HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 9656/2024

CG Tollway Ltd, Through Its Authorised Signatory, Having Its Registered Office At Floor No. 1, Villa No. 122, Gaurav Path Barliyas Royal Farm, Bhilwara, Rajasthan.- 311001.

----Petitioner

Versus

1. The Union Of India, Through The Secretary, Ministry Of Finance, Department Of Revenue, North Block, New Delhi - 110 001.
2. State Of Rajasthan, Through The Secretary, Ministry Of Finance, Department Of Revenue, 1St Flor, Main Building, Gate 2, Government Secretariat, Jaipur, Rajasthan 302005.
3. Office Of Deputy Commissioner, State Tax, Business Audit 1, Bhilwara Rajasthan, Bhilwara - 311003.
4. Office Of Special Commissioner, State Gst Office, Kar Bhawan, Todarmal Marg, Ajmer - 305001.

----Respondents

Connected With

D.B. Civil Writ Petition No. 10553/2024

CG Tollway Ltd., Through Its Authorised Signatory, Having Its Registered Office At Floor No. 1, Villa No. 122, Gaurav Path Barliyas Royal Farm, Bhilwara, Rajasthan - 311001.

----Petitioner

Versus

1. The Union Of India, Through The Secretary, Ministry Of Finance, Department Of Revenue, North Block, New Delhi- 110001.
2. State Of Rajasthan, Through The Secretary, Ministry Of Finance, Department Of Revenue, 1St Floor, Main Building, Gate 2, Government Secretariat, Jaipur, Rajasthan 302005.
3. Office Of Deputy Commissioner, State Tax, Business Audit 1, Bhilwara Rajasthan, Bhilwara - 311003.

----Respondents

For Petitioner(s)	:	Mr. Bharat Rai Chandani Mr. Jitendra Mohan Choudhary
For Respondent(s)	:	Mr. Mahaveer Bishnoi, AAG with Mr. Anirudh Singh Shekhawat Mr. Uttam Singh Rajpurohit for Mr. Mukesh Rajpurohit, Dy.SG

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE CHANDRA PRAKASH SHRIMALI

Order

03/02/2025

1. Learned counsel for the petitioner-firm makes a limited submission that the impugned order dated 22.08.2024, which has been passed while taking into consideration the Sections 9, 16, 17, 50, 65, 73 of the RGST Act, 2017 R/w the CGST Act, 2017 and IGST Act, 2017 and RGST/CGST/IGST Rules as well as the impugned order dated 05.08.2024, which has been passed while taking into consideration the Sections 74, 9, 50 of RGST Act, 2017 & CGST Act, 2017 & Section 5, 20 of IGST Act, 2017, has a remedy in appeal.

2. It is further submitted that the petitioner-firm is ready to file an appeal and it shall be satisfied if, upon filing of the appeal, the respondents shall consider the same keeping into consideration the Circular dated 17.06.2021 bearing No.150/06/2021-GST and the Audit Reports dated 19.06.2023 bearing No.09/DC-12/GST AUDIT/2022-23/No.339/40 and dated 28.06.2024 bearing No.DCCT(Audit)-1/2024-25 passed by the State of Gujarat and the State of Karnataka respectively.

3. The relevant part of the Audit report dated 19.06.2023 passed by the State of Gujarat, on which learned counsel for the petitioner-firm has placed reliance, reads as under :-

> "**Para-13: VERIFICATION OF TAXABILITY ON TOLL COLLECTION RIGHTS.**
>
> 13.1:
>
> During the course of GST audit, while undertaking financial reconciliation with statutory returns particularly relating to tax applicability on toll collection rights.
>
> 13.2
>
> On being pointed out the above objection, the taxpayer has provided clarification that With reference to taxability of toll collection rights, we hereby state that, NHAI has entered a concession agreement with the Company (SPV) for Rupee ONE for construction and maintenance of Ahmedabad to Vadodara Expressway in the state of Gujarat. During the construction regime, GVAT was applicable and applicable VAT was deducted and paid by the company under composition scheme. Against such construction services, NHAI has assigned the user fees collection from the users of the road which is exempt under GST. **Please refer the clarification on BOT contract issued issue by Government of India wide F. NO. CBI-190354/77/2021-TO-(TRU-II)-CBEC dated. 28.06.2021** for your ready reference annexed as Annexure 2.
>
> Based on the above submission, the clarification on the said para has been verified along with supporting documents.
>
> **[Para settled]**"

