TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act 2017)

A.R.Appeal No.10/2020/AAAR

Date: 04/03/2021

BEFORE THE BENCH OF

1. Thiru G.V.KRISHNA RAO, MEMBER

2. Thiru M.A. SIDDIQUE, MEMBER

ORDER-in-Appeal No. AAAR/05/2021 (AR)

(Passed by Tamilnadu State Appellate Authority for Advance Ruling under Section 101(1) of the Tamilnadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamilnadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.

2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only

(a). On the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;

(b). On the concerned officer or the jurisdictional officer in respect of the applicant.

3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.

4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void sb-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	M/s. Chennai Metro Rail Ltd Admn Building, Poonamallee High Road, Koyambedu, Chennai-602107
GSTIN or User ID	33AADCC2233K1Z0
Advance Ruling Order against which appeal is filed	Order No. 26/ARA/2020 dated 12.05.2020
Date of filing appeal	09.12.2020
Represented by	Dr. Ravindran Pranatharthy, Advocate
Jurisdictional Authority-Centre	Chennai South Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST) Royapettah Assessment Circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CPIN No. 20123300116665 dated 09.12.2020

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.

The subject appeal is filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by M/s. Chennai Metro Rail Ltd (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN33AADCC2233K1Z0. The appeal is filed against the Order No.26/ARA/2020 dated 12.05.2020 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2.1 The appellant 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, (hereinafter referred to as the Landlady) D/o Shri Late

T. Kanagasabapathi residing at Plot No.2045 E, 2nd Avenue, Anna Nagar, Chennai- 600040 in Thirumangalam, Anna Nagar on payment of adequate compensation. As per clause 4 of the agreement entered into between the appellant and Dr. K. Prema on 21-08-2019, 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. Without the access the Landlady would be unable to, come out to the road and make her ingress and exit to and from the house. In short, the access to pathway is required for any movement and connection with the world outside the residential house of the Landlady. Thus, unless the right to pathway was sold along with the land there was no way the Landlady would be able, to live in her residential house and the acquisition of the land would not have been made possible. They have stated that the pathway access was a covenant running with the land and was inseparable from the acquisition of the land by them. From the sale price agreed with the Landlady, it was mutually determined that the Landlady would pay a sum of Rs.60,40,800 towards enduring right to access to the pathway land sold to them. The appellant felt that the right to pathway enabling the Landlady to access the road and thus the outside world was a covenant running with' the land and hence the sum, charged for the access was an element of the price for the sale and purchase of the land. The sale and purchase of land is not subject to the levy of GST, It was also felt that the grant of access to pathway to the residential dwelling was exempt from GST under SI no 12 of Notification 12/2017 since any leasing in connection with residential property was exempted therein.

2.2 The Appellant made an application to ORIGINAL AUTHORITY on the following question:

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

3. The Original Authority has ruled as follows:

The leasing of pathway by the appellant to Dr. Prema (lessee) by way of shared access of the Non-residential property held by the appellant is taxable under GST.

4.1 Aggrieved by the above decision, the Appellant has filed the present appeal. In the grounds of appeal, they have inter-alia, stated that:

- The Authority for Advance Ruling (AAR, for short) 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 AAR have admitted vide para no 7.1 of the Ruling that the consideration for the access to pathway was deducted from the price of the land. Therefore, the AAR ought to have considered that the grant of access to pathway was an integral and inseparable part and parcel of the acquisition of land which was outside the scope of the levy of GST.
- The AAR has failed to recognize that the pathway land which was the subject of permanent access to the Landlady was to be used for ingress into and exit from the residential house of the Landlady and constituted part and parcel of the residential dwelling unit, which was not liable to be, taxed under GST.
- The AAR has failed to provide any evidence or basis for its ruling that the provision for the access to pathway as an integral part of the sale and purchase of the land, amounted to the service of agreeing to tolerate an act.
- The sale and purchase of the land in issue did not have any provision for toleration of any act.
- The provision of access to pathway cannot be construed as agreeing to tolerate an act.
- Without prejudice to any of the grounds taken, it is submitted that the supply of easement as a taxable supply will arise, if at all, only independently of the sale and purchase of land. Any grant of easement incidental or integral to the sale and purchase of the land at the time when such sale and purchase of the land is made cannot be brought to the levy of GST as such easement would be an integral part of the immovable property which is beyond the pale of the law of GST.
- The supply of easement contemplated as a service under schedule II of the CGST Act would arise, if at all, only when such supply is provided or rendered separately and independently of the sale and purchase of the land.

In the case of the Applicant herein, the easement was integral, inseparable and inherent to the sale and purchase of the land. The two cannot be segregated and without each other the sale and purchase of land would not have materialized.

