

**Note:** Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

**At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.**

-----

CHENNAI METRO RAIL LIMITED, PH road, Koyambedu, Chennai-600107, (hereinafter called the 'Applicant' or 'CMRL') is registered under the GST Vide GSTIN 33AADCC233K1Z0. They have sought Advance Ruling on the following question:

Whether leasing of pathway to a person to her/his dwelling unit by CMRL is taxable under GST?

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that they had acquired a portion of the property (including the land which is now leased out to the owner) for public purpose from Dr.K.Prema, D/o Shri Late T.Kanagasabapathi residing at Plot No.2045 E, 2" Avenue, Anna Nagar, Chennai- 600040 in Thirumangalam, Anna Nagar on payment of adequate compensation. As per clause 4 of the agreement entered into between CMRL and Dr. K. Prema on 21-08-2019, Dr. K. Prema(lessee) is entitled to use the passage with 3 Meter width and 14 Meter length measuring 452 out of the acquired land for shared access purpose for 35 years and has to pay Rs.30,00,000/- towards lease amount. It appeared that the arrangement is made since, the Dr. K. Prema from whom the property is acquired has no pathway to her residential property. The applicant has stated that according to notification No. 12/2017-Central Tax (Rate), renting of residential dwelling unit for use as a residence is exempt from GST. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. However, the applicant has sought the authority to clarify whether the amount of Rs.30,00,000/- received for the purpose of granting right to access to the pathway leading to the dwelling unit is exempted from levy of GST as per the

above mentioned notification treating the agreement as one for leasing out a "dwelling unit". The applicant has also stated that apparently, it may lead to an inference that only land has been leased out and not a "dwelling unit" and hence, the lease amount cannot be exempted from levy of GST. Whereas, a reading of Indian Easement Act, 1891 would establish that the land over which the lessee acquired the Easement right would form part of the "dwelling unit" owned by the lessee. They have stated that without the Easement right over the property belonging to CMRL, there would be no access to the house owned by the lessee and in such a scenario nobody can live in that house and therefore it cannot acquire the character of a "dwelling unit". However, once the lessee or anybody gets a right over the land belonging to CMRL to have access to the house, the house acquires the character of "dwelling unit" and therefore, necessarily the definition or meaning of "dwelling unit" would include the land over which the lessee get the "Easement right",

2.2 The applicant has stated that according to section 4 of the Indian Easements Act, 1882, "Easement" is defined as "a right which the owner or occupier of certain land possesses, for the beneficial enjoyment of that land, in or upon, or in respect of, certain other land not his own". The Indian Easements Act, 1882 also provides that the land for the beneficial enjoyment of which the right exists is called the "dominant heritage", and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner. Additionally, it may be noted that as per the explanation appended to section 4, the expression "land" mentioned in the first and second clauses of this section, includes also things permanently attached to e right for the beneficial enjoyment over the land which is not his own, that is owned by CMRL and thus the "dominant heritage/house" and the "Easement right" is bundled together. Thus the applicant claims that the "dwelling unit/house" of the lessee acquires the name of "dominant heritage" under the Easement Act 1882, and as such, the lessee being the owner or occupier of the "dominant heritage" has an Easement right for the beneficial enjoyment over the land which is not his own, that is owned by CMRL and thus the "dominant heritage/house" and the "Easement right" is bundled together.

2.3 The applicant has referred to the illustrations under Chapter 1 , Section 4 of Indian Easement Act 1882. They have stated that it is pertinent to note that as per Section 19 of Indian Easement Act, 1882, where the "dominant heritage" is

transferred or devolves, by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place. Therefore, the applicant is of view that both the "easement right" and the "dominant heritage", that is "dwelling unit" go together and inseparable.

2.4 In light of the aforesaid, facts the applicant is of the view that the lease amount Rs.30,00,000/- received from the lessee would not attract GST by virtue of the exemption granted under Notification 12/2017-CT(R). They have sought the authority for Advance Ruling to clarify the same.