4. The relevant part of the Audit report dated 28.06.2024 passed by the State of Karnataka, on which learned counsel for the petitioner-firm has placed reliance, reads as under :-

> "**Observation No. 08: Other ITC related information:**
>
> On verification of GSTR-9/9C filed by the Auditee, it is observed that, the Auditee has Declared ITC of Rs.

6,22,33,070=00 under each SGST and CGST as ITC available but Ineligible at Column No.8(F) of the Form GSTR-9 but the Auditee has not produced any Documentary Evidences regarding Ineligible ITC as listed in the Annual Statement filed in Form GSTR-9. The Auditee has failed to declare the corresponding Outward Supply with respect to Inward Supplies regarding ITC reversed. Hence, the Auditee is hereby informed to produce documentary evidence within 07 days of the receipt of this notice, failing which, further necessary actions will be taken as per the provisions of the KGST Act, 2017.

Tax Payer's reply:

IRB Westcoast Tollway Limited is a Special Purpose Vehicle (SPV) formed for the execution of Four Lanning of Kundapur to Karwar in the state of Karnataka. The project was awarded by National Highways Authorities of India (NHAI) on Built, Operate & Transfer (BOT) Model. Under the BOT contract, SPV constructs and maintains the road during concession period and SPV is given toll collection right to recover the cost so incurred. The SPV has further sublet the work of construction and maintenance of highway to its parent company, IRB Infrastructure Developers Ltd which executes the work and discharges the applicable GST Liability on the same at the applicable GST rates. The SPV thus renders no construction supply to NHAI as the Highway is constructed on its own account and in lieu thereof the NHAI grants the SPV a toll collection rights from user of the road during the concession life of the project after which the highways asset is handed over to the NHAI.

SPV having not provided any construction services to NHAI and is thus not entitled to any claim of ITC under GST, GST charged by the EPC Contractor i.e. IRB Infrastructure Developers Limited is reversed in respective month while filing the GST returns. During the financial year, SPV has reversed the ITC in the form of CGST Rs. 6,22,33,070/- & SGST of Rs. 6,22,33,070/- considering no service been rendered by SPV to NHAI. To support the above stand, similar view has been expressed by the Chairman, Central Board of Indirect Taxes and Customs (CBIC) vide letter F. No. CBIC-190354/77/2021-TO(TRU-II)-CBEC dated

28.06.2021, addressed to the Secretary, Ministry of Road Transport & Highways (Government of India).

Conclusion:

The reply filed by the Tax Payer is perused and verified the related documents. The contentions of the Auditee are acceptable and hence, further proceedings are dropped."

5. Learned AAG assures this Court that if an appeal is brought by the petitioner-firm, the same shall be considered strictly in accordance with law while keeping into consideration the above referred circular, audit reports and all the other relevant laws.

6. On such limited submissions, these writ petitions are disposed off with a direction to the petitioner-firm to move an appeal against the final orders passed by the authority within a period of 15 days from today. The appeal shall be decided expeditiously, preferably within a period of 3 months from the date of filing of the same strictly in accordance with law while keeping into consideration the Circular dated 17.06.2021 bearing No.150/06/2021-GST and the Audit Reports dated 19.06.2023 bearing No.09/DC-12/GST AUDIT/2022-23/No.339/40 and 28.06.2024 bearing No.DCCT(Audit)-1/2024-25 passed by the State of Gujarat and the State of Karnataka respectively.

7. It shall be open for both the parties to make all the necessary contentions in the appeal.

8. Stay petitions also stand disposed off.

(CHANDRA PRAKASH SHRIMALI),J **(DR.PUSHPENDRA SINGH BHATI),J**

44-45-Hanuman/-