

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
ROOM NO.206, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI - 600 006.**

**RULING UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER
SECTION 98(4) OF THE TNGST ACT, 2017.**

Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner/ Member(CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt. A Valli, M.Sc., Joint Commissioner/Member(SGST), Office of the Commissioner of Commercial Taxes, Chennai-600 006.
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ORDER No. 04/ARA/2024 Dated: 28.03.2024

- 1. Any appeal against this Advance Ruling order shall lie before the Tamilnadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/ TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed, is communicated.*
- 2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the 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. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
- 4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*
- 5. The provisions of both the Central Goods and Service Tax Act and the Tamilnadu Goods and Services Tax Act (herein referred to as an 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 Services Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act.*

GSTIN Number, if any / User id		33AAACD0559N1ZN
Legal Name of Applicant		M/s. DCW Limited
Trade Name of Applicant(Optional)		M/s. D.C.W. Ltd.
Registered Address / Address provided while obtaining user id		No.45, Sahupuram, Arumuganeri, Kayalpattinam North Village, Toothukudi, Tamil Nadu – 628 229.
Details of Application		Form GST ARA – 01 Application Sl.No.53/2023/ARA, dated 27.10.2022
Concerned Officer		Centre: Madurai Commissionerate. Division: Tuticorin State: Tiruchendur Assessment Circle Division: Tirunelveli
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service provision/Service Recipient
B	Description (in brief)	<p>The sunset clause of exemption of GST on Ocean freight and Air Export freight under notification 08/2017 (integrated tax) serial number 9 item (ii) Transport of goods in a vessel @ 5% and item (vii) Goods transport services other than (i) to (vi) i.e., Air at 18%, has not been extended beyond 01.10.2022 and thus the ocean freight and air freight on exports have become taxable.</p> <p>In the case of CIF basis of export, the freight is paid by the exporter and the freight forwarder/ shipping line charges the GST on freight on forward basis and thus there is no issue as far as CIF exports.</p> <p>In case of FOB basis of export, the freight is paid by the overseas buyer to the freight forwarder/ shipping line. The exporter hands over the export goods either factory stuffed or port loaded in the container to the shipping line at the customs port. The exporter filed shipping bill is assessed by the customs and the let export order is issued by customs after the containers are loaded into the ship and it sails the port on the basis of export general manifest filed by the shipping line.</p>

Issue/s on which advance ruling Required	<p>(i) Applicability of a notification issued under the provisions of the Act.</p> <p>(ii) Determination of the liability to pay tax on any goods or services or both.</p> <p>(iii) Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/ or services or both, within the meaning of that term.</p>
Question(s) on which advance ruling is required	<ol style="list-style-type: none"> 1. On FOB basis of exports, whether the exporter (M/S. DCW Ltd.) is liable under RCM basis to pay GST on the export freight; 2. Whether the shipping line who accepts the goods from the exporter (M/s. DCW Ltd.) is liable to pay GST on RCM basis; 3. Whether the FOB basis (free on board) exports are liable to GST; 4. Whether the FOB basis of exports constitutes an inter-state supply subject to IGST 5. If liable to GST, what is the taxable value to be adopted as freight is not known to the exporter.

M/s. DCW Limited, No.45, Sahupuram, Arumuganeri, Kayalpattinam North Village, Thoothukudi, Tamil Nadu – 628 229 (hereinafter called as 'the Applicant') is engaged in the manufacture of chemical products like 'Caustic Soda', PVC resin etc. They are registered under the GST Acts with GSTIN 33AAACD0559N1ZN. They have filed an application seeking Advance Ruling on the following questions:

- 1) Whether the exporter (M/s. DCW Ltd.) is liable under RCM basis to pay GST on the export freight on the FOB basis of exports;
- 2) Whether the shipping line who accepts the goods from the exporter (M/s. DCW Ltd.) is liable to pay GST on RCM basis;
- 3) Whether the FOB basis (free on board) exports are liable to GST;
- 4) Whether the FOB basis of exports constitutes an inter-state supply subject to IGST; and
- 5) If liable to GST, what is the taxable value to be adopted as freight is not known to the exporter.

2.1 The Applicant submitted the details of debit entry vide No.DC3310220172122 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.

2.2 The authorities of the Centre and State were addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the Advance Ruling application and for comments on the issues raised.

3 The Applicant, in the Statement of facts has stated that:-

3.1 The sunset clause of exemption of GST on Ocean freight and Air Export freight under notification 08/2017 (integrated tax) serial number 9 item (ii) Transport of goods in a vessel @ 5% and item (vii) Goods transport services other than (i) to (vi) i.e., Air at 18%, has not been extended beyond 01.10.2022 and thus the ocean freight and air freight on exports have become taxable.