- The consideration for access to pathway is part and parcel of the price of acquisition of immovable property by APPELLANT in public interest and hence not liable to be taxed under GST.
- Without prejudice to the other grounds, it is submitted that the Pathway with its access to the Landlady is to be considered as part of the residential dwelling of the Landlady. Any renting or leasing of residential property is exempted from tax under serial no 12 of Notification 12/2017 ibid.

PERSONAL HEARING:

5.1 Due to the prevailing PANDEMIC situation, the appellant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital mode vide e-mail dated 23rd December 2020. The appellant provided their consent to be heard through virtual mode. They were extended the opportunity to be heard virtually on 22nd January 2021 and the appellant sought adjournment as their advocate was not available on the said date. They were extended an opportunity to be heard on 5th February and the hearing was held virtually on 5th February 2021. The Authorized representative appeared for the hearing virtually. They furnished written submission (vide email) which was taken on record. They stated that:

1. Easement is not contemplated in Schedule II of the CGST/TNGST Act 2017.
2. The purchase and acquisition is a composite supply with 'Supply of Land' being 'Principal Supply' and grant of pathway access 'Ancillary Supply' .

They stated that they will furnish the minutes of the Lok Adalat settling the land acquisition proceedings.

5.2 The applicant vide their email dated 08.02.2021 submitted the following points put forth in the Virtual Hearing and requested to record in the minutes.

- They never claimed or submitted that easement was not covered in entry 2(a) of Schedule II of CGST Act

- They only said that Schedule II covers only easements where the transfer of space is occupied by the easement taker, since easement is put in the company of categories in the Schedule with lease, tenancy or license to occupy which involve transfer of space.
- The particular type of easement in their case providing only for access and not possession or occupation (lease, tenancy or license to occupy) is not covered by Schedule II.

5.3 The Appellant furnished the following additional submissions during the Personal Hearing in support of their representation that the supply of easement running integrally and inherently with the supply of land is not liable to GST:

- The right to access the road through the land supplied to the appellant which is the issue involved in the appeal is an encumbrance on the land they acquired and the sale of land by the landlady reflected the encumbrance. It cannot be said that the appellant was engaged in supply of encumbrance, let alone easement. Further, it is common to come across encumbrances/easements when land is bought and sold. The encumbrances/ easements may impact the value of land depending on their nature. Similarly, it is common to find easements in the use of common areas or to obtain access to water, road etc in the case of residential dwellings or residential land. The consideration would take into account such encumbrances/easements, but there is no attempt by the GST dept to levy tax on such encumbrances/easements concerning the land or residential properties.
- The grant of access to road over the land makes the easement part and parcel of the residential dwelling of the land. When the easement goes with residential dwelling and residential use which is the case in their matter, the same is non-taxable being an integral part of residential dwelling which cannot be brought to tax. The grant of access to road over the land makes the easement part and parcel of the residential dwelling of the landlady which makes it free from tax-liability.
- Without prejudice, it is submitted that the land would not have been supplied to the Appellant without the easement of access to road. Hence it amounted to a composite supply in which the principal supply was that of land which was not liable to GST. The subsidiary supply of easement was

integrally bundled in the sale of land and would be synonymous with the principal supply of land for GST purposes and so tax free.

- Without prejudice to any of the grounds pleaded in the appeal, it is submitted that even if easement were to be considered a taxable service in a narrow sense, not every type of easement is covered in serial no 2(a) of schedule II of the GST Act. The statutory entry puts "easement" in the company of lease, tenancy and license to 'occupy land. Lease., tenancy and license to occupy denote possession and occupation by the lessee, tenant and licensee respectively. Hence only easements where there is a possession and occupation of the space by the owner of the dominant heritage would be liable to tax if at all. In the case of the appellant, the easement at issue is only a grant of access to reach the road and there is admittedly no grant of right of occupation and possession unlike lease, tenancy or license to occupy. In other words, the appellant didn't grant any easement in the nature of right of occupation or possession of the land by the landlady. Hence such easements not involving right of occupation and possession are not liable to tax.
- The grant of access by them was for the purpose of residential dwelling of the Landlady and not for any business or commercial purpose. That the appellant is in the business of running metro rail service or the acquisition of land was for its business purpose is immaterial and cannot affect the residential dwelling purpose of the easement. The business of them cannot be attributed to the residential purpose of the easement of access to the road.
- International practices in this regard do not envisage levy tax on supply of interests over land. For instance, in the British VAT system concerning such transactions the UK Govt exempts VAT on supply of interests in land such as easements. The United Kingdom's VAT Guidance Ref:742 para 2.4(given below) thereof updated as on 31st December 2020 has the following provision which may be considered.

