

**GIB/TN/M/S. CHENNAI METRO/04.03.2021/AAAR-51**

**Appellate Advance Ruling Category :** LEVY OF GST

**State :** Tamil Nadu

**Order No.:** GIB/TN/M/S. CHENNAI METRO/04.03.2021/AAAR-51

**Name of Entry :**

M/S. CHENNAI METRO RAIL LIMITED

**Date :** 04-03-2021

**Breif Issue :**

**FACTS OF THE CASE:**

In this case the appellant M/s. Chennai Metro Rail limited had initially acquired the property (including the land for which shared access is extended to the land owner) for public purpose from the land owner and paid the considerations. The land owner had disputed the settlement before Civil Court and thereupon the appellant had entered into an MOU for out-of-court settlement. One of the claims accepted by the appellant is to extend the shared access of the pathway to the land owner for a consideration for a specific period. The issue is on this activity of grant of shared access for a consideration by the appellant. It is the contention of the appellant that the right to pathway is an easement of the land owner, an appurtenant to the residential dwelling; not in the genre of lease, tenancy, etc. which are declared as 'services' in Schedule-II to the Act; easement is ancillary to sale of land in the composite supply of land and therefore the easement in the case at hand is not taxable under GST.

**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:**

So In this case, the landowner is granted shared-access of the pathway from the acquired land for a specific period of 35 years on payment of lease rentals and is also termed as 'lease' in the said MOU. Therefore, the shared access granted by the appellant to the land owner against lease rentals is not 'easement' acquired/held by the landowner on account of the sale of land. Once it is held that the nature of shared access is not an easement held by the land owner, the contention of the appellant does not hold any merit.

The land once acquired for business purposes becomes a non-residential property. The Landowner has been granted the right of shared access enabling the land owner access to the road. This right to use the pathway being common to both the appellant and the landowner, the pathway cannot be termed as land appurtenant to the residential dwelling as claimed by the appellant - Transfer of right to use the space without the transfer of space per-se also conveys the right to occupy.

In the instant case, it is not a lease of the pathway but only rights are granted to the land owner by the appellant for the shared access. It is seen that the grant of access to the pathway is a right given by them to the landowner. This activity of agreeing to grant rights for shared access of the pathway is an "act of agreeing to tolerate an act" and is classifiable under SAC 999794 under "other miscellaneous services/Agreeing to tolerate an act" and is taxable to 9% CGST and 9% SGST as per Sl.No.35 of Notification 11/2017 CT (Rate) dated 28.06.2017 as rightly held by the Lower Authority.

The present appeal has been filed against [order no.26/ARA/2020 dated 12/05/2020](#)