

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. Ajaykumar V. Bonde Joint Commissioner of State Tax, (Member)

(2) Ms. Priya Jadhav, Joint Commissioner of Central Tax, (Member)

ARN No.	AD2702230218459
GSTIN Number, if any/ User-id	27AAECN8723A1ZN
Legal Name of Applicant	M/s. Maharashtra Metro Rail Corporation Ltd.
Registered Address/Address provided while obtaining user id	1261, Metro Bhawan, Opposite Dikshabhumi, Near Ambedkar College, Maharashtra, Nagpur 440010.
Details of application	GST-ARA, Application No. 115 Dated 06.03.2023
Concerned officer	DCST, NAG-VAT-E-002, LTU-1

NO.GST-ARA- 115 of 2022-23/2024-25 / B-52 Mumbai, dt. 31/07/2024

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. Maharashtra Metro Rail Corporation Ltd. the applicant, seeking an advance ruling in respect of the following questions.

1. **Whether the Applicant is eligible for exemption under Sr. No. 41 of Notification no. 12/2017-Central Tax (rate) dated 28 June 2017 ('exemption notification')?**
2. **If not, whether 18% GST Will be applicable on the leasing services provided to M/s. Abhijit Realtors and infra ventures Pvt. Ltd. ('Service recipient')?**

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

1. FACTS AND CONTENTION – AS PER THE APPLICANT FACTS:

- 1.1. Maharashtra Metro Rail Corporation Limited (Applicant') is a company incorporated in India under the provisions of The Companies Act, 2013 having its registered office at 1261, "Metro Bhawan", Opposite Dikshabhumi, Near Ambedkar College, Nagpur, Maharashtra, 440010.

The Applicant is engaged in establishing a Metro Railway System and/or Guided Urban Transit System in the State of Maharashtra outside Mumbai Metropolitan Region so as to meet the Urban Transport needs.

- 1.3. The Applicant is registered under the provisions of Central Goods and Services Tax Act, 2017 (CGST Act') and Maharashtra Goods and Services Tax Act, 2017('MGST Act') having GSTIN 27AAECN8723A1ZN.

- 1.4. The Applicant had issued a tender notice number N1PD-12/2019 dated 9 June for 'licensing of commercial space adjacent to Airport Metro Station', Nagpur.



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- 1.5. The Applicant has accepted the bid of M/s Abhijit Realtors and Infraventures Pvt. Ltd. ('service recipient') on 5 June 2021 in respect of licensing rights of commercial space adjacent to Airport Metro Station admeasuring 10,000 sqm built-up area and 4,054 Sqm basement.
- 1.6. As per Clause B.1. of letter of acceptance the consideration of premium was as indicated below.
- 1.7. "Upfront premium amounting to INR 10.26 crores plus GST as applicable which shall be paid in the following manner-

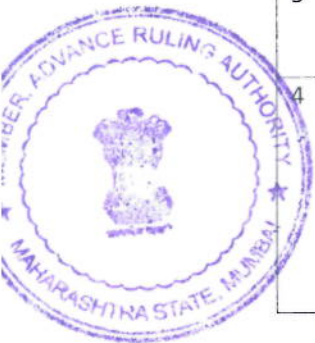
Sr. No.	Instalment number	Amount	Due Date
1	1 st Instalment	INR 7.01 crores <u>plus GST</u>	30 days from the date of acceptance of LOA
2	2 nd instalment	INR 3.25 crores <u>plus GST</u>	Within 180 days from the date of signing of license agreement

- 1.8. Further as per Clause 5 of LOA," the licensing rights of said licensed space shall be for a period of 60 years unless otherwise terminated.
- 1.9. The service recipient is of the belief that on the basis of exemption notification the Applicant should not levy any taxes on such license fees and has filed an advance ruling for the same the decision of such advance ruling is still pending.

2. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

- 2.1. At the outset, we would like to make it clear that the provisions of both the CGST Act, 2017 and the MGST Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act.
- 2.2. Extract of clause 41 of Notification no. 12/2017-Central Tax (rate) dated 28 June 2017.
- 2.3. While the lease period is more than 30 years as mentioned in LOA, the Applicant does not satisfy other conditions mentioned under the exemption notification. Brief of such conditions is reproduced below-

Sr. No.	Condition	Para reference
1	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years or more,...	3.4
2 of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20% or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.	3.5
3	Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:	3.6
4	Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements	3.7



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2.4. The upfront premium is for building and not land

- 2.4.1. As per Clause A 1. a) of LOA, "the bare shell commercial space so constructed shall be considered deemed hander over to the successful bidder on 'license basis' at the end of 24 months from the date of signing of License Agreement."
- 2.4.2. Further, as per the definition provided in the license agreement between the Applicant and service recipient, "licensed spaces means the specified bare shell commercial space (built-up area) in the property development building to the developed adjacent to Airport Metro Station for commercial operations by licensee under and in accordance with this license Agreement" (agreement is attached as **Annexure 6**)
- 2.4.3. From the above references, it is understood that license fee is pertaining to leasing of the building and not land per se.

2.5. License fee is not for industrial plot or financial plot-

- 2.5.1. The said Notification or GST Act, 2017, does not define the 'industrial or financial business area'.
- 2.5.2. Therefore, we refer to the definition of 'industrial or financial business area' from Maharashtra Industrial Development Act, 1961. As per sub- section (g) of Section 2 of the said act, the 'Industrial Area' means - "any area declared to be an industrial area by the State Government by Notification in the Official Gazette, which is to be developed and where industries are to be accommodated"
- 2.5.3. Thus, for considering any area as industrial or financial business area, it is necessary that the area must be declared as industrial or financial business area by the state government by Notification.
- 2.5.4. In the instant matter, we find that no such Notification declaring the area consisting of plot leased out by the Applicant, as industrial/financial business area, is on record.
- 2.5.5. Further, the licensed space is clearly expressed to be a commercial property as per development plan of Nagpur City. Same is also mentioned in the Annexure 1 of tender document which classifies the designated land use as "parking and commercial and further states that considering Airport in the vicinity, best suited for Hospitality Sector and Institutional use".
- 2.5.6. Therefore, the applicant believed that the area cannot be treated as industrial or financial business area in absence of any evidence in support. Therefore, the benefits of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, are not available to the Applicant.
- 2.5.7. Further, the Hon'ble High Court Bombay has dealt with the identical issue in the matter of Writ Petition No. 12194 of 2017 in the case of Builders Association of Navi Mumbai and Neelsidhi Realities v. Union of India¹.
- 2.5.8. Similar advance ruling has been given by the Gujarat Advance ruling authority in the case of Jinmangal Corporation².
- 2.5.9. From the above facts and references, we understand the licensed space cannot be termed as industrial or financial plot.



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2.6. The space is not intended to be used for industrial or financial property

2.6.1. As stated above, the rented space is proposed to be used for parking or hospitality or institutional use, therefore not satisfying the said condition.

2.7. Agreement does not mention that central tax shall be exempted on long term lease

2.7.1. As per para 4.8 clause c of 'consideration to Maha-metro' given under Tender it is clearly mentioned that "the applicable GST along with applicable cess (if any) or any other taxes as applicable shall be payable in addition to the Total consideration. All other statutory dues, local levies, as applicable shall be charged extra and shall have to be paid to the respective authorities directly.

2.7.2. Further, clause E of LOA also specifically states that GST @ 18% shall be INR 1.26 crores on the first instalment of INR 7.01 crores. And both the parties have signed on the said document.

2.8. Thereby, based on the above, we come to the conclusion that-

2.8.1 The Applicant is not leasing industrial or financial plot-

2.8.2 The Applicant has clearly mentioned in the tender and LOA that GST **will** be levied over and above the consideration.

2.8.3 The upfront premium levied by the Applicant to the service recipient does not satisfy all the conditions of the exemption notification and therefore on the basis of Sr. no. 16(iii) of Notification no. 11/2017- Central tax (rate) dated 28 June 2017 tax rate of 18% shall **be** applicable on the services provided by the Applicant (as attached in **Annexure 8**)

2.9. Prayer

The applicant is of the firm belief that based on definition of "applicant" section 95(a), only service provider i.e. Maharashtra Metro Rail Corporation Limited can apply for advance ruling and any advance ruling filed by the service receiver i.e. M/s Abhijit Realtors and Infraventures Pvt. Ltd. will stand rejected. It is prayed that the application for advance ruling of Maharashtra Metro Rail Corporation Limited should be accepted.

