of law that a circular clarifying the notification cannot have overriding effect.
- **Entire annuity is exempt:** The recommendations of the GST Council and the notifications issued pursuant thereto clearly exempts the entire annuity payment made towards construction and maintenance of the roads. Therefore, the impugned circular having an overriding effect over the notifications is held as bad in law. Further, if the government desires to modify the notification, then fresh

¹ M/s DPJ Bidar Chincholi (Annuity) Road Project Private Limited & Anr.

² by Karnataka Road Development Corporation Limited (KRDCL)

³ Notification No.12/2017 dated 28 June 2017

⁴ Meeting held on 6 October 2017

⁵ Notification No. 32/2017 and Notification No. 33/2017 dated 13 October 2017

⁶ Circular No. 150/06/2021-GST dated 17 June 2021

⁷ Order No. - A/10785-10787/2022 dated 7 July 2022

notifications shall be issued to amend the effect of earlier notifications.

Our comments:

In a similar matter⁸, the Rajasthan Appellate Authority for Advance Ruling (AAAR)⁹ had held that the annuity payment received by the concessionaire is exempt under GST¹⁰.

The present decision is in line with the well settled principle that the departmental circular cannot override statutory provisions. The view aligns with the decision of Madras HC in case of Jenefa India¹¹ wherein the court had held that the clarificatory circular cannot override the exemption. Similar view was also taken by the Madras HC in case of Precot Meridian Limited¹².

⁸ Nagaur Mukundgarh Highways Private Limited

⁹ Order No. RAJ/AAAR/06/2018-19 dated 12 Feb 2019 (TS-122-AAAR-2019-NT)

¹⁰ Entry No. 23A of Notification No. 12/ 2017- Central tax (Rate)

¹¹ W.P.(MD)No.16770/2019 and

W.M.P.(MD)Nos.13372 to 13376 of 2019

¹² W.P.(MD)No.20504 of 2019

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