

**GIB/TN/CHENNAI METRO/12.05.2020/AAR-449**

**Advance Ruling Category :** Classification of Services

**State :** Tamil Nadu

**Order No.:** GIB/TN/CHENNAI METRO/12.05.2020/AAR-449

**Name of Entry :**  
CHENNAI METRO RAIL LTD.

**Date :** 12-05-2020

**Breif Issue :**

**FACTS OF THE CASE:**

In the above case the applicant, Chennai Metro Rail Limited acquired a portion of the property including the land which is now leased out to the owner for public purpose on payment of adequate compensation. As per clause 4 of the agreement entered into between CMRL and Dr. K. Prema, the lessee, Dr. K. Prema 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.

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 notification treating the agreement as one for leasing out a “dwelling unit”.

The applicant sought the advance ruling on the issue whether leasing of a pathway to a person to her/his dwelling unit by CMRL is taxable under GST. The AAR ruled that 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 SI No. 35 of Notification 11/ 2017–Central Tax (Rate) dated June 28, 2017 and Notification dated June 29, 2017 respectively.

The appellant has challenged the AAR’s order on the ground that AAR has failed to consider and recognize that the grant of access to pathway to connect with the outside world was a covenant running with the land and inseparable from the sale and purchase of the land which was not a supply to be taxed under GST. The appellant urged that the AAR ought to have considered that the grant of access to the pathway was an integral and inseparable part and parcel of the acquisition of land which was outside the scope of the levy of GST.

**DECISION:**

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 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.

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. 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'.

Thus, the act of agreeing to grant easement rights of the pathway by the applicant to Dr.K.Prema by way of shared access is classifiable under SAC 999794 and taxable under @18%.

**ISSUE OF THE CASE:**

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

**Decision of Advance Ruling Authority :****DECISION:**

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 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.

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. 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'.

Thus, the act of agreeing to grant easement rights of the pathway by the applicant to Dr.K.Prema by way of shared access is classifiable under SAC 999794 and taxable under @18%.