3. CONTENTION – AS PER THE CONCERNED OFFICER-

3.1. In the present case the dealer has asked whether the dealer is eligible for clause 41 of Notification no. 12/2017-Central Tax (rate) dated 28 June 2017?

3.2. Clause 41 has been reproduced 3.3. In the present case the lease period is more than 30 years as mentioned in LOA.

3.3. It is important to check whether the dealer satisfies other conditions mentioned under the exemption notification. The conditions are reproduced below-

Sr. No.	Condition
1	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long-term lease of thirty years or more, of industrial plots or plots....
2 for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20% or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.
3	Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:
4	Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale



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agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long-term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements and that the parties to the said agreements

Non-Satisfaction of condition mentioned in Sr. No. 1 above table:

3.3.1 I have referred to Clause A 1. a) of LOA which states as under:

“the bare shell commercial space so constructed shall be considered deemed hand over to the successful bidder on ‘license basis’ at the end of 24 months from the date of signing of License Agreement.”

3.3.2. I have referred to the definition provided in the license agreement between the Applicant and service recipient, “licensed spaces means the specified bare shell commercial space (built-up area) in the property development building to the developed adjacent to Airport Metro Station for commercial operations by licensee under and in accordance with this license Agreement”

3.3.3. I understand that license fee is pertaining to leasing of building and not land per se.

3.3.4. I find that the condition of leasing of plot as mentioned in clause no. 41 is not being fulfilled in the present case.

Non-Satisfaction of condition mentioned in Sr. No. 2 above table:

3.3.5. The said Notification or GST Act, 2017, does not define the 'industrial or financial business area'.

3.3.6. Therefore, I have referred to the definition of 'industrial or financial business area' from Maharashtra Industrial Development Act, 1961. As per sub-section (g) of Section 2 of the said act, the 'Industrial Area' means - "any area declared to be an industrial area by the State Government by Notification in the Official Gazette, which is to be developed and where industries are to be accommodated".

3.3.7. Thus, for considering any area as industrial or financial business area, it is necessary that the area must be declared as industrial or financial business area by the state government by notification.

3.3.8. I have studied the government resolution no. TPS-2415/182/P.No.98/2015/Navi-9, Mantralay, Mumbai - 400032; dated 14.03.2018. The resolution is for change in land use for the plot in question. I find that the land use has been changed to “Parking, Station and Commercial” i.e. not for industrial or financial purpose.

3.3.9. Based on the governmental resolution I find that the plot is not a industrial or financial plot.

3.3.10. As per Annexure 1 of License Agreement:

Point no. 2: “parking and commercial and further states that considering Airport in the vicinity, best suited for Hospitality Sector and Institutional use”.

Point no. 3: Designated land use: is stated as “parking and commercial” which classifies the designated land use as (Reference: Page no. 79 of the License Agreement)



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- 3.3.11. It is also noted that the purpose of issuance of tender as mentioned in the cover page of the tender document is "Bid for allotment of commercial space adjacent to Airport Metro Station" (Reference: Cover Page of E-Tender Notice)
- 3.3.12. Therefore, I am of the opinion that the area cannot be treated as industrial or financial business area in absence of any evidence in support but it can be treated as commercial area.
- 3.3.13. Further, I would like to attract your attention towards the judgement of Hon'ble High Court Bombay, Writ Petition No. 12194 of 2017, in the case of Builders Association of Navi Mumbai and Neelsidhi Realities v. Union of India¹.
- 3.3.14. Similar advance ruling has been given by the Gujarat Advance ruling authority in the case of Jinmangal Corporation².
- 3.3.15. The above facts and references, support the view of the register tax payer and in my opinion licensed space cannot be termed as industrial or financial plot.
Non-Satisfaction of condition mentioned in Sr. No. 3 and 4 above table:
- 3.3.16. From the Leasing Agreement and Tender Document, I find that the purpose of rented space is for parking or hospitality or institutional use, and not for industrial or financial use.
- 3.3.17. In my opinion leased space is not intended for being used for industrial or financial business thus not satisfying the conditions of clause 41.
Consideration Clause as per Tender Document and LOA:
- 3.3.18. As per para 4.8 clause C of 'consideration to Maha-metro' given under Tender it is clearly mentioned that "the applicable GST along with applicable cess (if any) or any other taxes as applicable shall be payable in addition to the Total consideration. All other statutory dues, local levies, as applicable shall be charged extra and shall have to be paid to the respective authorities directly."
- 3.3.19. Clause E of LOA also specifically states that GST @ 18% shall be INR 1.26 crores on the first instalment of INR 7.01 crores. And both the parties have signed on the said document.
- 3.3.20. It is pertinent to note that that as per tender document and as per the LOA both parties have agreed that GST is applicable on the upfront premium.

