



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
(पोत परिवहन, सड़क परिवहन और राजमार्ग मंत्रालय)
National Highways Authority of India

(Ministry of Shipping, Road Transport and Highways)

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NHAI/13013/3/02-03/CMD-CO/Policy on Toll (Vol. IX)

March 31, 2006

CIRCULAR NO.: NHAI/COMMERCIAL OPERATIONS/072

Sub: Legal opinion on the matter of Stamp Duty

Our draft bid document for collection of user fee through Private Contractor circulated to all PIUs vide our letter no. NHAI/13013/13/05-06/CMD-CO/Misc dated 1.12.2005 provides under Section 37 of Part IV relating to Stamping and Engrossing that Central Government shall be liable to pay stamp duty payable on registration of the contract.

2. Since the matter of Stamp Duty payable on registration of the contract to be entered into with Private Contractor for collection of user fee at various plazas is a critical matter as it directly affects the amount of bid to be quoted by the bidders, opinion on the applicability of stamp duty on the aforesaid bid document was sought from M/s. Lakshmi Kumaran and Sridharan, Advocates, New Delhi. They have opined that in order to safeguard the interest of NHAI, if in the contract Government undertakes the liability to pay stamp duty on the said contract, exemption under the provisions of Section 3 of Stamp Act 1899, would be available and no stamp duty on the said contract shall be payable.
3. Based on the above opinion, suitable changes in the bid document (duly concurred by Finance Division) have been made by inserting "contract entered into on behalf of the Central Government" at relevant places in the bid document, circulated to all PIUs.
4. We are enclosing a copy of the above opinion for apprising all Project Directors regarding exemption of NHAI on behalf of Central Government under the provisions of Section 3 of Stamp Act 1899 from payment of stamp duty on the contract entered into /to be entered into for engagement of Private Contractor for fee collection.

This issues with the approval of Competent Authority.

(Vishal Gupta) 31/3

Deputy General Manager (CO)

Encls: As above

To,

All PIUs/CMUs
NHAI

Copy submitted for favour of information:

All Members
All CGMs/CVO
All GMs
PS to Chairman
Librarian

**P.S.: Legal opinion on the matter of Stamp
Duty has already been sent by e-mail.**



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LEGAL OPINION

QUERIST: M/s NATIONAL HIGHWAY AUTHORITY OF INDIA

M/s National Highway Authority of India (hereinafter "the Querist") has sought my opinion on the applicability of stamp duty on the agreement for collection of user fees through Private Contractor.

1.0 Brief Facts

1.1 The Querist is an authority constituted under and governed by the provisions of the National Highways Authority of India Act, 1988.

1.2 The Querist has issued circular No. NHAI/Commercial Operation/48 dated 20.10.2004 which provides guidelines for collection of user fee through Private Contractors. The circular also provides standard format of agreement to be entered into.

1.3 The Querist has sent us various documents in respect of the proposed transaction.

1.4 The Querist has sought our opinion on the following Queries:

"1. Whether stamp duty is payable if the Contract is awarded as per bid documents enclosed with Circular No NHAI/CommercialOperations/48 dated 20.10.2004.

2. If not, how can the interest of NHAI be protected if the State Government does not agree with our stand?

3. If Yes,

(i) Can certain amendments (duly safeguarding the business interest of NHAI) in the bid documents avoid the levy of stamp duty or minimize the same.

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(ii) Can any legal amendments be proposed in the Indian Stamp Act, 1899 or any other act, for consideration of Central Government.

4. *Whether OMT concept will also attract the levy. (A draft bid document (provisional) on OMT concept enclosed)”*

Our Opinion

INDIAN STAMP ACT, 1899

2.1 Section 3 of the Indian Stamp Act, 1899 (hereinafter “the 1899 Act”) provides for the liability of various instruments mentioned in Schedule I, I-A and I-B to the 1899 Act to stamp duty. Vide Article no. 35 of Schedule I-B, a lease instrument has been included in the list of the instruments liable to stamp duty. The relevant extract of Art 35 reads as follows:

“35. Lease, including an under-lease or sub-lease and any agreement to let or sublet-

(a)...

(b) Where the lease is granted for a fine or premium or for money advanced and where no rent is reserved,-

...”