3.2 In the case of CIF basis of export, the freight is paid by the exporter and the freight forwarder/ shipping line charges the GST on freight on forward basis and thus there is no issue as far as CIF exports.

3.3 In case of FOB basis of export, the freight is paid by the overseas buyer to the freight forwarder/ shipping line. The exporter hands over the export goods either factory stuffed or port loaded in the container to the shipping line at the customs port. The exporter filed shipping bill is assessed by the customs and the let export order is issued by customs after the containers are loaded into the ship and it sails the port on the basis of export general manifest filed by the shipping line.

4. The applicant has not submitted any interpretations of law/or facts as the case may be in respect of the aforesaid questions or the applicants' view point and submissions on issues on which the advance ruling is sought.

5. The concerned Officer of the 'Centre', viz., the Assistant Commissioner vide letter dated 05.03.2024, has stated that no proceedings are pending on the above said issue in respect of the applicant.

6. The State jurisdiction Officer viz. the State Tax Officer, Tiruchendur Assessment Circle stated that there is no pending for adjudication in the applicant's case relating to the question raised in the application for advance ruling section 98 (1). The Joint Commissioner (ST), Intelligence, Tirunelveli has also remarked that there is no pending proceedings in the applicant's case in his jurisdiction.

7.1 The Applicant, was given an opportunity to be heard in virtual mode on 29.11.2023. Shri M. Thyagamoorthy, General Manager (Legal & Indirect Taxation), who is the Authorized Representative of the Applicant appeared for the virtual hearing and he reiterated the submissions made in their application. He explained that M/s. DCW Ltd., are engaged in the manufacture of around 13 different chemical product like 'Caustic Soda', PVC resin etc., and that they export around Rs. 250 crores of their goods, annually. He explained in brief about the nature of

queries raised and stated further that the queries raised in the instant case pertain basically to exports made by them on FOB basis.

7.2 The members requested the authorised representative to offer clarity on the various queries raised in the instant application, especially in relation to the queries raised by the applicant vide Sl. No. 3 and 4, which talks about export of goods and its taxability. The authorised representative explained that inadvertently, the queries in question were framed improperly, and that in actual terms, the queries were meant to involve only the ocean freight involved on the export of goods, and that the same is not about the export of goods, per se. He further stated that he would re-phrase the queries at Sl. No. 3 and 4 of the application to this effect in the nature of an amendment, and to furnish a write-up on the various queries raised, involving the facts of the case and their interpretation of law relating to the case.

7.3 As undertaken by them, the applicant vide their letter dated 28.12.2023 requested the Advance Ruling Authority to permit the rephrasing of the queries numbered 3 and 4, as follows :-

*“Query 3 : Whether the **“export freight involved”** is liable to GST on RCM basis for the goods exported (on which GST is liable and permitted and exported under LUT) on FOB basis (Free on Board).*

*Query 4 : Whether the **“export freight involved”** above constitutes an inter-state supply subject to IGST.”*

8 Accordingly, they were accorded another opportunity of hearing on 12.01.2024, Shri M. Thyagamoorthy, General Manager (Legal & Indirect Taxation), attended the hearing in virtual mode. The AR stated that as undertaken in the personal hearing held on 29.11.2023, they have furnished another letter dated 28.12.2023, wherein they have requested to permit them to rephrase the queries at Sl.no.3 and 4 to the application.

DISCUSSION AND FINDINGS:

9.1 We have carefully considered the submissions made by the Applicant in their application, submissions made during the personal hearing and the comments furnished by the Centre and State Tax jurisdictional officers. We observe that after the rephrasing of queries 3 and 4, the queries to be addressed in respect of the applicant in the instant case, are as follows :-

- 1) Whether the exporter (M/s. DCW Ltd.) is liable under RCM basis to pay GST on the export freight on the FOB basis of exports;
- 2) Whether the shipping line who accepts the goods from the exporter (M/s. DCW Ltd.) is liable to pay GST on RCM basis;

- 3) Whether the “export freight involved” is liable to GST on RCM basis for the goods exported (on which GST is liable and permitted to be exported under LUT) on FOB basis (Free on Board);
- 4) Whether the “export freight involved” above constitutes an inter-state supply subject to IGST; and
- 5) If liable to GST, what is the taxable value to be adopted as freight is not known to the exporter.

