

**GOVERNMENT OF WEST BENGAL
DIRECTORATE OF COMMERCIAL TAXES
14, BELIAGHATA ROAD, KOLKATA-700015**

TRADE CIRCULAR No. 15/2024
(Corresponding Central Circular No. 221/15/2024-GST)
DATED: 08.07.2024

Subject: Clarification on time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model.

Representations have been received from the trade and the field formations seeking clarification regarding the time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects in Hybrid Annuity Mode (HAM) model, where certain portion of Bid Project Cost is received during construction period and remaining payment is received through deferred payment (annuity) spread over years.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Commissioner, in exercise of his powers conferred by section 168 of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as “WBGST Act”), hereby clarifies the issues as under:

S.No.	Issue	Clarification
1.	Under HAM model of National Highways Authority of India (NHAI) , the concessionaire has to construct the new road and provide Operation & Maintenance of the same which is generally over a period of 15- 17 years and the payment of the same is spread over	Under the Hybrid Annuity Model (HAM) of concession agreements, the highway development projects are under Design, Build, Operate and Transfer model (DBOT), wherein the concessionaire is required to undertake new construction of Highway, as well as the Operation and Maintenance (O&M) of Highways. The payment terms for the construction portion as well

<p>the years. What is the time of supply for the purpose of payment of tax on the said service under the HAM model?</p>	<p>as the O&M portion of the contract are provided in the agreement between National Highways Authority of India (NHAI) and the concessionaire.</p> <p>2.1 A HAM contract is a single contract for construction as well as operation and maintenance of the highway. The payment terms are so staggered that the concessionaire is held accountable for the repair and maintenance of the highway as well. The contract needs to be looked at holistically based on the services to be performed by the concessionaire and cannot be artificially split into two separate contracts for construction and operation and maintenance, based on the payment terms. The concessionaire is bound contractually to complete not only the construction of the highway but also to operate and maintain the same.</p> <p>2.2 In HAM contract, the payment is made spread over the contract period in installments and payment for each installment is to be made after specified periods, or on completion of an event, as specified in the contract. The same appears to be covered under the ‘Continuous supply of services’ as defined under section 2(33) of the WBGST Act.</p> <p>2.3 As per clause (a) of Section 13(2) of WBGST Act, the time of supply in respect of a supply of services shall be the date of issue of Invoice, or date of receipt of payment, whichever is earlier, in cases where invoice is issued within the period prescribed under section 31 of WBGST Act. Further, as per clause (b) of Section 13(2) of WBGST Act, in cases where</p>
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		<p>invoice is not issued within the period prescribed under section 31, the time of supply of service shall be date of provision of the service or date of receipt of payment, whichever is earlier. However, as per section 31(5) of WBGST Act, in cases of continuous supply of services, where the payment is made periodically, either due on a specified date or is linked to the completion of an event, the invoice is required to be issued on or before the specified date or the date of completion of that event.</p> <p>2.4 Accordingly, as per section 13(2) of WBGST Act, read with section 31(5) of WBGST Act, time of supply of services under HAM contract, including construction and O&M portion, should be the date of issuance of such invoice, or date of receipt of payment, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. However, in cases, where the invoice is not issued on or before the specified date or the date of completion of the event specified in the contract, as per clause (b) of section 13(2), time of supply should be the date of provision of the service, or date of receipt of payment, whichever is earlier. In case of continuous supply of services, the date of provision of service may be deemed as the due date of payment as per the contract, as the invoice is required to be issued on or before the due date of payment as per the provisions of Section 31(5) of WBGST Act.</p>
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		<p>3. In the light of above, it is clarified that the tax liability on the concessionaire under the HAM contract, including on the construction portion, would arise at the time of issuance of invoice, or receipt of payments, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. If invoices are not issued on or before the specified date or the date of completion of the event specified in the contract, tax liability would arise on the date of provision of the said service (i.e., the due date of payment as per the contract), or the date of receipt of the payment, whichever is earlier.</p> <p>4. It is also clarified that as the instalments/annuity payable by NHAI to the concessionaire also includes some interest component, the amount of such interest shall also be includible in the taxable value for the purpose of payment of tax on the said annuity/instalment in view of the provisions of section 15(2)(d) of the WBGST Act.</p>
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3. Difficulty, if any, in implementation of this Trade Circular may please be brought to the notice of the Commissioner.

Sd/-
(DEVI PRASAD KARANAM, IAS)
Commissioner, State Tax
West Bengal

Memo. No.- 72/CT/PRO
3C/PRO/2024

Date: 08.07.2024

Copy forwarded to the Special Commissioner, State tax /ISD for information and for uploading it on the official website of the Directorate for information of all concerned.

Sd/-
(Joyjit Banik)
Additional Commissioner, State Tax
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PRO