2.2 Thus, a lease which is granted for lump sum consideration and no periodic payment or rentals would an instrument subject to stamp duty. Section 2(16) of the 1899 Act provides the definition of lease. Section 2(16) reads as follows:

“(16) "Lease" means a lease of immovable property and includes also—

(a) a patta;

(b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for, immovable property;



(c) any instrument by which tolls of any description are let;

(d) *any writing on an application for a lease intended to signify that the application is granted.*”

2.3 Clause (c) of Section 2(16), which is of relevance here, provides that an instrument by which tolls of any description are let would be included in ‘lease’. Thus, the first aspect to be checked is whether the agreement for collection of user fee through private contractor shall amount to a lease.

2.4 Clause (c) of Section 2(16) includes tolls of any description. The term “toll” has not been defined in the 1899 Act. Therefore, we shall see the meaning of the word “toll” as interpreted by various Courts.

2.5 In **State of U.P. v. Devi Dayal Singh, (2000) 3 SCC 5**, in the context of Tolls Act, 1851, Hon’ble Supreme Court of India observed:

“The concept of “toll” is derived from English jurisprudence. Shorn of connotations which are historically irrelevant in this country, a “toll” may be defined as a sum of money taken in respect of a benefit arising out of the temporary use of land. It implies some consideration moving to the public either in the form of a liberty, privilege or service. In other words, for the valid imposition of a toll, there must be a corresponding benefit.”

2.6 In **Banney Khan V. Chief Inspector, Stamp AIR 1976 All 475**, a Full Bench of Hon’ble Allahabad High Court in the context of Section 2(16)(c) holding that market fees as toll, held :

“It is needless to say that the word “toll” used in this sub-section means any sum of money which is taken in respect of some benefit, the benefit being temporary use of land, that is, fares and market tolls.”

2.7 The meaning of the term “toll” as provided in various Dictionaries are as follows:



New Webster's Dictionary and Thesaurus:

"a tax or charge levied on those who use a particular service (e.g. a bridge, road etc.)"

Shorter Oxford English Dictionary

"A general term for ..

(b) for permission to pass somewhere, do some act, or perform some function"

2.8 Thus, it can be seen that the term 'toll' is a general term and would mean any amount which is collected for temporary use of an immovable property. Further, vide Clause (c) which provides 'tolls of any description', any amount collected by whatever name called for using a road shall amount to a toll under Section 2(16)(c).

2.9 Section 7 of the National Highways Act, 1956 (hereinafter "the 1956 Act") provides for levy of fees for services or benefits rendered on National Highways. Section 7 reads as follows:

"(1) The Central Government may, by notification in the Official Gazette, levy fees at such rates as may be laid down by rules made in this behalf for services or benefits rendered in relation to the use of ferries, permanent bridges the cost of construction of each of which is more than rupees twenty-five lakhs and which are opened to traffic on or after the 1st day of April, 1976, temporary bridges and tunnels on national highways 5[and the use of sections of highways.

Provided that if the Central Government is of opinion that it is necessary in the public interest so to do, it may, by like notification, specify any bridge in relation to the use of which fees shall not be leviable under this sub-section.

(2) Such fees when so levied shall be collected in accordance with the rules made under this Act.

..."

2.10 Thus, it can be seen that the fees is charged for the use of sections of national highways, permanent bridges and temporary bridges etc. Therefore, in the case of the



Querist where an amount is charged for the use of a section of highway, such amount would fall within the meaning of the word 'toll' as used in Section 2(16)(c).

Letting of Tolls

3.1 The next question that arises as to what is considered as letting of tolls and whether an agreement with a private contractor to collect and retain the fees/tolls in lieu of lump sum money would amount to letting of tolls.

3.2 In **Uppalapati Durga Prasad V. Executive Engineer (R&B) N.H. Division AIR 2001 AP 442**, Hon'ble Andhra Pradesh High Court has held:

"The instrument by which right to collect toll is conveyed has to be treated as lease for the purpose of Stamp Act."

3.3 In **Banney Khan (supra)**, the Hon'ble Allahabad High Court has held that an agreement wherein the right to collect the market fees for one year in consideration of a lump sum amount shall amount to letting of the tolls. The Court held:

"What is, therefore, to be seen is whether the document is an instrument by which toll of any description are let. In our opinion the agreement before us comes clearly within the language quoted above. This is a document by which all lands and buildings known as "New Subzi Mandi" have been made over by the owners thereof to the applicant for a period of year. He is entitled to realize fee from occupiers thereof at a certain rates in consideration of a sum fixed by public auction. This is "letting of tolls" and the document is covered by Section 2(16)(c) of the Stamp Act."

