

AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI -600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Ms. Manasa Gangotri Kata, I.R.S., Additional Commissioner/Member,
Office of the Commissioner of GST & Central Excise, Chennai -34
2. Thiru Kurinji Selvaan V.S., M.Sc., (Agri.), M.B.A.,
Joint Commissioner (ST) / Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-3.

ORDER No. 03/ARA/2020 Dated 31.01.2020

GSTIN Number, if any / User id	33AAACS6994C1ZC
Legal Name of Applicant	Shapoorji Pallonji and Company Private Limited.
Trade Name of the Applicant	Shapoorji Pallonji and Company Private Limited
Registered Address / Address provided while obtaining user id	SP Infocity, Module 4-A, 2nd floor, A Block No-40, M.G.R. Salai, Kandanchavadi, Perungudi Chennai - 600 096.
Details of Application	Form GST ARA – 001 Application SI.No.02 Dated 22.01.2019
Concerned Officer	State: The Assistant Commissioner(ST), Thiruvanmiyur Assessment Circle. Plot No. 141, 1 st Floor, Yazhini Complex, 1 main Road, Burma Colony, Perungudi, Chennai – 600 096. Centre:Chennai South, Division: Perungudi
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for	
A Category	Provision of services.
B Description (in brief)	Composite Works Contracts involving supply of both materials (goods) and service.
Issue/s on which advance ruling required	1. Determination of time and value of supply of goods or services or both 2. Admissibility of input tax credit of tax paid or deemed to have been paid

<p>Question(s) on which advance ruling is required</p>	<p>1. Whether the Transitional Provisions under Section 142(11)(c), (Chapter XX) of TNGST Act, 2017/CGST Act, 2017 is correctly applicable for the remaining installments of ‘Mobilization Advance’, which transitioned into the GST regime and to be adjusted/deducted by the applicant post the implementation of GST (i.e. Post July 1, 2017).</p> <p>2. Whether, the applicant would be liable to pay GST, under the provisions of the TNGST Act, 2017/CGST Act, 2017 and allied laws, on the installments of the ‘Mobilization Advance’, which has transitioned into the GST regime and adjusted /deducted by the applicant post the implementation of GST (i.e. post July 1, 2017).</p> <p>3. Whether, the applicant would be eligible to avail Input tax Credit (ITC) on Service Tax paid which was transferred from Pre-GST period through TRAN-1 Return filed in terms of the section 142(11)(c), under Transitional Provisions (Chapter XX) of both TNGST Act, 2017/CGST Act, 2017.</p>
--	---

Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

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.

M/s .Shapoorji Pallonji and Co.Pvt.Ltd, SP Infocity, Module 4-A,2nd floor, A Block No-40, M.G.R. Salai, Kandanchavadi, Perungudi, Chennai - 600 096. (hereinafter called the ‘Applicant’ or SPCPL) is registered under the GST Vide GSTIN 33AAACS6994C1ZC. They are primarily engaged in the construction business dealing with various clients under composite Works Contracts involving supply of both materials (goods) and service. They have sought Advance Ruling on the following questions:

1. Whether the Transitional Provisions under Section 142(11)(c), (Chapter XX) of TNGST Act, 2017/CGST Act, 2017 is correctly applicable for the remaining installments of 'Mobilization Advance', which transitioned into the GST regime and to be adjusted/deducted by THE APPLICANT post the implementation of GST (i.e. Post July 1, 2017)
2. Whether, THE APPLICANT would be liable to pay GST, under the provisions of the TNGST Act, 2017/CGST Act, 2017 and allied laws, on the installments of the 'Mobilization Advance', which has transitioned into the GST regime and adjusted 'deducted by THE APPLICANT post the implementation of GT (i.e. post July 1, 2017)
- 3 Whether, THE APPLICANT would be eligible to avail Input tax Credit (ITC) on Service Tax paid which was transferred from Pre-GST period through TRAN-1 Return filed in terms of the section 142(11)(c), under Transitional Provisions (Chapter XX) of both TNGST Act, 2017/CGST Act, 2017.

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan 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.

