



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार)

National Highways Authority of India

(Ministry of Road Transport and Highways, Government of India)

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NHAI/Policy Guidelines/ Accounts and Taxes/2023

Policy Circular No.3.3.30/2023 dated 03rd May, 2023

{Decision taken on E-Office File No. NHAI/F&A/GST/2018-19/SM(Vol.III) (Comp. No. 6801)}

Sub: Clarification regarding applicability of GST on BOT (Toll) projects and payment of GST under change in law on BOT (Toll) projects

- Ref: - 1) CBIC Notification No. 12/2017 - CT (R) dt. 28.06.2017
2) CBIC Circular No. 150/6/2021-GST dt. 17.06.2021
3) CBIC Circular No. 15/2022 - CT(R) dt. 30.12.2022
4) CBIC Circular No. 15/2022 - IT(R) dt. 30.12.2022

In pursuance of the above referred notification and circulars to the extent of applicability of GST on BOT (Toll) projects, following is hereby clarified.

Section-1: Applicability of GST under change in law on EPC Portion

1. Where bid due date of the project was before 01.07.2017

- i. Payment of GST on EPC portion of BOT (Toll) projects, where construction work completed before implementation of GST on 01.07.2017

As the bid due date of the project is before 01.07.2017 and construction work is also completed before 01.07.2017, hence payment of GST under change in law is not applicable on EPC portion of the BOT (Toll) Projects.

Further, it is clarified that entry no. 23 of Notification No.12/2017 exempts access to a road or bridge from GST, where the consideration is in the form of toll charges, which matter has been also clarified by the CBIC vide their circular no. 150/6/2021 dated 17.06.2021.

Hence, it can be clearly determined that the Concessionaire doesn't have to pay output GST liability on BOT (Toll) projects to GST Department. Therefore, no GST is applicable in case of BOT (Toll) projects.

- ii. Payment of GST on EPC portion of BOT (Toll) projects, where construction work completed or to be completed after implementation of GST on 01.07.2017

NHAI have received representations from various stakeholders regarding increase in EPC Cost due to implementation of GST and further due to increase in rates of GST. They have represented that due to change in law (implementation of GST &/or increase in rates of GST from 12% to 18%), the construction cost of the project is increased thereby resulting in financial burden/loss to the Concessionaire.

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Hence, to compensate the Concessionaire for increase in cost due to implementation of GST, NHAI shall pay differential GST under Change in Law in respect of EPC Contractor, which is an input service for the Concessionaire.

In respect of the above, it is hereby clarified that the Concessionaire has to establish that there is a decrease in net after tax return or increase in cost or any other financial burden, due to change in law, a claim in respect of the same may be submitted to GST Cell, NHAI HQ for scrutiny and vetting by GST Consultant/Auditor by using GST Template Annexure-I of EPC Circular (regular or composite, whichever applicable) issued vide policy circular no. 3.3.26/2022 on 24.11.2022 considering following parameters:

- a. To find out the effect in EPC project cost, NPV & Toll Collection etc. which is the responsibility of the Concessionaire who will claim any amount due to impact of change in law.
- b. Further, Concessionaire is responsible to comply the provisions of the Concession Agreement in respect of increase in cost, reduction in cost, protection of NPV, restriction of cash compensation, no claim of recovery from users and moderation of Total Project Cost (TPC).

The Concessionaire also has to establish that the construction of the project is completed or shall be completed within the schedule date of completion or if there is any delay, the same is not attributable to the Concessionaire. In case the delay is attributable to the Concessionaire and EOT is not approved by the Competent Authority, it is to be seen that how much period shall fall in the pre-GST/post-GST ambit and claim shall be prepared accordingly.

It is further clarified that GST under change in law shall be calculated on the basis of supporting documents/information provided by the Concessionaire clearly indicating the excess amount paid/to be paid by the Concessionaire to their EPC Contractor along with proof of discharging the GST liability by the end user and accordingly, the same will be reimbursed by NHAI on construction work of the project under BOT (Toll) mode by using GST template Annexure I of EPC Circular (regular or composite, whichever applicable) issued vide policy circular no. 3.3.26/2022 on 24.11.2022.