9.2 Prima facie, it is observed that all the queries relate to (i) Applicability of a Notification issued under the provisions of this Act; (ii) Determination of the liability to pay tax on any goods or services or both; and, (iii) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term. Thereby, the queries under consideration get covered under Section 97(2)(b), 97(2)(e) and 97(2)(g) of the CGST Act, 2017, and accordingly, the application is liable for admission.

9.3 As the term ‘place of supply’ plays a significant role in the taxability and the nature of tax to be charged, provisions relating to the same as in ‘Chapter V’ covering Sections 10 to 14 of the IGST Act, 2017, needs to be discussed in this case before proceeding further. The situations covered under the relevant Sections are as below:-

Section 10 – Place of supply of goods other than supply of goods imported into, or exported from India.

Section 11 - Place of supply of goods imported into, or exported from India.

Section 12 - Place of supply of services where location of supplier and recipient is in India

Section 13 - Place of supply of services where location of supplier or location of recipient is outside India

Section 14 – Special provision for payment of tax by a supplier of online information and database access or retrieval services.

As could be seen from the above, Sections 10 and 11 discusses about the place of supply of ‘goods’, and Section 14 discussed about ‘Online information and database access or retrieval service’. As the issue in the instant case revolves predominantly around the service involving ‘export freight’, Section 12 and 13 which discusses about the place of supply of ‘services’, are found to be relevant to this case.

9.4 At the outset, as one may be aware Sl.No.20 of the Exemption Notification No.9/2017-Integrated Tax (Rate) dated 28.06.2017 provided for exemption on services relating to “Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.” Vide Notification No.2/2018-Integrated Tax (Rate) dated 25.01.2018, Sl.Nos.20A and 20B were inserted after Sl.No.20, to provide for exemption on services by way of transportation of goods by an aircraft, and by a vessel, respectively, when the said

services are provided from customs station of clearance in India to a place outside India. However the conditions attached to Sl.Nos.20A and 20B, read as “*Nothing contained in this serial number shall apply after the 30th day of September 2018.*”. The said condition was extended time and again, and as a ‘sunset’ clause, it was extended upto 30.09.2022 vide Notification No.07/2021-Integrated Tax (Rate) dated 30.09.2021, beyond which no such extension was provided under any other notification.

9.5 This meant that the provision of such services of ‘transportation of goods from customs station of clearance in India to a place outside India’ when provided by means of an aircraft or a vessel have become taxable with effect from 01.10.2022. Apart from this, it is also pertinent to note that in cases of outbound shipments whether by air or by sea, where both the parties (supplier and recipient) are in India, the place of supply was to be determined in terms of the proviso to Section 12(8) of the IGST Act, 2017 which was inserted with effect from 1.02.2019, and which read as :-

“Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.”

Therefore, since the supplier (shipping line/freight forwarder) of service (transportation of goods by vessel/air), is in India, and the recipient (the applicant) is also in India, the place of supply is to be determined in terms of Section 12 of the IGST Act, 2017, in such cases. Accordingly, from 1.10.2022 onwards taxes under IGST is liable to be discharged in the instant case, in terms of Section 7(5) of the IGST Act, 2017, read with proviso to Section 12(8) of the Act, *ibid*, which fixes the place of supply, as the ‘place of destination of such goods’, which is outside India.

9.6 Apart from the proviso to Section 12(8) of the IGST Act, 2017, it is also seen that Section 13 of the IGST Act, which provides for ‘place of supply of services in a situation where the location of supplier, or location recipient, is outside India’, states in sub-section 9 to Section 13, as follows :-

“(9) The place of supply of services of transportation of goods, other than by way of mail of courier, shall be the place of destination of such goods.”

9.7 However, it is to be noted that from 1.10.2023 onwards, the omission of both the aforesaid provisions, i.e., proviso to Section 12(8) of the IGST Act, 2017, and Section 13(9) of the Act, *ibid*, proposed under Sections 161 and 162 respectively of the Finance Act, 2023 (No.8 of 2023), takes effect, by way of Notification No.28/2023-Central Tax dated 31.07.2023. That is to say that from 1.10.2023 onwards, with the omission of Section 13(9), the ‘place of supply’ under Section 13 (where location of supplier or location of recipient is outside India) gets fixed by default as the location of the recipient of service, vide Section 13(2) of IGST Act, which states as :-

“(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services.”

Likewise, Section 12(8) of the IGST Act, 2017, now (from 1.10.2023) operates without the proviso, which reads as :-

“(8) The place of supply of services by way of transportation of goods, including by mail or courier to,—

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.”

Here again, the place of supply of such services under Section 12 (where location of supplier and recipient is in India) when provided to a ‘registered person’, shall be the location of such person, which in turn happens to be the ‘recipient of service’.