2.1 The Applicant has stated that they had entered into an agreement, dated November 21, 2016 with the Christian Medical College, Tamil Nadu, India (CMC) for construction of Service and Teaching Facility at CMC. As per the Agreement CMC was required to pay 'Mobilization Advance' to the applicant, which would be equivalent to 5 percent of the contract price in two tranches of 2.5 percent each totally amounting to Rs.15,83,72,000/-. They have also stated that both tranches of 'Mobilization Advance' were paid to them by CMC during the Pre-GST regime. On receipt of 'Mobilization Advance' the applicant had paid Service tax, as the same was leviable/payable under Sec.66B read with Sec.67 of the Finance Act, 1994. However, no Value Added Tax was paid on Mobilization Advance as VAT would be payable subsequently only at the time of charging Running Bill (RA Bill) on the gross amount including the 'portion of the Mobilization Advance' being adjusted thereon. The 'Mobilization Advance' had to be recovered on a time basis in fifteen equal instalments on monthly basis against the Running Bill during the month or

separately if no Bill is raised in that particular month. As on 30th June 2017 the applicant had paid five instalments of first tranch and three instalments of second tranch of Mobilization Advance totally amounting to Rs.4,22,32,533/-

2.2 The applicant has further stated that GST was implemented in India from July 1, 2017. Therefore, it is clear that the payment of remaining ten instalments of first tranch and the remaining twelve instalments of second tranch of the 'Mobilization Advance' totally amounts to Rs. 11, 61, 39,467 transitioned into the GST regime. They have filed TRAN-1 Return in terms of the Section 142(11)(c), under Transitional Provisions (Chapter XX) of both CGST Act, 2017 and TNGST Act, 2017 for transferring the amount of Rs.1,44,85,057 being Service Tax paid on the 'Mobilization Advance' under Sec.66B read with Sec.67 of the Finance Act, 1994 during the Pre-GST regime. During September 2017, this amount has been transferred into GST common portal and credited into the Electronic Credit Register of the applicant. The applicant has made reference to Section 142(11)(c) of CGST Act/TNGST Act 2017 which provides that in cases where both VAT and Service Tax are payable then, tax under this Act (i.e. TNGST Act, 2017/CGST Act, 2017) shall be payable, on the supplies made after July 1, 2017, and the taxpayer would be allowed to avail the credit of VAT or Service Tax paid under the erstwhile taxation laws. The applicant is of the view that the portion of 'Mobilisation advance' transited into GST regime would get covered under Section 142(11)(c) of CGST Act/TNGST Act 2017. The applicant has stated that their client Christian Medical College, Tamil Nadu, India (herein after CMC) has disputed this and they are of the opinion that the portion of the Mobility Advance transited into GST regime would get covered under Section 142(11)(b) of the TNGST Act, 2017/CGST Act, 2017 as Service tax was leviable on 'Mobilization Advance' paid for Works Contract, under Chapter V of the Finance Act, 1994 and no VAT was paid and as such no GST shall be payable on this under the TNGST Act, 2017/CGST Act, 2017.

2.3 Regarding the question of whether the applicant would be eligible to avail Input Tax Credit(ITC) which was transferred from Pre-GST period through TRAN-1 Return filed in terms of the Section 142(11)(C), of both TNGST Act, 2017/CGST Act, 2017, the applicant has stated that where the supply is subject to VAT as well as service tax and only one tax has been paid (either service tax or VAT) as the work is not completed under the previous regime, in such cases, credit of the tax paid can be availed as credit and when the work is completed applicable taxes may be paid.

Therefore, in the present case, the applicant has submitted that they are engaged in providing works contract services to CMC, which attracts both Service Tax and VAT and the applicant has only paid service tax and therefore, credit must be availed of the service tax so paid during Pre-GST regime and GST has to be paid for gross value charged in the RA Bill during GST regime including the 'portion of the Mobilization Advance' being adjusted thereon. In view of the foregoing facts, the applicant has sought the authority for advance ruling on the questions mentioned in para 1 supra.

3.1 The applicant was given an opportunity to be personally heard on 10.04.2019. The authorised representative appeared before the authority and stated that their works contract with client is for Rs.315crore for which advance amount was paid by client on which ST & VAT was already paid. They stated that on the advance amount which is now amortised in the invoices in GST regime they should pay the GST whereas the client stated that they should not change GST again on the ST/VAT paid advance. They further stated that they would submit full contract with all annexure, all invoices, RA, including advance invoices, tax paid details in 2 weeks and requested for another personal hearing. In furtherance to the above PH the applicant submitted certain details such as Agreement, invoices and returns filed under Service Tax and Value Added Tax and wanted another personal hearing for submitting additional particulars regarding their works contract and filing returns under service tax Act.

