

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
HYDERABAD**

REGIONAL BENCH - COURT NO. - I

**Service Tax Appeal No. 21482 of 2014**

(Arising out of **Order-in-Original** No.04/2014 (BVSNK) dated 31.01.2014 passed by  
Commissioner of Central Excise & Customs, Visakhapatnam)

**National Highways Authority of India** .. **APPELLANT**

Project Implementation Unit (PIU),  
D No.78-14-21,  
Shyamala Nagar,  
Rajahmundry,  
Andhra Pradesh - 533 103.

VERSUS

**Commissioner of Central Excise and Service Tax Visakhapatnam - I** .. **RESPONDENT**

Port Area,  
Visakhapatnam,  
Andhra Pradesh - 530 035.

**WITH**

**Service Tax Appeal No. 30677 of 2017**

(Arising out of **Order-in-Original** No.KKD-EXCUS-COM-28/16-17 dated 14.02.2017 passed  
by Commissioner of Central Excise & Service Tax, Visakhapatnam)

**National Highways Authority of India** .. **APPELLANT**

Project Implementation Unit (PIU),  
D No.78-14-21,  
Shyamala Nagar,  
Rajahmundry,  
Andhra Pradesh - 533 103.

VERSUS

**Commissioner of Central Excise and Service Tax Visakhapatnam - I** .. **RESPONDENT**

Port Area,  
Visakhapatnam,  
Andhra Pradesh - 530 035.

**AND**

**Service Tax Appeal No. 31212 of 2018**

(Arising out of **Order-in-Original** No.VSP-EXCUS-001-COM-005-18-19 dated 30.06.2018  
passed by Commissioner of Central Tax, Visakhapatnam)

**National Highways Authority of India** .. **APPELLANT**

Project Implementation Unit (PIU),  
D No.78-14-21,  
Shyamala Nagar,  
Rajahmundry,  
Andhra Pradesh - 533 103.

*VERSUS***Commissioner of Central Excise  
and Service Tax****Visakhapatnam - I**Port Area,  
Visakhapatnam,  
Andhra Pradesh – 530 035.

..

**RESPONDENT****APPEARANCE:**

Shri C. Praneeth, Advocate for the Appellant.

Shri PRV Ramanan, AR (Special Counsel), Authorized Representative for the Respondent

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)  
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)****FINAL ORDER No. A/30297-30299/2026**

Date of Hearing: 05.02.2026

Date of Decision: 02.06.2026

**[ORDER PER: ANGAD PRASAD]**

The present appeals arise out of Order-in-Original passed by Adjudicating Authority confirming Service Tax demand, along with interest and penalties, on the amount received by the appellant / National Highway Authority of India (NHAI), from contractors towards transfer of "user fee collection rights" for various toll plaza.

2. The Department's case is that the appellant, by assigning toll collection rights to contractors for consideration, has rendered taxable service and classifiable as "franchise service" for the period prior to 01.07.2012 and as taxable service, not covered under the negative list for the subsequent period.

3. Aggrieved by the impugned orders, the appellant has filed the present appeals.

4. Learned Counsel for the appellant submitted that appellant is a statutory authority constituted under the National Highways Authority of India Act, 1988 (NHAI Act) and functions as an executing agency of the Central Government. The user fee (Toll) is a statutory levy under Section 7 of the National Highways Authority of India Act, 1956 and NHAI merely facilitates its collection.

5. Learned Counsel for the appellant submitted that the contractors do not receive any representational right, hence, the transaction cannot be classified as "franchise service". It is further submitted that there is no service provider and service recipient relationship between appellants and the contractor.

6. Learned Counsel for the appellant submitted that the activity falls within the ambit of Section 66D(h) of the Finance Act, 1994 (negative list) being related to access to roads. Therefore, activity undertaken by the appellants falls under negative list of services, and hence is a non taxable service.

7. Learned Counsel for the appellant submitted that the appellant acts as an agent of the Central Government, and therefore, the activity is in the nature of sovereign/statutory function. Thus, not liable to pay Service Tax.