3. The applicant was extended an opportunity to be personally heard on 2.01.2020. The applicant appeared before the authority and gave a written submission stating that the land of 2500Sq.ft was acquired from an individual by CMRL under the Land Acquisition Act. Out of the 2500sq.ft land, 452sq.ft is now leased out to the same individual to be used as common access road to be used by CMRL and the individual in terms of an MOU in which it was agreed that a net amount of Rs.4,00,00,000/- along with lease right to use (Easement rights) the land of 452sq.ft as road will be given to the individual. The amount pertaining to this lease was decided in Minutes of meeting. They stated that as per Easement Act and Supreme Court Judgments (Copies given) a dwelling unit should include access road also and hence they should be eligible for exemption under Sl.No12 of Notification 12/2017 CT (Rate). They submitted copy of Minutes and requested a weeks' time to give additional submissions and that an additional hearing is not required. The Central Jurisdictional officer appeared and gave a written submission that this lease is a supply under GST and this supply of easement right is not exempt under Notification 12/2017 as exemption is only for dwelling unit of residential purpose and not for accessing land. The applicant stated that the land was acquired for industrial use of Metro Rail Construction.

4.1 The applicant furnished written submission vide their letter dated 28.1.2020, wherein they have stated inter-alia that

- The lease has to pay Rs. 60,40,980/- towards lease amount
- AS per Section 4 of Easement Act 1882, the house of the lessee is the "dominant heritage" and hence, the lessee has an Easement right for beneficial enjoyment over the pathway owned by CMRL. Accordingly, the dominant heritage/house and Easement right are bundled together.

- Hon'ble Madras High Court in case of T.V. Ravi in Second Appeal No 232 of 2015 dt 21.11.2016 has held that easement right and dominant heritage cannot be transferred separately by segregating one from the other
- Hence, both the pathway and the dwelling unit are inseparable and come under the term "dwelling unit" which is eligible for exemption under Sl.no 12 ( Heading 9963 or 9972) of Notification No 12/2017 Central Tax (Rate) dt 28.6.2017.

4.2 The applicant furnished written submission vide their letter dated 10.02.2020, wherein they have stated inter-alia that

- the issue is whether the shared path way, which was leased out by CMRL could be considered as a residential property or 'residential dwelling' unit to qualify for the exemption granted by the Notification No. 12/2017-C.T.(Rate)
- the portion of the land which was acquired by CMRL from the lessee and then was leased out by CMRL, is in the course of their business and there is no building on the land which was leased out to the lessee as "shared access" but these facts cannot be decisive test to hold that the leased out pathway is not a residential dwelling unit
- Hon'ble Supreme Court in the case of Municipal Corporation of Delhi Vs. Rishi Raj Jain & Anr on 14<sup>th</sup> September 2006 [Appeal (civil)4125 of 2006] has stated the test to arrive at the extent of appurtenant land
- The word 'appurtenances' includes all the incorporeal hereditaments attached to the land granted or demised, such as rights of way, of common...but it does not include lands in addition to that granted
- If access is denied to the lessee, then the house in which the lessee is living would lose the character of "dwelling residence"
- The landed property which is leased out is only for providing access to the house in which the lessee is living, it is an Easement right leased out and collection of rent cannot prevent the transaction pertaining to the shared access from acquiring the character of "Easement"

The applicant had enclosed copies of decision of Hon'ble Supreme Court in the case of Municipal Corporation of Delhi Vs. Rishi Raj Jain & Anr, Decision of the High Court of Chancery Division[England] in the case of De La Cuona Vs. Big Apple Marketing Limited[2017]EWHC3783(Ch) and Land Sketch.

5. The applicant is under the administrative jurisdiction of Central Tax authorities and the Central Jurisdictional officer vide their letter dated 28.01.2020 has stated that

- The term lease is covered within scope of supply under CGST Act 2017.
- CMRL is a provider for outward supply for a pecuniary benefits and for furtherance of business as per Section 2(17) of CGST Act and the applicant is a taxable person for supply of land for pathway to his lessee under lease agreement for consideration is leviable to tax under Section 2(108) of CGST Act, 2017.
- As per Notification 12/2017 CT (R) dated 28.06.2017, exemption is provided for renting of residential dwelling to be used as residence. However, the said premise is not a residential dwelling and irrespective of other facts the exemption would not be applicable.
- Easement rights and Notification 12/2017 cannot be clubbed together. Hence, the leasing of pathway to lessee for pecuniary benefits is supply of service and lease agreement made for consideration is taxable under GST Act 2017.