3.4 Thus, letting of tolls means by which the right to collect toll is conveyed to a third party. The third party collects the actual tolls and in return pay a pre decided amount to the owner either in lump sum or in form of periodic rents.

3.5 In the Querist's case, the right to collect tolls for use of the Highways is conveyed to a private contractor and the contractor pays a lump sum amount in return as consideration. Thus, the same would amount to letting of tolls.



EXEMPTION FROM STAMP DUTY

4.1 Section 3 of the 1899 Act is the charging section which provides for duty on various instruments. Proviso to Section 3 provides the exemption from the Stamp Duty. Proviso to Section 3 reads as follows:

“Provided that no duty shall be chargeable in respect of—

(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act 1894, or under Act 19 of 1838, or the Indian Registration of Ships Act, 1841, as amended by subsequent Acts”

4.2 For the purpose of Querist’s case, Clause (1) of the proviso appears relevant which is discussed in detail in subsequent paragraphs.

4.3 Clause (1) of the proviso prescribes two requirements for the exemption, namely:

- a) any instrument should be executed by, or on behalf of, or in favour of, the Government; and
- b) but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument.

First Requirement of Proviso

5.1 The first requirement to be checked is whether the agreement with the private contractors to collect and retain fees in lieu of lump sum payment can be said to have been made on behalf of Government.

5.2 The tolls/fees are levied under the power of Section 7 of 1956 Act as reproduced above. It is to be noted that the fees is levied directly by the Central Government. In



other words, the ownership rights over that fees vests with the Central Government. Section 7(2) further provides that the fees so levied shall be collected in accordance with the rules made under the 1956 Act.

5.3 The Central Government under Section 9 of the 1956 Act has power to make Rules for prescribing the rate at which the fees can be levied and the manner in which such fees shall be collected.

5.4 Therefore, the fees is levied only *by the Central Government* and it is only in accordance with the instructions and directions of the Central Government that the fees levied under Section 7 can be collected.

5.5 The National highways (Fees for the Use of National Highways Section and Permanent Bridge – Public Funded Project) Rules, 1997 (hereinafter “the 1997 Rules”) has been made in pursuance of section 9 of the 1956 Act.

5.6 Rule 3 of the 1997 Rules provides that the fees shall be levied and paid, on behalf of the Central Government, to the Querist in respect of those national highways as entrusted to the Querist. Thus, the levy and payment shall be on behalf of the Central Government. Rule 3 reads as follows:

“3. These shall be levied and paid to the executing agency, on behalf of the Government of India, fee on mechanical vehicles for the use of National Highway Section or permanent bridge or both at the rates notified by the Central Government, in the Official Gazette in respect of such National Highway Section or permanent bridge or both.”

5.7 Therefore, the Querist is only under the responsibility of collecting the fees which belongs to the Central Government. The Querist does not have any rights whatsoever to levy fees and is only entrusted with the function to collect the fees. Thus, there is no nexus *inter se* between the tolls and the Querist. In other words, the Central Government may also appoint any other person to collect the tolls instead of the Querist.

5.8 Rule 9 prescribes the rules for collection and retention of fees by a franchisee.

5.9 Rule 2(d) lays down the definition of “franchisee”. The definition reads as follows:



“(d) “franchisee” means a firm or a company or a person to whom the franchise to collect and retain the fee has been awarded through auction.”

5.10 Rule 9 provides for the method of fee collection through franchisee. Rule 9 provides:

“(1) In case the fee collection is to be done through the franchisee, the collection of fee and retaining such fee shall be auctioned under the instructions for specific periods as the Central Government may issue and the money shall be collected by the executing agency or his authorised representative as per the terms and conditions of the agreement executed for such purposes.

(2) The mode of fee collection shall be decided by the franchisee referred to in sub-rule (1) with the approval of the Central Government.

(3)...

(4) The franchisee authorised to collect and retain the fee under these rules shall nominate an official as in charge of fee collection who shall be responsible to ensure that fees are collected at not more than the notified rates and the fee collection is smooth without causing hardship to the road users and for all other matters connected with the fee collection on National Highway Section or permanent bridge.

(5) ...

(6) The executing agency shall remit the auction money so collected from the franchisee by a demand draft to the Pay and Accounts Officer, National Highways, Ministry of Surface Transport, New Delhi. The Pay and Accounts Officer shall account the amount so received in the relevant receipt head in his books.

5.11 Therefore, pursuant to Rule 9 only, the franchisee is engaged for collection of fees and has been given the right to collect and retain the fees. We shall, therefore, see the scheme of Rule 9 of the 1997 Rules.