3.4. Based on the above, I have come to the conclusion that-

- 3.4.1 The dealer is not leasing industrial or financial plot,
- 3.4.2 The land use is not for industrial or financial purpose,
- 3.4.3 The licensee can only use the licensed premises for parking or hospitality or institutional use, and not for industrial or financial use.
- 3.4.4 The dealer has clearly mentioned in the tender and LOA that GST will be levied over and above the consideration.
- 3.4.5 The present case does not satisfy all the conditions of the exemption notification.
- 3.4.6 In my opinion the transaction is not eligible for exemption under clause 41 of Notification 12/2017 and GST @ 18% will be applicable for under "997212 Rental or leasing services involving own or leased non-residential property"

4. HEARING

Preliminary hearing in the matter was held on 26.06.2024. Mr. Atindra Deshmukh, C.A. appeared, and requested for admission of the application. Jurisdictional Officer Mr. Sadashiv Kulkarni, DCST, NAG-VAT-E-605, LTU-1 also appeared.

The application was admitted and called for final hearing on 18.07.2024. Mr. Atindra Deshmukh, C.A. authorized Representative, appeared made oral and written submissions. Jurisdictional Officer Smt. Rohini Dhane, DCST, NAG-VAT-E-002, LTU-1 appeared. We heard both the sides.



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5. Findings, observations and discussion:

5.1 Uncontroverted facts of the case are as under,

5.1.1 Maharashtra Metro Rail Corporation Ltd (Applicant), is a Government Company registered under the Companies Act 2013. It is established by central government and state government with 50% equity of each.

5.1.2 The applicant floated tender calling for bids for Allotment of Commercial space admeasuring 2899.00 sq meters/ 10,000 Sqm. Built-up area and 4,054 Sqm basement; adjacent to Airport Metro Station, bearing Kh. No. 147 (P) Mz. Somalwada vide Tender No: N1PD-12/ 2019 dated 09/06/2019.

5.1.3 M/s. Abhijit Realtors and Infraventures Pvt Ltd. (hereinafter referred as "Abhijit") was successful bidder. Consequent to acceptance of the bid agreement was signed on 18th July 2022, between the applicant and M/s. Abhijit. Some of the Important clauses required for decision are reproduced below,

Title of Agreement: -License Agreement for allotment of commercial space adjacent to Airport Metro Station for a period of 60 buyers.

Name of Work: Allotment of commercial space adjacent to Airport metro station.

5.1.4 Relevant terms of agreement are as under:

Definition clauses-

a. '**License period**' means a period of 60 years the date of deemed transfer of commercial space to the licensee and ending on the Transfer Date;

b. '**Licensed Space**' means the specified bare shell commercial space (built-up area) in the property development building to be developed advancement to Airport Metro Station for commercial operations by the licensee under and in accordance with this License Agreement.

c. **Clause 2.3 Construction of Bare Shell Structure**

i. As per the tentative building plan prepared by Maha-Metro, the minimum commercial development shall comprise of commercial Build-up space of approximately 10000 Sqm (in G+6 Floors) basements cumulatively admeasuring approximately 4054 Sqm for parking.

ii. As agreed in the negotiation process, the licensee shall construct the commercial space in the form of bare shell structure under supervision of Maha-Metro, at his own cost, within a period of 24 months from the effective date. The bare shell structure shall include RCC works such as foundation, retaining wall, columns, beams, Slabs and staircase only.

iii. Minimum Development obligations: The licensee shall have to develop a commercial project compression following:

a. Minimum commercial space (built-up area) of approx. 10000 Sqm

b. Minimum 2 basements parking of approximately 4054 Sqm.

c. The licensee shall construct an access for parking at the existing basement floor (parking) of airport station building from the parking area of proposed commercial project at his own cost.

d. The licensee shall give access to the existing basement floor (parking) of airport station building from the parking area of proposed commercial project at his own cost.

iv. The Licensee shall execute all works as required without damaging any structure, any services/ utility of adjacent Airports Metro Station. In the event of any damage to the structure/services/ utility, the same shall be rectified/repaired/ reconstructed by licensee at his own cost.