It is also clarified that in case of BOT (Toll) projects, if the Concessionaire is eligible for adjustment of input GST against payment of any output GST liability, the benefit of same shall be passed on to NHAI.

It is further also clarified that the applicability of change of rate from 12% to 18% shall be governed in accordance with time of supply under section 14 of the CGST Act.

2. Where bid due date of the project was between 01.07.2017 to 17.07.2022

During the period between 01.07.2017 to 16.06.2021, the bids were invited inclusive of GST and after 16.06.2021, the bids were invited exclusive of GST by the NHAI.



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Further, CBIC has issued Notification no. 03/2022 dated 13.07.2022 wherein it is decided by GOI to increase the rate of tax on construction of roads, bridges etc. from 12% to 18%, which has increased the cost of construction and O&M of Concessionaire from 12% to 18% with effect from 18.07.2022.

As clarified in para 1 (i), the output service under BOT (Toll) projects provided by the Concessionaire to NHAI is exempt from GST due to entry no. 23 of Notification No.12/2017 which exempts access to a road or bridge from GST, where the consideration is in the form of toll charges.

Hence, between 01.07.2017 to 17.07.2022, the Concessionaire is expected to prepare their bids without considering output tax on service provided by them to NHAI but after considering GST @ 12% on input service of EPC contractor while preparing their bids.

Therefore, for the projects where the bid due date was between 01.07.2017 to 17.07.2022, there may arise any one out of following two situations:

- i. **Work completed on or before 17.07.2022 (before change in rate of tax), or**
- ii. **Work completed on or after 18.07.2022 (after change in rate of tax)**

Under the situation 2 (i), no GST under change in law shall be payable to the Concessionaire in respect of input services of EPC contractor.

In respect of the above situation 2 (ii), it is hereby clarified that the Concessionaire has to establish that there is a decrease in net after tax return or increase in cost or any other financial burden, due to change in law, a claim in respect of the same may be submitted to GST Cell, NHAI HQ for scrutiny and vetting by GST Consultant/Auditor, considering following parameters:

- a. To find out the effect in EPC project cost, NPV & Toll Collection etc. which is the responsibility of the Concessionaire who will claim any amount due to impact of change in law.
- b. Further, Concessionaire is responsible to comply the provisions of the Concession Agreement in respect of increase in cost, reduction in cost, protection of NPV, restriction of cash compensation, no claim of recovery from users and moderation of Total Project Cost (TPC).

It is further clarified that GST under change in law shall be reimbursed by NHAI on the basis of supporting documents/information provided by the Concessionaire clearly indicating the excess amount paid/to be paid by the Concessionaire to their EPC Contractor along with proof of discharging the GST liability by the end user and accordingly, the same will be reimbursed by NHAI.

It is also clarified that in case of BOT (Toll) projects, if the Concessionaire is eligible for adjustment of input GST against payment of any output GST liability, the benefit of same shall be passed on to NHAI.

The Concessionaire also has to establish that the construction of the project was completed or shall be completed within the schedule date of completion or if there is any delay, the same is not attributable to the Concessionaire. In case the delay is attributable to the Concessionaire and EOT is not approved by the Competent Authority, it is to be seen that how much period shall fall in the pre-GST/post-GST ambit and claim shall be prepared accordingly.



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Section-2: Applicability of GST under change in law on Operation & Maintenance (O&M) Portion

3. Where bid due date of the project was before 01.07.2017

- i. Payment of GST on O&M portion of BOT (Toll) projects, where O&M works completed before implementation of GST on 01.07.2017.**

As the bid due date of the project is before 01.07.2017 and O&M works completed before 01.07.2017, hence payment of GST under change in law is not applicable on O&M portion of the BOT Projects.

Further, it is clarified that entry no. 23 of Notification No.12/2017 exempts access to a road or bridge from GST, where the consideration is in the form of toll charges, which matter has been also clarified by the CBIC vide their circular no. 150/6/2021 dated 17.06.2021.