9.8 In order to align with the change in ‘place of supply’, after the amendments carried out in respect of the aforesaid legal provisions as discussed above, the CBIC has caused the issue of the certain Notifications, in order to amend/omit the clauses that existed so far with effect from 01.10.2023, in the respective parent notifications, as mentioned below :-

S.No	Amendment Notification No./Date	Parent Notification No./Date	Changes effected
1	11/2023-IT (R) dt.26.09.2023	8/2017-IT (R) dt.28.06.2017 (Rate Notification)	A portion of the words omitted in item (ii) of column (3) against serial number 9 of the table.
2	12/2023-IT (R) dt.26.09.2023	9/2017-IT (R) dt.28.06.2017 (Exemption Notfn)	A new ‘proviso’ substituted against the existing proviso in column (3) against serial number 10 of the table.
3	13/2023-IT (R) dt.26.09.2023	10/2017-IT (R) dt.28.06.2017 (RCM Notification)	Serial number 10 and the entries relating thereto of the table, omitted.

9.9 We find that in the instant case, the queries raised by the applicant revolves around the “export freight” involved on the export of goods undertaken by the applicant on “FOB basis”. In this regard, we find that under the ‘statement of facts’ furnished by the applicant, they have stated as follows in respect of FOB basis of exports, i.e.,

“In case of FOB basis of export, the freight is paid by the overseas buyer to the freight forwarder/shipping line. The exporter hands over the export goods either factory stuffed or port loaded in the container to the shipping line at the customs port. The exporter filed shipping bill is assessed by the customs and the let export order is issued by customs after the containers are loaded into the ship and it sails the port on the basis of export general manifest filed by the shipping line.”

It is understood from the above that the exporter of goods (the applicant) delivers the goods, either factory stuffed or port loaded in the container to the shipping line

at the customs port. Since the export on FOB (Free on Board) basis, is being discussed in the instant case, the exporter's responsibility ends with export of goods, and that they are in no way connected with the service involving export freight, which will be handled by the overseas buyer. Further, the freight forwarder/shipping line that undertakes the export freight may be a foreign based supplier of service, or an Indian based supplier of service, or a foreign based supplier having an Office in Thoothukudi, or elsewhere in India. It may be noted that all these situations have a bearing on the determination of the nature of supply, i.e., whether to be treated as an 'inter-state supply' or an 'intra-state supply'.

9.10 Notwithstanding the same, we are of the opinion that any query not relating to the applicant, need not be answered, since the definition of 'advance ruling', as provided under Section 95(a) of the CGST Act, 2017, reproduced below speaks about the decision to be provided in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant, i.e.,

"(a) 'advance ruling' means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;"

It is brought to notice that in the case of an export on 'CIF (Cost Insurance Freight)' basis, an exporter is required to carry out transactions with the freight forwarder/shipping line, as they are responsible for arranging and paying the export freight charges. However, in the case of export on 'FOB basis', the export freight is to be arranged by the overseas buyer themselves, or through his agent, and so the freight forwarder/shipping line acts independently, and they do not have any transaction with the exporter in in this regard. Therefore, any query relating to the freight forwarder/shipping line, who is not the applicant in the instant case of export on 'FOB basis', or queries relating to the activities undertaken by the freight forwarder/shipping line, need not be answered by the Authority for Advance Ruling.

9.11 We now intend to undertake an issue-wise discussion on the queries raised by the applicant. We find that a major part of the queries seek clarity on liability, if any, under reverse charge (RCM) basis. Therefore, we are of the opinion that a discussion on the notifications involving RCM is required to be made before proceeding further. In this regard, it may be noted that in exercise of the powers conferred by sub-section (3) of Section 9 of the Central Goods and Services Act, 2017, the Government notifies certain category of supply of goods or services or both, the tax on which only, shall be paid on reverse charge basis (RCM) by the recipient of such goods or services or both. Accordingly, Notification No.13/2017-Central Tax (Rate) dated 28.06.2017, as amended, enumerates the supply of certain services on which tax under RCM is liable to be paid. Likewise, Notification

No.10/2017-Integrated Tax (Rate) dated 28.06.2017, as amended, also enumerates the supply of certain services on which tax under RCM is liable to be paid, as empowered by sub-section (3) of Section (5) of the Integrated Goods and Services Act, 2017. On perusal of both the notifications referred above, it is seen no such entries related to 'export freight' find a place in the said notifications. The Notification No.10/2017-Integrated Tax (Rate) dated 28.06.2017, as amended, provides for an entry at Sl.No.1, where the recipient becomes liable to pay taxes under IGST, on 'import' of service. Likewise, an entry at Sl.No.10 deals with 'Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India', where the 'importer of goods', is liable to pay taxes under IGST on RCM basis. It may be noted however, that the said entry at Sl.No.10 stands omitted with effect from 01.10.2023, in terms of Notification No.13/2023-Integrated Tax (Rate) dated 26.09.2023. In effect, as on date, no entries relating to 'export freight' finds a place in any of the RCM notifications referred above.