  2.4 Rights over land

  Rights over land include which include

rights of entry :	allow an authorised person or authority to enter land For example you might allow someone to come onto your land to perform a specific task
easements :	grant the owner of neighbouring land a right to make their property better or more convenient, such as a right of way or right of light
wayleaves :	are a right of way to transport minerals extracted from land over another's land, or to lay pipes or cables over or under another's land.
profits a prendre:	are rights to take produce from another's land, such as to extract minerals.

UK law currently exempts the supply of rights over land.

DISCUSSION & FINDINGS:

6.1 We have carefully considered the submissions of the appellant, the ruling of the Lower Authority and the applicable statutory provisions. The appellant undertook to furnish the Minutes of Lok Adalat settling the land and it was seen that they had furnished the same before the Lower Authority. Therefore, we proceed to take up the case for decision.

7.1 From the submissions, we find that the appellant had acquired land and building to an extant of 2077.452 Sq.ft in Survey No. T.S.5/2 under Award No.17 dated 27.02.2012 and 425.178 Sq.ft. in Survey No. T.S. 5/3 under an Award No. 21 dated 07.09.2012 on payment of compensation to the Owner of the said Land(hereinafter referred to as the 'Land Owner'). The Land Owner had filed LAOP No. 28/12 and 67/13 claiming enhanced compensation before the Civil Court and had also desired to take the land measuring 452 Sq. ft. on lease, for access to main road. As per the Minutes of the Directors Level Committee meeting held on 5th Day of August 2019 to recommend maximum additional compensation that can be paid to claimant to settle the LAOPs, it had been recommended that a lumpsum additional compensation of Rs. 4,00,00,000(Rupees Four Crores Only) inclusive of all, can be paid to settle the above 2 LAOP cases with grant of shared access to the pathway on payment of lease rent for 35 years extendable on payment of lease rent at 1% of GLV prevailing at that time, against the claim of an additional compensation of Rs. 4.34 Crores along with the lease of land for access to road. A

Memorandum of Understanding dated 21st August 2019 has been signed by the appellant with the land owner wherein it has been agreed

- by the appellant to pay Rs.4,00,00,000/-(Rupees Four Crores Only) as an additional consideration over and above the amount already paid under Awards, inclusive of all to the land owner
- The land owner is entitled to use the passage 3 meters width and 14 meters length measuring 452 sqft for shared access purpose

The land owner based on the above arrangement had to pay Rs. 30,00,000/- as lease amount towards the shared access extended as per clause 4 of the Agreement dated 21.08.2019. The appellant had sought ruling on

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

The Lower Authority has found that the right granted to the land owner by the appellant is one where the appellant also holds the right in the pathway and is not an activity of 'Lease' defined under Section 105 of Transfer of Property Act 1882 and therefore, the activity is not renting or leasing of property classifiable under SAC 9972 but the activity is one of 'Agreeing to tolerate an act' classifiable under SAC 9997 94 and held as liable to GST

7.2 The contentions of the appellant before us are:

- The grant of access to road over the land makes the easement part and parcel of the residential dwelling and the same is not taxable
- The land would not have been supplied without the easement of access to road. Hence, it amounted to a composite supply in which the principal supply was that of land which is not taxable under GST
- Easement do not involve right of occupation and possession and are not liable to tax

7.3 From the various submissions we find that the appellant 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.

7.4 Section 4 of Indian Easement Act, 1882 defines "Easement " as follows:

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.

From the above definition, easement is a right one possesses over certain other land for the beneficial enjoyment of his land, to do and continue to do something or to prevent and continue to prevent something being done on such land, on parting of the said other land. Thus 'easement' is a right a person holds on the land which is not his but a necessity for enjoyment of his property and is not granted but acquired. In the case at hand the appellant had acquired the land of the landowner and compensated monetarily along with agreeing to grant the shared access to the pathway for a specific period on payment of lease rentals. In respect of right-to-way as easement, it is the right of the landowner, held with him on account of sale of the land appurtenant to the pathway and such right flows automatically on sale. It is the right earned by the landowner and there appears to be no necessity for grant of such right vide an agreement. In the case at hand, however based on the Memorandum of Understanding, 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.

7.5 The shared access is granted for a specific period as lease against payment of lease rentals vide the Memorandum of Understanding dated 21.08.2019. To be a

lease, there should be a transfer of possession. Section 105 of the '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 the case at hand, there is no transfer of right to enjoy the property freely as the pathway is used both by the landowner and by the appellant and therefore, the activity is not a lease.