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d. Article 4 - Consideration to Maha-Metro

e. Consideration to Maha-Mero.

The consideration to Maha-metro shall be combination of upfront premium and annual license fees and shall be payable as conditions given below-

A. Up from Premium:

- a. The upfront premium quoted by bidder mounting to Rs. 10,26,00,000/- (Rupees ten crores Twenty-Six Lakhs only). The upfront premium is to be paid as for following schedule-

Sr. No.	Installment	Amount	Due Date
1	1 st installment	7,01,00,000/- plus GST as applicable (Rupees Seven Crores One Lakhs Only)	30 days from the date of acceptance of LoA.
2	2 nd installment	3,25,00,000/- plus GST as applicable (Rupees three Crores Twenty-Five Lakhs Only)	Within 180 days from the effective date

B. The Annual License Fees:

- a. The licensee has quoted an amount of Rs. 45.84 per Sqm per month towards the annual license fees for the first years of operations of the commercial space.
- b. The annual license fees as quoted shall be paid on annual basis, during the entire license tenure and shall be paid on higher of 10,000 Sqm or the actual built-up area constructed in the project.

f. Annexure 1- Details of Land for Construction of Built-up Space-

The designated land use for the built-up space to licenses to Abhijeet is: stated in Annexure 1: Details of land for construction of Built-up Space

Land details	Area: 2899 Sqm
Designated Land use	Parking and commercial However, considering airport in the vicinity, best suited for hospitality sector and institutional use.
Allowable FSI	As per applicable unified Development control and promotion rules, 2022 (UDCPR-2020)
Planning Authority	Maharashtra Metro Rail Corporation limited
Accessibility	Road the proposed station has direct accessibility via wardha road rail suburban Railway Station: Khapri (6.8KMs) and Nagpur (9.2KMs) Air Nagpur international airport: 1.3 KMs
Road frontage:	Excellent on 24Mts width road

5.1.5. Maharashtra Government Notification dated 14 March 2018, modifying the Land use of area adjacent to Nagpur Metro Rail Project, under which the plot on which proposed development activities are being undertaken by the Applicant and M/s. Abhijit. Loose translation of the Notification is as under,

NOTIFICATION,



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Ministry of Urban Development Department, Mumbai- 400 032. Dated - March 14, 2018 MAHARASHTRA REGIONAL PLANNING AND URBAN DEVELOPMENT ACT, 1966 No.: TPS-2415/182/P.No.98/2015/NAVI-9: That is, improved development of the city of Nagpur Scheme, Government Notification under Section 31 (1) of the Maharashtra Regional Planning and Town Planning Act, 1966 (Maharashtra Act No. 37 of 1966) (hereinafter referred to as "the said Act"), Urban Development Department No. TPS-2496/2643/P.No.300(A)/97/Navi-9, dt. It was approved on January 07, 2000 and dated in force from March 01, 2000 (hereinafter referred to as "the said Development Scheme");

And whereas, the officer appointed on 23rd April, 2015, submitted the report on 12 April 2017, to the government. After that, after the necessary inquiry and after consulting the Director Urban Planning, Maharashtra State, Pune, among the proposed changes, the government decided to Revision proposal approved vide notification dated November 10, 2017 is proposed that among the changes, **parking lots, stations and for commercial use**. Government has decided to approve the pending amendment proposal vide notification dated February 16, 2016:

NOW WHEREFORE, in exercise of sub-section (1cc) (c) of section 37 of the said Act and in exercise of other powers vested thereunder, approves the proposed modification in the Development Plan as follows;

Modification- "The amendment proposal pending vide notification dated February 16, 2016 under section 37(1cc) (c) for airports, stations and commercial use is hereby approved as published."