8. Learned Counsel for the appellant submitted that the Circular No. 152/3/2012-ST dated 22.02.2012 makes it clear that Service Tax is not leviable on the toll fee paid by the road user. The circular is binding on the authorities / Department. Judicial Precedents have confirmed that circular issued by the Board are binding on them and they cannot be deviate from it. Learned Counsel for the appellant has placed reliance on Supreme Court

decision in case of Collector of Central Excise Vadodara Vs Dhiren Chemical Industries [2002 (139) E.L.T 3 (Sc)], wherein, it was held that Departmental clarification or CBEC circulars is binding on revenue. Similarly, there are plethoras of the Court decisions which have followed this judgment and consistently make it clear that the board circular are binding on revenue authorities. In this regard Learned Counsel for the appellant has cited following decisions.

i) Ideal Road Builders Pvt Ltd., Vs Commissioner of Service Tax, Mumbai [2013 (31) S.T.R. 350 (Tri-Mum)]

ii) MMK Toll Road Pvt Ltd., Vs Commissioner of Service Tax-II, Mumbai, [2013 (30) S.T.R. 190 (Tri-Mumbai)]

9. Learned Counsel for the appellant also referred Tribunal Mumbai decision in the case of IDAA Infrastructure Pvt Ltd., Vs Commissioner of Service Tax, Mumbai -II, [2014 (34) S.T.R. 87 (Tri-Mum)], wherein, it was decided that if tolls are collected by the concessionaire on their own account, then such collection is not covered any taxable service.

10. Learned Counsel for the appellant additionally submitted that the transaction falls under Section 66 D(a) of the Finance Act, since, the services are deemed to be rendered by the Central Government itself. The nature of the agreement, the flow of rights and consideration under the contract between the Central Government and the appellant on one hand and the appellant and the contractor on the other hand, in the light of various rules. The appellant is acting on behalf of the Central Government as an agent, but not in its own capacity for conducting any activity for business with regard to its own rights. It is further submitted that for the period from 01.07.2012 to 31.03.2016, the transaction falls under clause (a) of the Section 66D of the

Finance Act that a service by the Government and not liable to Service Tax as being covered by negative list.

11. Learned Counsel for the appellant additionally submitted that for the period from 01.04.2016 to 30.06.2017, since, sub-clause (iv) of Section 66 (a) was amended to include any services provided to a business entity by replacing the expression "support service, it is possible that exclusion from negative list is attracted." However, even for the said circumstances, there is no tax liability/levy on the appellant or the Government, in view of the charge operating on reverse charge basis as per Section 68(2) of the Finance Act read with Notification N0.30/2012-ST dated 20.06.2012. Therefore, service provided by the Government are covered and exclusion therein does not include sub-clause (iv) of Section 66 D(a) and Service Tax liability would be on the service provider i.e. contractor. Therefore, for the period from 01.04.2016 to 30.06.2017, even if the levy operates, the charge does not fall on the appellant or the Government, but it falls on the recipient /contractor under reverse charge.

12. Learned Counsel for the appellant submitted that invocation of extended period of limitation is also not invocable as the issue is interpretational and the appellant being a Government Authority is acting in bonafide belief that they were not liable to pay Service Tax on toll fee collected by him. There is no any suppression of facts or value of toll fee with any intent to evade Service Tax or otherwise. The appellant was under a strong bonafide belief that a toll fee collected by him was not taxable services and therefore, appellant did not to seek any registration or disclosed information regarding this being a non taxable service in the ST>Returns.

Therefore, penalty is not imposable in this regard, reliance has been placed on the following decision:

- i) Hindustan Steel Ltd., Vs State of Orissa [1978 (2) ELT 159 (SC)]
- ii) Akbar Badruddin Jiwani Vs Collector of Customs [1990 (47) ELT 161 (SC)]

13. The Learned Authorized Representative reiterates the findings of the impugned order and also, inter alia, submitted that the appellant receives consideration for transfer of commercial rights and their activity is distinct from toll collection and is taxable.