6. We have carefully examined the submissions of the applicant in their application, their oral and written submission during the personal hearing, their further submissions after PH and the comments of the central jurisdictional officer in the instant case. The question on which advance ruling is requested is as follows:

Whether leasing of pathway to a person to her/his dwelling unit by CMRL is taxable under GST?

The applicant claims that this land for which the access is shared against a consideration is to be considered as leased for residential dwelling as the pathway provides the existing residential property of Dr. K. Prema, access to the Road. It is their claim that the shared access extended for consideration, is an Easement right extended, should be considered as land appurtenant to the residential dwelling and they are eligible to the exemption at Sl.No. 12 of Notification No. 12/2017-C.T.(Rate) which exempts the 'services by way of renting of residential dwelling for use as residence' classified under SAC 9963 or 9972. The applicant has stated that the extension of lease of shared access is in the course of business and therefore it is a supply under GST. They also agree to receipt of consideration for

such supply. The issue before us is whether such supply is eligible for exemption vide Notification No. 12/2017-C.T.(Rate) or taxable.

7.1 The facts of the case as available before us are that the applicant had acquired a portion of the property of Dr. K. Prema for the formation of Thirumangalam Metro station. The applicant has entered into a Memorandum of Understanding with Dr. K. Prema on 21-08-2019. As per the MOU, the claims of Dr.K.Prema for additional compensation filed in the court of law are to be settled out of court under the terms of payment of Rs 4 Crs which is the balance payable by CMRL after deducting Rs 60,40,980/- as the amount payable by Dr. K. Prema for the right to use the passage with 3 Meter width and 14 Meter length measuring 452 Sqft for shared access for a period of 35 years as pathway to the main road by the lessee who lives in the adjacent land.

7.2 The relevant statutory provisions are examined as under.

Section 4 of Indian Easement Act, 1882. Defines "Easement " as

*An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.*

Supply is defined under Section 7 of the CGST Act 2017 and the same is reproduced below for reference:

*7. (1) For the purposes of this Act, the expression "supply" includes—*

*(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

*(b) import of services for a consideration whether or not in the course or furtherance of business; and*

*(c) the activities specified in Schedule I, made or agreed to be made without a consideration;*

*(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.;*

Section 2(102) of CGST/TNGST Act states:

*"Services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by*

*any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;*

Section 2(31) of the CGST/TNGST Act states:

*(31) "consideration" in relation to the supply of goods or services or both includes- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.....*

SCHEDULE II of the CGST/TNGST Act states:

**ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

*2. Land and Building*

*(a) any lease, tenancy, easement, licence to occupy land is a supply of services;*

*(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.*

As per the MOU, The applicant has given the right to use the pathway to the individual so that she can access the main road from her residential property. This pathway is owned by the applicant and is also to be used by both the applicant and the individual. It is clear that this right of use of the 'pathway' granted to the lessee for a fixed period for an amount qualifies the definition of "Easement" of the land owned by the applicant as per Section 4 of Indian Easement Act, 1882. From the above, it is seen that the applicant has given the easement right to the above land (pathway) for use by Dr. K. Prema as a part of the settlement to acquire a larger property from Dr. K.Prema for the purposes of constructing Thirumangalam Metro station. The amount payable by Dr.K.Prema was deducted from the additional compensation to be paid to her and a final settlement of Rs 4 Crs was made on the part of the applicant . Hence, it is seen that in the course of business of the applicant , i.e constructing the metro station, the applicant has given easement rights to the land measuring 452 sqft to the individual for an amount agreed, Rs 60,40,980/-, in the MOU which is the consideration here. Hence, it is seen that this transaction of granting easement rights satisfies the conditions of Section 7(1)(a) as a 'supply' under CGST/TNGST Act. Further, As per Section 7(1A) and



Para 2(a) of Schedule II to the Act, activity of easement of land constitutes supply of service.

