

Circular 212/2/ 2019-Service Tax

F.No 137/3/2016 -Service Tax(Part-I)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
Service Tax Wing

New Delhi dated 21st May, 2019

All Principal Chief /Chief Commissioners of GST and Central Excise
All Principal Directors General/Directors General/ Chief Commissioner AR CESTAT

Madam/Sir

Subject: Taxability of the service of access to a road or bridge in the period 8-11-2016 to 1-12-2016

I am directed to draw your attention to a representation from the Construction Federation of India wherein they have stated that due to the demonetisation of Rs 500 and Rs 1000 notes with effect from 8-11-2016, the Ministry of Road Transport and Highways(MoRTH) and the National Highways Authority of India (NHAI) issued directions to the concessionaires operating tolls, to allow free access to users upto 1-12-2016 and that the toll charges for this period would be paid by the project authority(NHAI) .

2. Certain authorities have commenced investigations that service tax is payable in this period on the ground that it is a “declared service” under section 66E(e) of the Finance Act, 1994. The logic of the investigating authorities apparently is that even though in terms of section 66D(h) of the Finance Act, 1994, “*service by way of access to a road or a bridge on payment of toll charges*” is in the Negative List of services and is not taxable, since the toll operator chose to forgo payment by the user and accepted payment by NHAI, it comes under the category of “*agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.*”.

3.0 The matter has been examined. The correct legal position in this regard is as follows:

3.1 “*Service by way of access to a road or bridge on payment of toll charges*” is included in the Negative List . That means that no service tax can be levied on this service. The service that is provided by toll operators before 8-11-2016, during the period 8-11-2016 to 1-12-2016 and after 1-12-2016 is that of access to a road or bridge. When the service remained the same throughout and it continued to be in the Negative List, there can be no legal reason to treat it differently for the period 8-11-2016 to 1-12-2016.

3.2 Section 66E of the Finance Act, 1994 has to be read along with the other provisions of that Act. A "declared service" cannot therefore, be assumed to have an overriding or omnibus character over other provisions. Thus, one cannot apply the concept of "declared service" to remove a service from the Negative List and make it a taxable service.

3.3 The service that is provided by toll operators is that of access to a road or bridge, toll charges being merely a consideration for that service. On MoRTH/ NHAI's instructions, for the period 8-11-2016 to 1-12-2016 this service of access to a road/bridge was continued to be provided without collection of consideration from the actual user of service. Consideration came from the project authority. The fact that for this period, for the same service, consideration came from a person other than the actual user of service, does not mean that the service has changed.

Yours faithfully

(Dr. Sreeparvathy.S.L)
Deputy Commissioner and OSD Service Tax

21/05/2019