14. Learned Authorized Representative submitted that sovereign functions are in-alienable and cannot be transferred. Such functions include army, administration of justice, ensuring of law and order, collection of direct and indirect tax etc. These functions are to be performed only by the Government. No doubt, NHAI is constituted by an act of parliament, it is a "body corporate" setup to "act on business principles" under Section 10 of the NHAI Act. Hence, it cannot be contended that collection of toll fee is a sovereign function. Furthermore, Notification No. 22/2016-ST dated 13.04.2016 provides exemption in respect of the assignment of rights to use any natural resources, which have been granted by the Government/Local Authority, whereas no such exemption has been provided for assigning the right to collect toll.

15. Learned AR also submitted that NHAI obtains as consideration a lump-sum amount, irrespective of the amounts of toll paid by users and collected by the contractors. In fact, even when no toll is collected, the contractors are

required to pay the agreed amount to NHAI. The amount so received by NHAI is nothing but a consideration for the service of "Transfer of user fee rights" to the contractors rendered by NHAI. The collection of Service Tax on consideration so received by NHAI is not unconstitutional. For prior to 01.07.2012, the service rendered by NHAI is covered under 'franchise service' and after 01.07.2012 under taxable service. It is also submitted that the service. "Transfer of user fee rights" to the contractors rendered by NHAI is not, per se, a collection of tolls for providing access to a road or bridge. Such service is in relation to collection of tolls and would be in the nature of service used for providing such service and would not be covered under negative list. Hence, Section 66D(h) does not exclude Service Tax on aforesaid "Transfer of user fee rights" service. Learned AR further submitted that as per the contract, the agreed amount shall be paid by the highest bidder, to whom the rights for collection of user fee were given by the appellant, on weekly basis irrespective of vehicle traffic. When no vehicle passed through the toll gate, the contractor may not be able to collect any toll. However, as per contract, contractor is under obligation to pay the agreed remittances on weekly basis and therefore, the said remittances paid by the contractor cannot be treated as "toll fee" and the same is not representing charges collected by way giving access and thereby not covered within the ambit Section 66 D(h) and cannot be treated as non-taxable service. Mere crediting the remittances to the credit of Government of India by NHAI, cannot make the amount as toll fee. In this regard, reliance is placed in the decision of Ahmedabad Tribunal in the case of L&T Vs Commissioner of Service Tax [2019 (921) GSTL - 428 (Tri. - Ahd.)],

wherein, it was held that there is no exemption to any service provided in respect of collection of tax.

16. Learned AR further submitted that Tribunal Hyderabad in the case of Navayuga Engineering Co. Ltd., Vs Commissioner of Central Excise and Customs, Visakhapatnam, wherein, the facts are similar, vide Final Order No. A/30902/2020 dated 03.07.2020, has held that when right to collect toll has been assigned to a contractor, the payment received for transferring the rights are taxable. He further submitted that the Circular dated 22.02.2012 was issued in respect of tolls collected from users of a facility, whereas, in the present case, the service rendered in "Transfer of user fee rights" to the contractors by the appellant. The Circular further stated that charges in the nature of tolls were not covered under BAS, Hence, the Circular is not applicable to the present case.

17. Learned Authorized Representative submitted that appellant had not obtained registration even after the order dated 31.01.2014 and 30.06.2018, and did not pay any Service Tax or observed the requisite procedures including filing of returns, hence, the plea of bonafide belief has no force.

18. We have heard in details to both sides and perused the records with their submissions.

19. The following crucial issues arise for adjudication in the instant appeals:

- i) Whether transfer of "user fee collection rights" constitutes a taxable service;
- ii) Whether the consideration received by NHAI is chargeable to Service Tax.

iii) Whether the activity is excluded under Section 66 D(a) or (h) of the Finance Act, 1994.

iv) Whether NHAI performs sovereign functions and immune from taxation;

v) Whether extended period of limitation, interest and penalties are sustainable;

20. Before considering all the facts and contentions raised by the parties, we consider it necessary to refer to the 'contract', between appellant and contractor and the relevant paras, of which is reproduced below as under:

“(G) AND WHEREAS the authority is empowered under the provisions of the 1988 Act to enter into contracts with any person for the purpose of collection of USER Fee under the National Highways (Fee for the use of National Highways section and permanent Bridge – Public Funded Project) Rules, 1997. The Authority is desirous of engaging the contractor to collect User Fee only at Krishnavaram toll plaza located at Km. 865.553 for the Rajamundry - Tuni section from Km. 830.525 to Km. 914.883, of National Highway No.5.