5.12 The Rule provides that the collection and retention of fees shall be auctioned under the instructions of the Central Government. The Querist shall only be responsible for collection of the auction money and remitting it to the 'Pay and Accounts Officer, National Highways, Ministry of Surface' as per Rule 9(6).

5.13 The mode of collection of fees shall be decided by the franchisee with the approval of Central Government.

5.14 Thus, the auction of the collection and retention of fees shall be made under the instructions of the Central Government and any proceeds of such auction belong to the Central Government.

5.15 The National Highways Authority of India Act, 1988 (hereinafter "the NHAI Act") lays down the function of the Querist in section 16. One of the functions of the Querist is to collect fees on behalf of the Central Government for services or benefits rendered under section 7 of the 1956 Act and such other fees on behalf of the State Government on such terms and conditions as may be specified by such State Governments.

5.16 Thus, the Querist is only under the duty obligation to collect the fees on behalf of the Central Government. The Querist cannot appropriate the tolls for any purpose other than those specified in the 1956 Act and/or NHAI Act.

5.17 Therefore, the following facts appears in relation to the collection of tolls:

5.17.1 The power to levy fees vests with the Central Government pursuant to section 7 of the 1956 Act.

5.17.2 The Querist is only given a function to collect the fees/tolls on behalf of Central Government

5.17.3 The auction of collection and retention of fees to a franchisee takes place in accordance with the instructions of the Central Government

5.17.4 In case the right to collect and retain the fees is awarded to a franchisee; the Querist is responsible only for collection of lump sum money from the franchisee and deposit it to the funds of Central Government.



Agreement being on behalf of Government

6.1 In the light of above facts, we shall analyse whether the agreement entered into by the Querist is on behalf of the Government.

6.2 The words 'on behalf of' is not defined in the 1899 Act. We may, therefore, refer to certain dictionary meanings, which are as follows:

- (i) **Longman Dictionary of Contemporary English** has defined '*on behalf of*' as under:
 - "a) *instead of someone, or as their representative;*
 - b) *because of someone;*"

- (ii) **Chambers English Dictionary** defined 'on behalf of' as under:
"on someone's behalf speaking or acting;"

- (iii) **Collins Cobuild English Dictionary for Advanced Learners** has defined 'behalf' as under:
"If you do something on someone's behalf, you do it for that person as their representative."

- (iv) **Webster's Dictionary of English Usage** has defined 'on behalf of' as under:
"On behalf of means as the agent, representative, or spokesman for."

- (v) **WordNet 2.0 by Princeton University** has defined 'behalf' as under:
 - 1. *as the agent of or on someone's part (usually expressed as "on behalf of" rather than "in behalf of"); "the guardian signed the contract on behalf of the minor child"; "this letter is written on behalf of my client";*
 - 2. *for someone's benefit (usually expressed as 'in behalf' rather than 'on behalf' and usually with a possessive); "in your behalf";*



"campaigning in his own behalf"; "spoke a good word in his friend's behalf"

6.3 The above dictionary meanings clearly lead to the conclusion that 'on behalf of' indicates an action undertaken representing somebody else. In other words, when you do something on behalf of someone, you are representing that someone, who was otherwise obliged to do it. Therefore, if 'X' has entered into a contract with 'Z' on behalf of 'Y', it not only implies that the contract is entered between 'X' and 'Z', but it also means it is an agreement between 'Y' and 'Z' and the Agreement binds 'Y'.

6.4 In the Querist case, the power to levy tolls vests with the Central Government and the Querist is only given the function to collect the tolls. The collection of the tolls whether by the Querist or the contractor/franchisee is on behalf of the Government.

6.5 Further, the amount so collected shall be deposited into the funds of the Central Government. In other words, the Central Government has the beneficial interest in the tolls levied and collected. The Querist does not enjoy any beneficial interest in the tolls.

6.6 Moreover, the auction by which the right to collect and retain the tolls are given to the franchisee are conducted as per the instructions and terms and conditions of the Central Government.