5.2. In backdrops of the facts the applicant has raised common questions:

1. Whether the Applicant is eligible for exemption under Sr. No. 41 of Notification no. 12/2017-Central Tax (rate) dated 28 June 2017 ('exemption notification')?
2. If not, whether 18% GST Will be applicable on the leasing services provided to M/s. Abhijit Realtors and infra ventures Pvt. Ltd. ('Service recipient')?

These questions are pertaining to upfront payment of Rs. 10.26. Cr only.

5.3 Provisions of Law relevant and applicable to decide the issue are; -

5.3.1 Classification of services and HSN codes and Explanatory Notes applicable are

9972 - Classification of services			
Sr. No.	Chapter, section, Heading or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
220	Heading 9972		Real estate services
221	Group 99721		Real estate services involving owned or leased property
222		997211	Rental or leasing services involving own or leased residential property
223		997212	Rental or leasing service involving own or leased non-residential property

5.3.2 Classification in Notification No 11. 2017-Central Tax (Rate) for levy of Tax-

Sr. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)



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14	Section 7	Financial and related services; real estate services; and rental and leasing services.		
16	Heading 9972	(i) Services by the Central Government, State Government, Union territory or local authority to governmental authority or government entity, by way of lease of land.	Nil	
		(ii) Supply of land or undivided share of land by way of lease or sub lease where such supply is a part of composite supply of construction of flats, etc. specified in the entry in column (3), against serial number 3, at item (i); { (i) (ia), (ib), (ic), (id), (ie) and (if)}.	Nil	
		(iii) Real estate services other than (i) and (ii) above.	9	-]

5.3.3 Exemption Notification No. 12/2017-Central Tax (Rate) dated 28th June 2017, entry at Sr no 41.

Table

SL. No.	Chapter Tariff.....)	Description of Services	Rate (Percent.)	Condition
(1)	(2)	(3)	(4)	(5)
41	Heading 9972	<p>{Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by <u>way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business</u>, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having [20] per cent. or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.}</p> <p><i>[Explanation:- For the purpose of this exemption, the Central Government, State Government or Union territory shall have [20] per cent. or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.]</i></p>		<p>Nil</p> <p>[Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:</p> <p>Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard:</p> <p>Provided also that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:</p> <p>Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease</p>



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				or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.]
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5.4 To decide the issue of applicability of exemption entry No. 41 of 12/2017 central tax rate dated 28.06.2017 following issue need to be decided.

5.4.1 Whether the applicant is undertaking or any other entity having 20% or more ownership of central govt or state government?

- Submission of Applicant- ownership of the Government is 100% (50% each of Central Government & State Government)
- Submission of Jurisdictional Officer- ownership of the Government is 100% (50% each of Central Government & State Government)
- Findings, observation, discussion & decision.

Article of Association of the Applicant Company provides for share Capital Article as under-Article No. 4- Share Capital -(ii) So long as the Company is a Special Purpose Vehicle (SPV) in the nature of a Joint Venture with contribution from Government of India, the Paid-up Share Capital of the Company will be constituted as follows: Paid up Share capital Contributed by the Government of India 50% Paid up Share capital Contributed by the Government of Maharashtra 50% Total 100%.

As the entity is created as Government Company established by both the Central government and State government with 50% participation in equity. Hence the applicant is covered by the term "the Central Government, State Government or Union territory shall have 20 per cent. or more ownership in the entity directly"

5.4.2 whether the term lease or license is for period of 30 years or more?

- Submission of Applicant- it is long term lease.
- Submission of Jurisdictional Officer- it is long term lease.
- Findings, observation, discussion & decision

Clause in agreement - License period' means a period of 60 years the date of deemed transfer of commercial space to the licensee and ending on the Transfer Date;

Ans: - yes, period is 60 years.

5.1.3 Whether lease or License is of a Plot or Constructed structure?

- Submission of Applicant- It is license of constructed bare shell structure.
- Submission of Jurisdictional Officer It is license of constructed bare shell structure.
- Findings, observation, discussion & decision

In the agreement, word "licensed Space is defined as under,

(i) '**Licensed Space**' means the specified bare shell commercial space (built-up area) in the property development building to be developed advancement to Airport Metro Station for commercial operations by the licensee under and in accordance with this License Agreement."