(H) AND WHEREAS the Authority invited bids from interested entrepreneurs for collection of USER Fee for the use of the said Section of National Highway/the said bridge for a period of one year User Fee. The Contractor is one of those bidders who submitted bid and quoted in its offer that, in lieu of transferring Central Government's User Fee collection rights for the said Section of the National Highway or the said bridge for aforementioned period, the Contractor shall remit the following amount to the Authority so as to be received by the Authority latest by TUESDAY of every week and if Tuesday happens to be a BANK Holiday, then by NEXT bank working day as indicated below by way of a demand draft/pay order for the said section of National Highway Or the said bridge. The remittance shall be as follows:

S. No.	Period	Total Amount Payable by the Bidder to the Authority (PIU-Rajahmundry) for the period mentioned in column B	Amount to be paid per week
A.	B.	C.	D.
a)	(From	Rs.	Rs.

	20/01/2011 00.00 hrs to 19/01/2012 24.00 hrs)	35,82,00,000/- (Rupees Thirty Five Crores Eighty Two Lakhs Only)	68,88,462/- (Rupees Sixty Eight Lakhs Eighty Eight Thousands four Hundred Sixty Tow Only)
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I) AND WHEREAS the Authority has authorized the Krishnavara toll plaza, Project Implementation Unit/Corridor Management Unit Rajahmundry (hereinafter referred to as "the said (to be authorized)" to supervise the discharge of various functions to be performed by the contractor under this Contract and to enter into this Contract with the Contractor.

J) AND WHEREAS the Contractor has authorized Sh. Vinod Kumar Menon, S/O Late Sh. M.S. Menon, who is Sr. Vice President (Business Development) of the Contractor to enter into this Contract with the Authority.

K) AND WHEREAS the parties are desirous of recording the terms and conditions on which the Contractor shall carry out the job of User Fee collection on behalf of the Authority.

Now therefore this contract witnesses in clauses as follows:

1. ENGAGEMENT OF CONTRACTOR:

In consideration of the premises, the Authority hereby engages the party of the Second Part as the Contractor and the Contractor do hereby agrees to act as the Contractor of the Authority for collection of USER Fee for the use of the said Section of National Highway/the said bridge."

21. The agreement clearly establishes that NHAI does not merely authorize contractors to assist in collection of toll, it transfers valuable and exclusive commercial right to collect user fee and appropriate the collection for fixed consideration. The contractors pay a predetermined amount irrespective of actual traffic. Thus, the consideration paid to NHAI is not a statutory toll itself, but a contractual consideration for assignment of exploitable business right. This transaction possesses essential characteristics of a commercial

service arrangement and is distinct from the statutory levy i.e. Toll collected from road users.

22. Section 65 (47) of the Finance Act, 1994 defined "franchise service" as an agreement whereby, representational rights to sell or provide services are granted for consideration. NHAI granted contractors the representational right to collect toll in its name. Without such authorization, contractors had no legal authority to collect toll. Appellant has received a lump sum amount as consideration for the said transfer of right, which is payable irrespective of the use of this facility. In the case of Navayuga Engineering Co. Ltd., supra, where the facts were very similar, the bench Hyderabad has held that the services rendered by NEPL to the contractors were in the nature of "franchise service". Accordingly, the activity squarely falls within the ambit of "franchise service". Section 65(47) of the Finance Act, 1994 defined the franchise as thus:

"(47) "franchise" means an agreement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved"

23. Taxability, after 01.07.2012,

With the introduction of negative list regime, all services became taxable unless specifically exempted or placed in the negative list. Assignment of user fee collection rights for consideration to a contractor constitutes a declared economic activity and is therefore a "service" under Section 65 B (44) of the Finance Act. No specific exemption covers this activity. Section 66 D(h) of the Finance Act excludes service by way of access to a road or

bridge on payment of toll charges. The present case does not concern the actual toll collected by the contractor from road users. The subject matter is the consideration received by NHAI from contractors for transfer of the right to collect such toll. The exclusion is, therefore, inapplicable.

