

B(ROAD)WAY

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A **road** is an identifiable route, way or path between places.^[1] Roads are typically smoothed, paved, or otherwise prepared to allow easy travel;^[2] though they need not be, and historically many roads were simply recognizable routes without any formal construction or maintenance. The main roads in India are under huge pressure and in great need of modernization in order to handle the increased requirements of the Indian economy. In addition to maintenance, the expansion of the network and widening of existing roads is becoming increasingly important.

The National Highways Authority of India (NHAI) was constituted by the Indian Parliament in 1988. It is the authority responsible for the development, maintenance and management of National Highways entrusted to it. The Authority was made operational in February 1995 and is currently undertaking the developmental activities under National Highways Development Project (NHDP) in phases. All the phases combined together envisage improvement of more than 25,000 km of arterial routes of National Highway Network to international standards. In addition to implementation of NHDP, the NHAI is also responsible for implementing other projects on National Highways, primarily road connectivity to major ports in India. The most prestigious project that has been taken up and successfully completed is "Swarna Chatuspatha" or Golden Quadrilateral.

Normally, in India, we always believe that Government means a monolith giant, where the right hand does not know what's the left hand is doing. This popular myth is, however, not correct in so far as Construction of Roads in India and extension of every support by all governmental agencies, especially, the big brother viz., Ministry of Finance, Department of Revenue a.k.a. Central Board of Excise & Customs.

By and large, taxation on any sphere of 'Road' Construction has been made with a very wide understanding of the infrastructural requirements. The omnipotent and omnipresent taxation under Chapter V of Finance Act, 1994, as amended or in simple terms 'Service Tax' has also given a wide berth to this area and excluded anything in relation to construction of Road from its purview.

In 2002, the Government has provided for Nil rate of import duty for certain goods used for construction of roads vide Sl.No.230 of Notification No.21/2002-Cus., dated 1.3.2002, subject to certain conditions as stipulated in Condition No.40 of the said Notification. The infrastructure fraternity, with much joy took the advantage of importation of goods and started the importation.

Now, comes the practical difficulties, in particularly with clause (b) of Condition No.40, such as not allowed to be shifted from the site for which

the goods were original imported, not allowed to be sold within 5 years period of time from the date of importation. While the second difficulty relating to sale is statutory, the first one is ofcourse, came out of the highly fertile brains of the law implementing authorities.

It is again a customary belief that Government never sees or listens to the grievances, since, it is Government which has no eyes and ears. Kudos to the Hon'ble Finance Minister and his team, which has not only seen and heard the difficulties, but also categorically amended and clarified the law to make the life of infra people easy.

By Clause (3) of Notification No.21/2010-Cus, dated 27.2.2010, the Government amended clause (b) of Condition No.40 of the original Notification and the amended clause reads as under:

"(b) the importer, at the time of importation, furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, to the effect that he shall use the imported goods exclusively for the construction of roads and that he shall not sell or otherwise dispose of the said goods, in any manner, for a period of five years from the date of their importation.

Provided that the said Deputy Commissioner of Customs or the Assistant Commissioner of Customs, may allow the importer to sell or dispose of any of the imported goods on payment of the Customs duties at the rates applicable at the time of import but for this exemption, on the depreciated value of the goods to be calculated @ 5% on straight line method for each completed quarter starting from the date of importation of the said goods till the date of their sale subject to the condition that the concerned Ministry, Authority, Department or Corporation referred to in condition (a) above certifies that said goods in the project, for which duty free import was allowed, are no longer required for the project."

It is indeed a welcome step in facilitating the infrastructure industry and out of many steps taken in this Union Budget, 2010, this one is a genuine pain remover and lets welcome and three cheers or shall we say roads to the Government.

Before Parting...

The best part of the entire issue, even at the cost of yours faithfully, is not only the amendment, but also the instructions issued vide para 15.4 of **D.O.F.No.334/ 1/2010-TRU**, dated 26th February, 2010, which hopefully will put a fullstop to unwarranted litigation!