7.3 The applicant has sought to classify this service under SAC 9963 or SAC 9972. The Classification of SAC 9963 and 9972 as given in the Scheme of Classification of Services -Annexure to Notification No. 11/2017-C.T.(Rate) is as follows:

71	<b>Heading 9963</b>		<b>Accommodation, food and beverage services</b>
72	<b>Group 99631</b>		<b>Accommodation services</b>
73		996311	Room or unit accommodation services provided by Hotels, Inn, Guest House, Club and the like
74		996312	Camp site services
75		996313	Recreational and vacation camp services
76	<b>Group 99632</b>		<b>Other accommodation services</b>
77		996321	Room or unit accommodation services for students in student residences
78		996322	Room or unit accommodation services provided by Hostels, Camps, Paying Guest and the like
79		996329	Other room or unit accommodation services nowhere else classified
220	<b>Heading 9972</b>		<b>Real estate services</b>
221	<b>Group 99721</b>		<b>Real estate services involving owned or leased property</b>
222		997211	Rental or leasing services involving own or leased residential property
223		997212	Rental or leasing services involving own or leased non-residential property
224		997213	Trade services of buildings
225		997214	Trade services of time-share properties
226		997215	Trade services of vacant and subdivided land

In the case at hand, the applicant vide the MOU agreed to provide shared access to the pathway for a specific period for a consideration to the lessee. It is clear that it is not an accommodation service and not classifiable under SAC 9963. Further, Section 105 of Transfer of Property Act , 1882 defines 'Lease' as

*105. Lease defined.—A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.*

In this case, the pathway is owned by the applicant and both the applicant and the individual have the right to use pathway. In the case of renting or leasing of the

property, the owner( applicant in this case) will not have the right to use the the land/pathway involved as 'Leasing' involves transfer of the right to enjoy the property to the lessee and the lessor does not retain right to enjoy the property during the lease period. In the instant case, it is not a lease of the pathway but only Easement rights are granted to the individual by the applicant. Therefore the classification of the service supplied is not covered under SAC 9972 which covers renting or leasing of property.

7.4 SAC 99979 of Classification of Services covers:

99979 Other miscellaneous services

999794 Agreeing to tolerate an act

In the case at hand, the applicant owns the pathway but has agreed through an MOU with the individual to permit her to use the pathway to access the main road from her residential property which is adjacent to the pathway. As seen above, this is an easement right given by the applicant to the individual to enjoy her residential property for a period of time for a consideration. The applicant has agreed through a MOU to tolerate her use of this pathway for a period of time for consideration. Hence, this service of agreeing to grant easement rights is a service of agreeing to tolerate an act and is classifiable under SAC 999794 under 'other miscellaneous services'/ 'Agreeing to tolerate an act'.

'Other miscellaneous services' classifiable under SAC 9997 are taxable to 9 % CGST and 9% SGST under Sl. No 35 of Notification 11/2017 –Central Tax(Rate) dt 28.06.2017 and Notification No.II(2)/CTR/532(d-14)/2017 vide G.O. (Ms) No. 72 dated 29.06.2017 respectively.

8. In view of the above, we rule as under:

**RULING**

The act of agreeing to grant easement rights of the pathway by the applicant to Dr.K.Prema by way of shared access as per the MOU dt 21-08-2019 is classifiable under SAC 999794 and taxable under GST at 9 % CGST and 9% SGST under Sl.

No 35 of Notification 11/2017 –Central Tax(Rate) dt 28.06.2017 and Notification No.II(2)/CTR/532(d-14)/2017 vide G.O. (Ms) No. 72 dated 29.06.2017 respectively.

*f. Manasa* 12/5/20

Ms. Manasa Gangotri Kata,IRS  
Member, CGST

*Shri Kurinji Selvaan V.S.* 12/5/2020

Shri Kurinji Selvaan V.S.,  
Member – SGST

To

CHENNAI METRO RAIL LIMITED  
PH Road, Koyambedu,  
Chennai-600107

//By SPAD//



Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,  
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Additional Chief Secretary/Commissioner of Commercial Taxes,  
II Floor, Ezhilagam, Chepauk, Chennai-600 005.

Copy to:

3. The Commissioner of GST & Central Excise, Chennai (South)  
Commissionerate, MHU Complex, No.692, Anna Salai, Nandanam, Chennai -  
600 035.
4. Assistant Commissioner (ST)  
Royapettah Assessment Circle,  
46, Pasumpon Murthuramalingam Salai,  
Taluk Office Building,  
RA Puram, Chennai – 600 028.
5. Master File/ Spare-2