24. Learned Counsel for the appellant has additionally argued that the transaction between the appellant and the contractor falls under Section 66 D(a) of the Finance Act since the services are deemed to have been rendered by the Central Government. In the present case, issue is not involved to provide a facility, but the issue is to collect toll. Government had authorized appellant to collect the toll by virtue of which appellant got the right to collect the toll. Therefore, appellant has transferred this right to the contractors. Such transfer of right constitutes a service 01.07.2012 in as much as appellants received a lumpsum consideration not relatable is collection of toll in each case. Appellant was not mere executing authority but had transferred the said right to collect the toll to the contractor.

25. Further, though NHAI is a statutory authority, it is constituted as a body corporate under Section 3(2) of the NHAI and is required to act on business principles under Section 10. Section 10 of the NHAI Act provides that "In the discharge of its functions under this Act, the Authority shall act, so far as may be, on business principles." Transfer of toll collection rights through competitive bidding for commercial consideration is manifestly a business activity and not an inalienable sovereign function. Sovereign functions are those which can only be performed by the state, such as defence, legislation, policing and administration of justice sovereign functions cannot be delegated. Commercial exploitation of toll collection

rights does not fall within that category. In the case of Larson & Toubro Ltd., supra, Tribunal Ahmedabad, clarified that the tax is on compensation received for granting the right to collect toll and not on toll itself. The relevant para of the decisions as follows:

"4.1 The Service Tax in the instant case has been demanded, not on the amount of toll collected, but on the compensation received by the appellant with respect to collection of such toll. While the toll may be a tax, the compensation received by the appellant is not a tax. The compensation received by the appellant is for the service provided by the appellant to AMTRL in respect of collection of toll and other assorted services. There is no exemption to any service provided in respect of collection of tax, and therefore, first argument of the Ld. Counsel cannot be sustained."

26. In Navayuga Engineering Co. Ltd., supra, this bench held that when right to collect toll has been assigned to a contractor, the payments received for transferring the rights are taxable. The relevant para of the judgment as thus:

"26. In this case, the appellant was to provide services to the consumers in the form of maintaining the bridge and allowing its use for which they were entitled to collect remuneration in the form of toll fee. The toll fee, evidently was to be collected in the name of the appellant because they were entitled to collect it as per the agreement with the Government of Andhra Pradesh. This was the business model of the appellant as far as this project is concerned. The appellant had given this right to GTBPL who was rendering all the services which the appellant was required to render and was (11) Appeal No. ST/730/2010 collecting fees which the appellant was entitled to collect. The receipts were also issued in the name of the appellant themselves. This changed only when the investigations had begun. Until these investigations had begun, every user of that bridge was given the impression that the appellant was rendering service and he was paying a fee for it. Similarly, the Government of Andhra Pradesh was also under the impression that the appellant was rendering service and was collecting fees as we understand from the agreement to which no changes have been produced before us. No document has been produced before us that the Government of Andhra Pradesh has either agreed to the arrangement between the GTBPL and the appellant or has concurred to it.

27. Thus, we find that, as far as both the Government of Andhra Pradesh and the users are concerned, the service which GTBPL was rendering was being rendered by the appellant and the fee which they were collecting was

being collected by the appellant. This is akin to McDonald's restaurant being run in a town by a franchisee. The consumer sees it as McDonald's restaurant although it is actually being operated by the franchisee. In view of the above, we find that the appellant has provided franchisee service to GTBPL and had collected an amount towards it.