6.7 In the case of **Basant Industries Vs. Collector of Central Excise, Kanpur [1995 (75) ELT 21]**, the Hon'ble Supreme Court decided on the point whether a particular manufacturing activity undertaken by various parties was done on behalf of the appellant. The Court held:

*"The ambit of controversy thus was not so much whether pumps were manufactured by different parties but whether it was manufactured on appellant's behalf. The Tribunal in this regard found it as fact that **the appellant had no control either over the manufacturing process or manufacturing parties**. Once the Tribunal recorded this finding it misdirected itself in entering into the question whether the pumps manufactured by third parties was mere assembling on raw material or component supplied by the appellant or it was*



manufacture. Even assuming that what was supplied was component, but that by itself was not sufficient to fasten liability on the appellant. The component unless processed did not result in production of pump. And that having been done by independent units for payment the finding that it was manufactured on behalf of the appellants without any material cannot be upheld. In fact, no such finding has been recorded by the Tribunal nor any material could be pointed out which could establish that it was the appellant who manufactured the pumps or the independent units from whom it got the pumps manufactured were doing so on behalf of the appellant. The Tribunal in extending the meaning of the expression 'manufacturing' on behalf of the appellant by introducing the concept of supply of components went beyond the ambit of the notification."

6.8 It can be inferred from the above judgement that where a person has a control over the activities of the other person, the activities undertaken by the other person can be said to have been done on behalf of the first person having the control. Applying the same analogy, where the Central Government is having the control over the manner of collection and manner of auctioning the rights of collection, the Querist is only discharging its function as the representative of the Central Government and the agreement entered into by the Querist is on behalf of the Central Government.

Second Requirement of the Proviso

7.1 The second requirement of the proviso is that but for the exemption provided by the proviso the Government should be liable to pay the duty.

7.2 The liability to pay duty in case of lease has been provided in Section 29 of the 1899 Act. The relevant portion of Section 29 reads as follows:

"29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne,—



(c) in the case of a conveyance (including re-conveyance of mortgaged property:) by the grantee: in the case of a lease or agreement to lease—by the lessee or intended lessee;

(d) in the case of a counterpart of a lease—by the lessor”

7.3 Thus, in absence of the contrary in the agreement, in the case of lease the liability of payment of stamp duty is on the lessee and not the lessor. Thus, in the Querist's case, the liability of payment of stamp duty shall be on the franchisee/contractor in accordance with section 29.

7.4 However, section 29 provides for the liability in absence of anything contrary in the agreement. In other words, where a contract of lease provides for the liability of stamp duty which is contrary to section 29 then the provisions of the contract shall prevail over section 29.

7.5 Thus, in the Querist's case, if it is expressly agreed that the liability to pay stamp duty is on Central Government, the second requirement of the proviso to section 3 will also get satisfied. In that case, the Government will not be liable to pay stamp duty vide first proviso to section 3.

7.6 Thus, the contract entered into by the Querist for the right to collect tolls, which is on behalf of the Central Government, if it is agreed that the liability of the stamp duty shall be on the Central Government, the contract shall not attract stamp duty.

OMT CONCESSION AGREEMENT

8.1 The Querist has also sent to us a model concession agreement (hereinafter “Concession Agreement”) based on built, operate and transfer (BOT) concept.

8.2 Under the Concession Agreement, the Querist shall grant a concession to a successful bidder contractor (hereinafter “concessionaire”) for construction and thereafter operation and maintenance of a particular section of a national highway.

8.3 It should be noted that the scope of the concession agreement and the provision of the various Acts governing them are different from those discussed above.



8.4 Section 8A of the 1956 Act lays down that the Central Government may enter into an agreement with any person in relation to the development and maintenance of the whole or any part of a national highway. Section 8A reads as follows;

“(1) Notwithstanding anything contained in this act, the Central Government may enter into an agreement with any person in relation to the development and maintenance of the whole or any part of a national highway.

(2) Notwithstanding anything contained in Section 7 the person referred to in Sub-section (1) is entitled to collect and retain fees at such rate, for services or benefits rendered by him as the Central Government may, by notification in the Official Gazette, specify having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such national highway, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement.

(3) A person referred to in Sub-section (1) shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 on the national highway forming subject matter of such agreement for proper management thereof.”(emphasis supplied)

8.5 Thus, it is only the Central Government which is empowered to enter into a contract with a person to develop and maintain the whole or a part of a national highway. Further, the right given to the Concessionaire to collect and retain the tolls is the consideration for the services and benefits rendered by him to the Central Government.

8.6 Pursuant to section 8A of the 1956 Act, the Central Government has notified “The National Highways (Collection Of Fees By Any Person For The Use Of Section Of National Highways/Permanent Bridge/Temporary Bridge On National Highways) Rules, 1997” (hereinafter “1997 Collection Rules”).