Hence, it can be clearly determined that the Concessionaire doesn't have to pay output GST liability on BOT (Toll) projects to GST Department. Therefore, no GST is applicable in case of BOT (Toll) projects.

- ii. Payment of GST on O&M portion of BOT (Toll) projects, where O&M works completed or to be completed after implementation of GST on 01.07.2017**

NHAI have received representations from various stakeholders regarding increase in O&M Cost due to implementation of GST and further due to increase in rates of GST. They have represented that due to change in law (implementation of GST &/or increase in rates of GST from 12% to 18%), the O&M cost of the project is increased thereby resulting in financial burden/loss to the Concessionaire.

Hence, to compensate the Concessionaire for increase in cost due to implementation of GST, NHAI shall pay differential GST under Change in Law in respect of O&M Contractor, which is an input service for the Concessionaire.

In respect of the above, it is hereby clarified that the Concessionaire has to establish that there is a decrease in net after tax return or increase in cost or any other financial burden, due to change in law, a claim in respect of the same may be submitted to GST Cell, NHAI HQ for scrutiny and vetting by GST Consultant/Auditor by using GST Template Annexure-I of EPC Circular (regular or composite, whichever applicable) issued vide policy circular no. 3.3.26/2022 on 24.11.2022 considering following parameters:

- a. to find out the effect in EPC project cost, NPV & Toll Collection etc. which is the responsibility of the Concessionaire who will claim any amount due to impact of change in law.
- b. Further, Concessionaire is responsible to comply the provisions of the Concession Agreement in respect of increase in cost, reduction in cost, protection of NPV, restriction of cash compensation, no claim of recovery from users and moderation of Total Project Cost (TPC).

The Concessionaire also has to establish that the O&M works of the project is completed or shall be completed within the schedule date of completion or if there is any delay, the same is not attributable to the Concessionaire. In case the delay is attributable to the Concessionaire and EOT is not approved by the Competent Authority, it is to be seen that how much period shall fall in the pre-GST/post-GST ambit and claim shall be prepared accordingly.

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It is further clarified that GST under change in law shall be calculated on the basis of supporting documents/information provided by the Concessionaire clearly indicating the excess amount paid/to be paid by the Concessionaire to their O&M Contractor along with proof of discharging the GST liability by the end user and accordingly, the same will be reimbursed by NHAI on Operation & Maintenance works of the project under BOT (Toll) mode by using GST template Annexure I of EPC Circular (regular or composite, whichever applicable) issued vide policy circular no. 3.3.26/2022 on 24.11.2022.

In case of Operation & Maintenance part of the project, at the time of calculation of GST impact, if the future cost to be incurred by the Concessionaire on operation & maintenance is not ascertainable and GST impact on O&M portion is calculated on basis of already incurred cost.

In such a case, GST under change in law on O&M portion already done shall be paid on the basis of arrived GST impact percentage and same percentage shall also be used for next 3 years and such percentage shall be reviewed after every 3 years on the basis of actual amount incurred in such 3 years period on operation and maintenance. Any amount short paid or excess paid shall be adjusted by the Authority accordingly. This process shall be repeated till the end of concession period.

It is also clarified that in case of BOT (Toll) projects, if the Concessionaire is eligible for adjustment of input GST against payment of any output GST liability, the benefit of same shall be passed on to NHAI.

It is further also clarified that the applicability of change of rate from 12% to 18% shall be governed in accordance with time of supply under section 14 of the CGST Act.

4. Where bid due date of the project was between 01.07.2017 to 17.07.2022

During the period between 01.07.2017 to 16.06.2021, the bids were invited inclusive of GST and after 16.06.2021, the bids were invited exclusive of GST by the NHAI.

Further, CBIC has issued Notification no. 03/2022 dated 13.07.2022 wherein it is decided by GOI to increase the rate of tax on construction of roads, bridges etc. from 12% to 18%, which has increased the cost of construction and O&M of Concessionaire from 12% to 18% with effect from 18.07.2022.

As clarified in para 1 (i), the output service under BOT (Toll) projects provided by the Concessionaire to NHAI is exempt from GST due to entry no. 23 of Notification No.12/2017 which exempts access to a road or bridge from GST, where the consideration is in the form of toll charges.