28. Learned counsel for the appellant argued that if they were rendering service the amounts collected as toll fee should have been transferred to them, whereas, GTBPL has actually taken these amounts in their accounts. We do not find much force in this argument. In a franchise agreement, the franchisor and franchisee can have any convenient method of financial arrangement. What is important is the service must be provided and the franchisor must allow franchisee to provide that service and collect the amounts. The franchisor and franchisee can have an arrangement where a portion of amount is paid to the franchisor on every transaction or they could have an arrangement of lump sum payment or any combination of two or any other suitable arrangement. In this case, the entire amount has been paid upfront in one go by the franchisee, GTBPL, to the appellant. Therefore, the entire toll fee is being retained by the franchisee, GTBPL."

27. Judicial discipline requires following aforesaid decisions, particularly when one of them emanates from this bench on identical facts.

28. Learned Counsel for the appellant relied on the decision, in the case of Ideal Road Builders Pvt Ltd., Vs Commissioner of Service Tax, Mumbai [2013 (31) S.T.R. 350 (Tri-Mumbai)] Collection of toll charges from road user is not taxable. It is not applicable in the present case factual matrix, although this case has been decided by the Tribunal on basis of Board circular dated 22.02.2012, which is reproduced below:

"The Board Circular dated 22.2.2012 is reproduced below:-

"A representation has been received by the Board, seeking clarification regarding leviability of Service Tax on fee (hereinafter referred as 'toll') paid by users, for using the roads. The representation has been examined.

2. Service Tax is not leviable on toll paid by the users of roads, including those roads constructed by a Special Purpose Vehicle (SPV) created under an agreement between National Highway Authority of India (NHAI) or a State Authority and the concessionaire (Public Private Partnership Model, build-Own/Operate-Transfer arrangement). 'Tolls' is

a matter enumerated (serial number 59) in List-II (State List), in the Seventh Schedule of the Constitution of India and the same is not covered by any of the taxable services at present Tolls collected under the PPP model by the SPV is collection on own account and, not on behalf of the person who has made the land available for construction of the road.

3. However, if the SPV engages an independent entity to collect toll from users on its behalf and a part of toll collection is retained by that independent entity as commission or is compensated in any other manner, Service Tax liability arises on such commission or charges, under the Business Auxiliary Service [Section 65(105)(zzb) read with Section 65(19) of the Finance Act, 1994].

4. Further, an SPV formed as a result of agreement between NHAI or State Authority and the concessionaire under the BOT arrangement, cannot be considered as an agent of the NHAI. Renting, leasing or licensing of vacant land by the NHAI or State Authority to an SPV for construction of road and such construction do not attract Service Tax.

5. This Circular may be communicated to the field formations and Service Tax assesseees, through Public Notice / Trade Notice.”

29. The Notification No. 22/2016-ST grants exemption to assignment of rights to use natural resources under specified conditions Toll collection rights cannot be equated with assignment of rights to use natural resources. Therefore, the notification is not applicable.

30. On the issue of limitation, we note that the appellants did not obtain Service Tax registration, did not file returns and did not pay tax, despite receiving substantial consideration over several years. The plea of bonafide belief cannot be accepted, in view of the clear statutory provisions and the commercial nature of transaction. Accordingly, sustainability of extended period under Section 73 (1) of the Finance Act by the Adjudicating Authority in the facts of the case cannot be sustained. In terms of Section 75 of the Finance Act, 1994 interest is compensatory and follows automatically upon delayed payment of tax therefore, the demand of interest is also sustainable.

31. In view of forgoing discussions, we hold that Appellant NHAI transferred valuable commercial rights to contractors for consideration, Such transfer constitutes "franchise service" up to 30.06.2012 and taxable service thereafter. Section 66 D(a) or (h) of the Finance Act does not apply in the present case, as the impugned activity is not a sovereign function. Therefore, Service Tax demand is legally sustainable. Extended period of limitation was also rightly invoked and penalties properly imposed in the given factual matrix.

32. In view of the above, appeals filed by the appellant liable to be dismissed.

33. Therefore, Appeals are dismissed.

(Pronounced in the open court on 02.06.2026 )

**(A.K. JYOTISHI)**  
**MEMBER (TECHNICAL)**

**(ANGAD PRASAD)**  
**MEMBER (JUDICIAL)**