8.7 Rule 3 of the 1997 Collection Rules provides:

“(1) The Central Government may enter into an agreement with any person in relation to development and maintenance of the whole or any part of a national highway/permanent bridge/temporary bridge on national highway as it may decide, whereby the person may be permitted to invest his own funds for the development/maintenance of a section of national highway/permanent bridge/temporary bridge and to collect and retain the fees at agreed rates from different categories of mechanical vehicles for an agreed period for the use of the facilities thus created, subject to the terms and conditions of the agreement and these rules.

(2) The rates of fees and the period of collection shall be decided and shall be specified by notification in the Official Gazette by the Central Government having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such section, interest on the capital invested, reasonable return; the volume of traffic and the period of such agreement.

(3) On completion of the period of collection of fees by the person, as per the agreement, all rights pertaining to the section/permanent bridge/temporary bridge on national highway shall be deemed to have been taken over by the Central Government and that Government shall continue with the collection of fees as notified from time to time.

...”

8.8 Thus, the 1997 Collection Rules also provide that only the Central Government can enter into a contract with a person for development and maintenance of a section of the highway.

8.9 We have been informed that the Central Government by notification nominates/appoints the Querist to enter into such concession agreement with a Concessionaire. The Querist does not have any inherent power to enter into any such contract. Thus, the Querist acts on behalf of the Central Government.



8.10 As discussed above, first proviso to the Section 3 of the 1899 Act exempts all contract entered into by or on behalf of the Government from stamp duty if the duty liability is on the Central Government.

8.11 It may be contended that the Concession Agreement does not amount to letting of tolls and the right to collect and retain tolls is given as the consideration for the services rendered by the Concessionaire by developing the highway.

8.12 However, under the Concession Agreement the Concessionaire receives a grant from the Querist which is arrived at after taking into account the expenditure incurred by the Concessionaire in developing and maintaining the highway and the expected revenue which would be generated to the Concessionaire from collection and retention of tolls.

8.13 Further, the Concessionaire is also in turn liable to pay a premium in the form of concession fees to the Querist based on the collection made by the Concessionaire.

8.14 Thus, the services rendered by the Concessionaire as also the right given by the Querist has been given a monetary value; and the amount of grant & concession fees is arrived after netting off the two monetary values so given.

8.15 Thus, the Concession Agreement in essence contains the contract by which the right to collect and retain the tolls are given to the Concessionaire. As discussed in earlier paragraphs, such contract will amount to letting of tolls as envisaged in the 1899 Act.

8.16 However, the Concession Agreement is entered into by the Querist on behalf of the Central Government on account of various provisions of the 1956 Act and the 1977 Rules.

8.17 Thus, the Concession Agreement entered into by the Querist is on behalf of the Central Government and if it is agreed that the liability of the stamp duty shall be on the Central Government, the Concession Agreement shall not attract stamp duty.



REPLIES TO THE QUERIES

Query 1: *Whether stamp duty is payable if the Contract is awarded as per bid documents enclosed with Circular No NHAI/CommercialOperations/48 dated 20.10.2004.*

Reply : Yes, the draft bid documents and the contract as sent to us would attract stamp duty.

Query 2: *If not, how can the interest of NHAI be protected if the State Government does not agree with our stand?*

Reply: Not Applicable since Stamp Duty would be payable as per the existing draft bid documents.

Query 3: *If Yes,*

(i) Can certain amendments (duly safeguarding the business interest of NHAI) in the bid documents avoid the levy of stamp duty or minimize the same.

(ii) Can any legal amendments be proposed in the Indian Stamp Act, 1899 or any other act, for consideration of Central Government.

Reply: (i) Please refer para 7.5 above. As discussed above, the contract is entered into on behalf of the Central Government. If in the contract, the Government undertakes the liability to pay stamp duty on the said contract, exemption available vide proviso to section 3 of the Stamp Act, 1899 would be available. Accordingly, no stamp duty on the said contract shall be payable.

(ii) In light of the above discussion, we are not opining on any modification which could be made in the Indian Stamp Act, 1899.

Query 4: *Whether OMT concept will also attract the levy. (A draft bid document (provisional) on OMT concept enclosed)*



Reply: The OMT concept shall also amount to letting of tolls which may be subject to stamp duty. However, as discussed in para 8, the Agreement based on OMT concept can be entered only on behalf of the Central Government. Such contract shall be exempt from Stamp Duty, if the Central Government undertakes the liability to pay the Stamp Duty under the contract.

Advised accordingly,

November 30, 2005

New Delhi

V. Lakshmi Kumaran

Advocate

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