Hence, between 01.07.2017 to 17.07.2022, the Concessionaire is expected to prepare their bids without considering output tax on service provided by them to NHAI but after considering GST @ 12% on input service of O&M contractor while preparing the bids.

Therefore, for the projects where the bid due date was between 01.07.2017 to 17.07.2022, there may arise any one out of following two situations:

- i. O&M work completed on or before 17.07.2022 (before change in rate of tax), or
- ii. O&M work completed on or after 18.07.2022 (after change in rate of tax)

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Under the situation 4 (i), no GST under change in law shall be payable to the Concessionaire in respect of input service of O&M contractor.

In respect of the above situation 4 (ii), it is hereby clarified that the Concessionaire has to establish that there is a decrease in net after tax return or increase in cost or any other financial burden, due to change in law, a claim in respect of the same may be submitted to GST Cell, NHAI HQ for scrutiny and vetting by GST Consultant/Auditor, considering following parameters:

- a. to find out the effect in EPC project cost, NPV & Toll Collection etc. which is the responsibility of the Concessionaire who will claim any amount due to impact of change in law.
- b. Further, Concessionaire is responsible to comply the provisions of the Concession Agreement in respect of increase in cost, reduction in cost, protection of NPV, restriction of cash compensation, no claim of recovery from users and moderation of Total Project Cost (TPC).

It is further clarified that GST under change in law shall be reimbursed by NHAI on the basis of supporting documents/information provided by the Concessionaire clearly indicating the excess amount paid/to be paid by the Concessionaire to their O&M Contractor along with proof of discharging the GST liability by the end user and accordingly, the same will be reimbursed by NHAI.

In case of Operation & Maintenance part of the project, at the time of calculation of GST impact, if the future cost to be incurred by the Concessionaire on operation & maintenance is not ascertainable and GST impact on O&M portion is calculated on basis of already incurred cost.

In such a case, GST under change in law on O&M portion already done shall be paid on the basis of arrived GST impact percentage and same percentage shall also be used for next 3 years and such percentage shall be reviewed after every 3 years on the basis of actual amount incurred in such 3 years period on operation and maintenance. Any amount short paid or excess paid shall be adjusted by the Authority accordingly. This process shall be repeated till the end of concession period.

It is also clarified that in case of BOT (Toll) projects, if the Concessionaire is eligible for adjustment of input GST against payment of any output GST liability, the benefit of same shall be passed on to NHAI.

The Concessionaire also has to establish that the O&M works of the project was completed or shall be completed within the schedule date of completion or if there is any delay, the same is not attributable to the Concessionaire. In case the delay is attributable to the Concessionaire and EOT is not approved by the Competent Authority, it is to be seen that how much period shall fall in the pre-GST/post-GST ambit and claim shall be prepared accordingly.

5. In case of the BOT (Toll) projects, where COD have been achieved, final claim for EPC Cost is to be submitted for final GST audit.

6. The Independent Engineer will certify the claim including the quantities and work done details provided in the detailed calculation submitted by the Concessionaire.


7. The concerned PD/RO will cross-check the calculations submitted by the Concessionaire and send the claim along with their recommendation the GST Cell, NHAI HQ.

8. The PIUs shall be advised to send the GST liability calculation file only for para 1 (ii), 2 (ii), 3 (ii) and 4 (ii) to GST Cell, NHAI HQ (at email id: gstcell@nhai.org) for further scrutiny and vetting by GST Consultant/Auditor. However, all payments under change in law shall be released by respective PIUs with approval of RO concerned.

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9. The Concessionaire have to submit the documents as the proof of deposition of GST to the GST department such as CA Certificate, GST Returns and Challans etc. PIU to ensure the collection of proof of deposition of GST already deposited before releasing the payment of GST under change in law.

10. This issues with the approval of Competent Authority.


03/05/23
(Sanjay Kumar Patel)
General Manager (Coord.)

To:

All Officers of NHAI HQ/ ROs/ PIUs/ CMUs/ Site Offices

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