9.12.1 Whether the exporter (M/s. DCW Ltd.) is liable under RCM basis to pay GST on the export freight on the FOB basis of exports – We find that in the instant case of exports on FOB basis, the exporter (applicant) is not at all involved in any way with the 'export freight', as the same is to be arranged by the overseas buyer themselves, or through his agent. We further find that the exporter is neither the provider nor the recipient of service relating to 'export freight'. Therefore, the question of payment of GST on RCM basis on the export freight on the FOB basis of exports by the exporter (M/s. DCW Ltd.), does not arise.

9.12.2 Whether the shipping line who accepts the goods from the exporter (M/s. DCW Ltd.) is liable to pay GST on RCM basis – As the shipping line is not the applicant, and does not transact with the applicant in the instant case involving export of goods on FOB basis, this query need not be answered by the Authority for advance Ruling as discussed in detail in para 9.10 above.

9.12.3 Whether the "export freight involved" is liable to GST on RCM basis for the goods exported (on which GST is liable and permitted to be exported under LUT) on FOB basis (Free on Board) – The issue has been discussed in detail in para 9.11 above. However, we are of the opinion that the above query on 'export freight involved' need not be answered, as it does not relate to the applicant, and as the applicant does not undertake or receive 'export freight' service as stated in para 9.12.1 above.

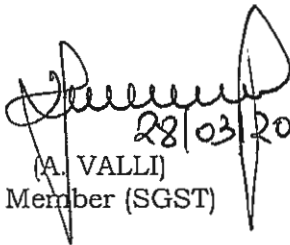
9.12.4 Whether the "export freight involved" above constitutes an inter-state supply subject to IGST – As stated already, the issue has been discussed in detail in para 9.11 above. However, we are of the opinion that the above query on 'export freight involved' need not be answered, as it does not relate to the applicant, and as the applicant does not undertake or receive 'export freight' service as stated in para 9.12.1 above.

9.12.5 If liable to GST, what is the taxable value to be adopted as freight is not known to the exporter – Does not apply, as the query No.4 has not been answered, and as the issue involving ‘export freight’, does not relate to the applicant.

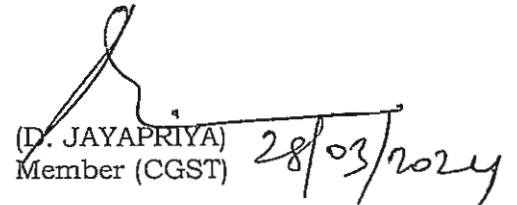
10 Based on the above discussions, we rule as under:

RULING

S.No.	DESCRIPTION OF THE QUERIES RAISED	RULING
1	Whether the exporter (M/s. DCW Ltd.) is liable under RCM basis to pay GST on the export freight on the FOB basis of exports?	The question of payment of GST under RCM by the applicant does not arise.
2	Whether the shipping line who accepts the goods from the exporter (M/s. DCW Ltd.) is liable to pay GST on RCM basis?	Not answered, as the shipping line is not the applicant
3	Whether the “export freight involved” is liable to GST on RCM basis for the goods exported (on which GST is liable and permitted to be exported under LUT) on FOB basis (Free on Board)?	Not answered, as the issue does not relate to the applicant.
4	Whether the “export freight involved” above constitutes an inter-state supply subject to IGST	Not answered, as the issue does not relate to the applicant.
5	If liable to GST, what is the taxable value to be adopted as freight is not known to the exporter	Does not apply, as the query No.4 has not been answered.


28/03/2024
(A. VALLI)
Member (SGST)




(D. JAYAPRIYA)
Member (CGST) 28/03/2024

To

M/s. DCW Limited,
No.45, Sahupuram, Arumuganeri,
Kayalpattinam North Village,
Thoothukudi, Tamil Nadu – 628 229.

//by RPAD//

Copy submitted to:

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

Copy to:

1. The Commissioner of GST and Central Excise,
Madurai Commissionerate, Central Avenue Building,
4, Lal Bahdur Shastri Road, Bibikulam, Madurai – 625 002.
2. The State Tax Officer,
Tiruchendur Assessment Circle,
Travellers Bungalow Road,
Tiruchendur – 628 215.
3. Master File/ Spare – 2.