3.2 The Applicant was extended an opportunity of being heard on 21.05.2019 for which the applicant requested adjournment and preferred to be heard in July 2019. The applicant was extended an opportunity to hear again on 24.07.2019. They appeared and submitted two volumes giving details of the contract, mobilization advances bills, subsequent monthly bills raised. They also submitted copies of the returns filed for Service Tax for the months of January 2017 till the mobilization advance have been recovered. They stated that they have charged Service Tax on the advances and adjusted amounts during Jan- June 2017, while for the monthly billing for VAT they have paid VAT for the which have not been billed separately. They have availed regular scheme of 'deemed sale' value under VAT regime and stated further that they have not paid VAT on the mobilization advances as it is not required. They also submitted that for question (1), the relevant supplies are supplies made for RA bills for the months of July 2017 onwards. For question (2), the supplies are Running Bills from Jan 2017 to

June 2017. They stated that they have paid the Service Tax on the mobilization advance in the months of October –December 2017 return and sought to submit Copies of the return with working sheet in a weeks' time.

3.3 Further to the above hearing, the applicant submitted written submission on 01.08.2019 stating that as a supplier of Works Contract involving both goods and services, they have paid service tax on the entire amount of advance received during Pre-GST period whereas they continued to supply works contract service during GST regime and a portion of Advance (received during Pre-GST period) was to be adjusted in the taxable value (in terms of contract.). Hence they are of the opinion that they, shall be entitled to take credit of Service Tax paid by them under the existing law (The Finance Act, 1994/Service tax Rules, 1994) to the extent of supplies made by them after the appointed day under the provisions of Sec. 142(11)(c) of the CGST Act, 2017.

4. The applicant is under the administrative control of Central Tax. The said jurisdictional authority was addressed to report if there are any pending proceedings in the applicant's case on the issues raised by the applicant in the ARA application and for comments on the issues raised. The said authority did not furnish any report and also has not furnished any comments. The State Tax authorities were also addressed for comments and the said authority has not furnished any comments. Hence, it is construed that there is no proceedings pending in the case of the applicant on the questions seeking Advance ruling before us.

5. We have carefully examined the statement of facts; supporting documents filed by the Applicant and heard the arguments made by the Applicant at the time of Personal hearing. The applicant is engaged in the construction business dealing with various clients under composite Works Contracts involving supply of both materials (goods) and service. They had entered into an agreement, dated November 21, 2016 with the Christian Medical College, Tamil Nadu, India (CMC) for construction of Service and Teaching Facility at CMC. As per the Agreement CMC was required to pay 'Mobilization Advance' to the applicant, which would be equivalent to 5 percent of the contract price in two tranches of 2.5 percent each totally amounting to Rs.15,83,72,000/- and the same is to be recovered on a time

basis in fifteen equal instalments on monthly basis against the Running Bill(RA Bill). They have also stated that both tranches of 'Mobilization Advance' were paid to them by CMC during the Pre-GST regime and On receipt of 'Mobilization Advance' they had paid Service tax payable under Sec.66B read with Sec.67 of the Finance Act, 1994. However, no Value Added Tax was paid on Mobilization Advance as VAT would be payable subsequently only at the time of charging Running Bill (RA Bill). The applicant has sought ruling on the following questions:

1. Whether the Transitional Provisions under Section 142(11)(c), (Chapter XX) of TNGST Act, 2017/CGST Act, 2017 is correctly applicable for the remaining installments of "Mobilization Advance", which transitioned into the GST regime and to be adjusted/deducted by THE APPLICANT post the implementation of GST (i.e. Post July 1, 2017)

2. Whether, THE APPLICANT would be liable to pay GST, under the provisions of the TNGST Act, 2017/CGST Act, 2017 and allied laws, on the installments of the 'Mobilization Advance', which has transitioned into the GST regime and adjusted 'deducted by THE APPLICANT post the implementation of GT (i.e. post July 1, 2017)

3. Whether, THE APPLICANT would be eligible to avail Input tax Credit (ITC) on Service Tax paid which was transferred from Pre-GST period through TRAN-1 Return filed in terms of the section 142(11)(c), under Transitional Provisions (Chapter XX) of both TNGST Act, 2017/CGST Act, 2017.

6. Section 97(2) of the CGST Act / Tamil Nadu GST Act (TNGST) gives the scope of Advance Ruling Authority, i.e., the question on which the Advance Ruling can be sought. For ease of reference, the section is reproduced as under:

97 (2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

(a) classification of any goods or services or both;

(b) applicability of a notification issued under the provisions of this Act;

(c) determination of time and value of supply of goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services or both;

(f) whether applicant is required to be registered;

(g) 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.

