

--COPY OF--
Circular No. 152/3/2012-ST,
Dated : 22nd February, 2012

Subject: Toll in the nature of 'user charge' or 'access fee' paid by roads users - regarding.

A representation has been received by the Board, seeking clarification regarding leviability of service tax on toll 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. Hindi version to follow.

(Samar Nanda)
Under Secretary, TRU