(ii) **Article "2.3 Construction of Bare Shell Structure**

i. As per the tentative building plan prepared by Maha-Metro, the minimum commercial development shall comprise of commercial Build-up space of



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approximately 10000 Sqm (in G+6 Floors) basements cumulatively admeasuring approximately 4054 Sqm for parking.

ii. As agreed in the negotiation process, the licensee shall construct the commercial space in the form of bare shell structure under supervision of Maha-Metro, at his own cost, within a period of 24 months from the effective date. The bare shell structure shall include RCC works such as foundation, retaining wall, columns, beams, Slabs and staircase only.

From these terms of contract it is clear that M/s Abhijit has to construct "Bare-shell structure" on the space allotted to him; which after development is deemed to be handed over to the applicant. After completion of the "Bare-Shell structure", it will be given as a "licensed space" for period of 60 years to M/s Abhijit, subject to other terms in contract.

5.4.4 whether license or lease is or industrial plot for development for infrastructure for finance business?

- a. Submission of Applicant- Licence of commercial space.
- b. Submission of Jurisdictional Officer - Licence of commercial space.
- c. Findings, observation, discussion & decision
 - I) Please refer the Government Notification dated 14- March 2018. It clearly states the purpose of Land use is for "**parking lots, stations and for commercial use**" from this GR it is very clear that the plots are not for any industry not for financial business.
 - II) Please refer Annex-1 of the Agreement. The bare shell structure is suitable for commercial use best suited for hospitality sector and institutional use. As under:

Designated Land use	Parking and commercial However, considering airport in the vicinity, best suited for hospitality sector and institutional use.
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5.5 Decision-

- (i) Considering aforesaid decision form, the issue we are of the opinion that conditions of the entry 41 are not fulfilled by the applicant in this transaction. In the taxation law claim of exemption is to be interpreted strictly and burden is on the applicant to prove his claim of exemption as held by constitution bench of Hon'ble Supreme court in case of Commissioner of Central Excise, New Delhi versus M/s Hari Chand Shri Gopal & Others etc. etc. in Civil Appeal No 1878-1880 OF 2004, decided on 18 November 2010, "22. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In Novopan Indian Ltd. (supra), this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State."
- (ii) Issue -Whether long term licensing /leasing of "bare shell constructed structure" is supply of service being covered as renting of immovable property or not? - The issue is settled by Hon'ble High court in case of Builders Association Of Navi Mumbai And ... vs Union Of India Through The Secretary And ... on 28 March, 2018, in Writ Petition No.



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12194 OF 2017, has held that "20. In the passing, we are of the opinion that the High Court of Judicature of Allahabad, while considering the demand, not arising out of the GST, but under the Finance Act in relation to the services of renting of immovable property of Greater Noida, has rightly arrived at the conclusion that the same was a taxable service and on the consideration received, the service tax could have been levied and demanded. Once we agree with the reasoning of the Division Bench, then, we do not feel it necessary to reproduce the paragraphs in the Division Bench judgment. We are not in agreement with the learned senior counsel appearing for the petitioners that the demand is contrary to law or unfair, unjust and unreasonable in any manner. 21. We are, therefore, of the clear view that the demand for payment of GST is in accordance with law. The said demand cannot be said to be vitiated by any error of law apparent on the face of the record. In these circumstances, we do not find any merit in the writ petition....."

6. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the question is answered thus –


Question 1: Whether the Applicant is eligible for exemption under Sr. No. 41 of Notification no. 12/2017-Central Tax (rate) dated 28 June 2017 ('exemption notification')?


Answer: - Not eligible for exemption.

Question 2: If not, whether 18% GST Will be applicable on the leasing services provided to M/s. Abhijit Realtors and Infraventures Pvt. Ltd. ('Service recipient')?

Answer: - Yes, it will be taxable @ 18% GST (9% CGST & 9% SGST)




AJAYKUMAR V. BONDE
(MEMBER)


PRIYA JADHAV
(MEMBER)

- Copy to:-
1. The applicant
 2. The concerned Central / State officer

Copy Submitted for information to,

1. The Commissioner of State Tax, Maharashtra State, Mumbai
2. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
3. The Joint commissioner of State Tax, Mahavikas for Website.

Note: An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.