The Act limits the Advance Ruling Authority to decide the issues earmarked for it under Section 97(2) and no other issue can be decided by the Advance Ruling Authority. Of the questions raised, Q.No. 1 & 2 relates to determination of the liability to pay tax which is governed under 97(2)(e). Q.No. 3 raised by the applicant relates to the admissibility to credit under the Transitional Provisions, which is not in the ambit of this authority and hence cannot be answered. We proceed to discuss the questions 1 & 2 raised by the applicant.

7.1 In the case at hand, the applicant has received mobilisation advance amounting to Rs. 15,83,72,000/- which is inclusive of Service Tax and Cess of Rs.89,64,453/-(on the 40% of the mobilisation advance received) i.e, the applicant has received the Mobilisation Advance which is 5% of the Contract value of Rs.316,74,45,469 amounting to Rs. 15,83,72,000/- to mobilise Materials, Labour etc for the execution of works. The said amount consists of Rs. 14,94,07,548/- as the value and Rs. 89,64,453/- as the service tax and cess components. The Mobilisation Advance is paid in 2 tranche @2.5% of the Contract value each. From the submissions, it is seen that the applicant has received the first tranche of Rs.7,91,86,000/- in the month of December 2016 which is inclusive of Service tax and cess of Rs.44,82,227/-(on the 40% of the advance received).They had issued Tax Invoice No. CMC/1349/Mob.Adv.01/16-17/07 dated 13.12.2016 and paid the service tax and cess of Rs. 44,82,227/- on the said amount received under 'Works Contract Service' for the month of December 2016 as reflected in the statements furnished by the applicant and the ST-3 Returns for the half-year October 2016-March 2017. The applicant has received the Tranche 2 of the advance of Rs.7,91,86,000/- in the month of March 2017, which is inclusive of Service tax and cess of Rs. 44,82,227/-(on the 40% of the advance received). They had issued Tax invoice No. CMC/1349/Mob.Adv.02/16-17/16 dated 04.03.2017 and has paid the service tax and cess of Rs. 44,82,227/- as reflected in the statements. The applicant has paid the service tax as per the Point of Taxation in respect of services during Pre-GST Regime. The applicant has issued Tax Invoice as per the Service Tax Law mentioning the advance value and service Tax with CESS to their customer. Thus as far as the applicant is concerned, we find that they have received the advance for execution of original works and had paid service tax &

cess on the 40% of the total value after claiming abatement available under the law. It is also seen that no VAT is paid on the advance received. However, it is seen that on the RA bills raised during the Pre-GST regime, the VAT/WCT payable has been raised while the Advance received has been considered against payment for the works executed during the said period.

7.2 After the GST came into force, the works contract entered into by the applicant for construction is a 'Supply of Service' as per Sl.No. 6 of Schedule-II to CGST Act. It is stated that the mobilisation advance is paid to the applicant for the execution of work. 'Consideration' is defined under Section 2(31) of the ACT as follows:

(31) "consideration" in relation to the supply of goods or services or both includes—(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

In the case at hand, the entire unadjusted mobilisation advance as on 1-7-2017, according to the Contract, is paid towards consideration for the said supply of service and therefore is a consideration against supply of service of 'Works Contract'. Also, Section 13 of the Act which provides for the time of supply of services, states that:

(2) The time of supply of services shall be the earliest of the following dates, namely:—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply

.....

Explanation.—For the purposes of clauses (a) and (b)—

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

The applicant has received the advance against the service to be provided and as

per the explanation above, the supply is deemed to have been made to the extent it is covered by the invoice or of the payment and the 'date of payment' is the date on which it is entered into the books of account of the supplier, i.e, the applicant. In the case at hand the applicant has raised the invoice to the full Mobilisation Advance received by them and is, therefore, deemed to have supplied works contract service to CMC prior to 1-7-2017 to the extent covered by the Mobilisation advance that stood credited to its account as per Section 13 of the GST Act.

7.3 The first and the second question is as to whether GST is to be paid on the amount raised in the RA Bill periodically post implementation of GST, without deducting the part of mobilisation advance adjusted in the bills raised or the liability to GST is to be arrived at after deducting the part of Mobilisation advance being adjusted in the RA bill. The applicant has stated that their case is covered under the provisions of Section 142(11)(c) and accordingly, the liability to GST arises inclusive of that part of advance sought to be adjusted against the receivables in a particular RA Bill. Section 142(11) of the Act is given below for ease of reference:

a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994(32 of 1994)

(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, 32 of 1994) tax shall be leviable under this Act and the taxable person shall be entitled to take credit of Value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed."