7.6 Section 52 of Indian Easement Act 1882, defines 'License' as

> *52. "License" defined.—Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license*

In the case at hand, as brought out in para supra, the shared access granted against lease rentals for a specific period of time, is not an easement acquired on sale of land by the land owner but a right granted by the appellant by way of MOU on payment of rentals. In the absence of such right, the usage of the pathway by the landowner is not legal and therefore, the activity is a 'License' as defined under Section 52 of the Indian Easement Act 1882 above, granted by the appellant to the land owner. The appellant is the owner of the pathway and holds the right to use the pathway for its purposes, while the land owner is also allowed to use the pathway. The appellant is a company and had acquired the land for its business purpose; 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.

7.7 The appellant has contended that the easement at hand is not one where there is transfer of space, occupied by the easement taker and not in the nature of

lease, tenancy, licence to occupy which are declared as services under Schedule-II of the Act and therefore, this particular type of easement is not covered under Schedule-II. It has been brought out clearly that the shared access against rentals is not an 'easement' but a 'License' to use the pathway with shared access granted by the appellant to the land owner. Schedule-II provides the activities which are to be treated as a supply of goods or services. The relevant portion of the said schedule is as under:

> 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;*

With respect to the Land, it is stated that any (1) lease, (2) tenancy, (3) easement, (4) licence to occupy land is defined to be supply of service. The appellant contends that the entry covers only those where the transfer of space is occupied by the taker and since in the case at hand, only access is granted and there is no possession or occupation, the activity of the appellant is not covered in the said entry. We do not agree with this interpretation of the appellant. "To Occupy' do not necessarily mean to possess. If the intention of the statute is to cover the activity wherein there is transfer of space by possession, then the wordings of the statute will clearly bring out such intention. Transfer of right to use the space without the transfer of space per-se also conveys the right to occupy. In view of the above, we hold that there is no merit in this contention of the appellant.

7.8 The next contention of the appellant is that the easement is ancillary to the sale of land and thereby the supply of land is a composite supply with the sale of land the 'Principal Supply', which is exempted under GST. As has been brought out in para supra, the shared access granted by the appellant is not 'easement' acquired by the land owner on the sale of his land to the appellant. Sale of Land by the landowner to the appellant is supply made to the appellant for which compensation is paid by the appellant to the land owner and grant of shared access on payment of lease rentals for a specific period to the land owner by the appellant is another supply made by the appellant to the land owner. A composite supply is one in which one or more supplies are bundled naturally and supplied in

conjunction by the service provider to the recipient. In the case at hand, land is supplied by the land owner to the appellant and the access to the pathway is granted by the appellant to the land owner. The recipient and the supplier are not the same in these supplies and therefore the same is not a 'Composite supply'

7.9 To sum up, it is clear that the entire land had been acquired by the appellant and the same had been acquired for business purposes only. The appellant after acquisition of the land had granted shared- access to the pathway with no grant of right of occupation and possession and the activity is in the genre of licence extended for a specific period against payment of rentals. In the case of renting or leasing of the property, the owner (appellant in this case) will not have the right to use the land/pathway involved as 'renting/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 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.

8. In view of the above we, Pass the following Order:

RULING

For the reasons discussed above, we hold that the grant of shared access for a consideration by the appellant is classifiable under SAC 9997 as rightly held by the Lower Authority and liable to GST. The subject appeal is disposed of accordingly.

(M.A.SIDDIQUE)
Principal Secretary/
Commissioner of Commercial Taxes,
Tamil Nadu/Member, AAAR.

(G.V.KRISHNA RAO)
Pr.Chief Commissioner of GST & Excise
Chennai Zone/Member, AAAR.

APPELLATE AUTHORITY FOR ADVANCE RULING
04 MAR 2021

To
M/s. Chennai Metro Rail Ltd
Admn building,
Poonamallee High Road,
Koyambedu,
Chennai-602107

//By Speed Post//

Copy to

1. The Principal Chief Commissioner of GST & Central Excise, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600 034.

2. The Principal Secretary/Commissioner of Commercial Taxes, II Floor, Ezhilagam, Chepauk, Chennai-600 005.

3. Joint Commissioner(ST)/Member, Authority for Advance Ruling, Tamil Nadu, Room No.503B, 5th Floor, Integrated commercial taxes Office complex, No. 32, Elephant Gate Bridge Road, Chennai-600 003.

3. The Commissioner of GST &Central Excise, Chennai South Commissionerate, MHU complex, No. 692, Anna Salai, Nandanam, Chennai 600 035.

4. The Assistant Commissioner (ST), Royapettah Assessment Circle 46, Pasumpon Muthuramalingam Salai, Taluk Office Building, RA Puram, Chennai-600028

5. Master File / spare – 1.