From the above it is seen that

- Section 142 (11)(a) applies to transaction in goods on which VAT is leviable and it over-rides Section 12 of GST law which states that liability to pay tax on goods arise at the time of supply as determined by provisions of Section 12.
- Section 142(11)(b) applies to transactions in services on which Service tax was leviable and it over-rides Section 13 of GST law which states that

liability to pay tax on services arise at the time of supply as determined by provisions of Section 13.

- Section 142(11)(C) applies to transactions where tax under both VAT and Finance Act 1994 was paid on any supply and on which GST is leviable to the extent 'supply' is made after the appointed date notwithstanding the fact that tax has already been remitted under the erstwhile VAT and Service Tax laws. An exception has been carved out, that VAT and service Tax paid on such transactions under the erstwhile laws would be available as credit under section 142(11)(c), to the extent VAT and Service Tax has been paid under old laws for the receipt of services/goods/both, which is treated as "supply' under GST.

Therefore, it can be deduced that Section 142(11)(c) is applicable in cases with respect to transactions in which both VAT and Service Tax are paid in the Pre-GST regime and on which GST would be leviable to the extent 'supply' is made after the appointed date for the recipient who has actually paid the tax. In the case at hand, the applicant has paid Service Tax on the advance received as per the said statute for which the applicant has raised invoice on their service receiver along with the component of service tax but no VAT has been paid/received from their customer on that part of the Mobilisation Advance pertaining to materials and therefore, this provision do not apply to the case at hand. Accordingly, we hold that the transitional provisions under Section 142(11)(c) is not applicable to the case of the applicant.

7.4 Further 'Supply of Works Contract' is deemed to be a service under GST. Under the pre-GST regime, service tax was leviable on the service portion of the Works Contract, which in the case at hand being original work, was levied on 40% of the value. The applicant on receipt of advance has paid the service tax on the 40% of the value as required under the provisions of Service Tax. The like situations are more aptly covered under the transition provision at Section 142(11)(b) wherein it is stated that no tax is payable on services under the GST Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act. Therefore, we conclude that GST is not payable on the Mobilisation advance which has been received prior to GST implementation as per Section 142(11)(b) of the Act.

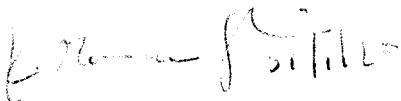
7.5 The applicant has further sought to know the eligibility of ITC (Rs. 1,44,85,057/-) as per Section 142(11)(c). As discussed in Para 7.3 above, Section 142(11)(c) will not be applicable on the Mobilisation Advance. However, as

discussed in Para 6 above, the admissibility of transitional credit is not in the ambit of Advance Ruling and therefore not considered.

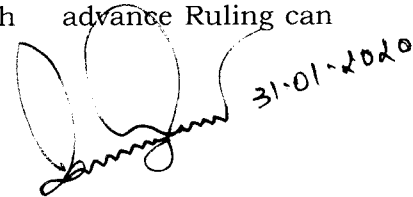
8. In view of the above, we rule as under:

RULING

1. The Transitional Provisions under Section 142(11)(c) is not applicable to the case at hand.
2. The Mobilisation advance to the extent received prior to the implementation of GST towards supply of Works Contract Service is not to be subjected to GST as per the provisions of Section 142(11)(b) of the GST Act 2017.
3. The eligibility to credit based on the transitional provisions is not answered as the same is not covered under the questions on which advance Ruling can be sought under Section 97(2) of the Act.

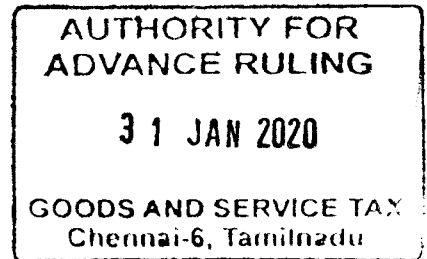


Ms. Manasa Gangotri kata
Member, CGST



Shri Kurinji selvaan V.S.,
Member, TNSGST

To
Shapoorji Pallonji and Company Private Limited,
SP Infocity, Module 4-A, 2nd floor, A Block
No-40, M.G.R. Salai, Kandanchavadi,
Perungudi Chennai - 600 096.



Copy Submitted to:

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

Copy to:

3. The Commissioner of GST & C.Ex., Chennai South Commissionerate,
MHU Complex, No. 692, Anna Salai, Nandanam, Chennai 600 035.
4. The Assistant Commissioner(ST),
Thiruvanmiyur Assessment Circle,
Plot No. 141, 1st Floor, Yazhini Complex,
1 main Road, Burma Colony, Perungudi,
Chennai - 600 096.
5. Master File/ Spare-2