

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. Thiru Senthilvelavan B., I.R.S, Additional Commissioner/Member
Office of the Commissioner of GST & Central Excise, Chennai -34
2. Thiru KurinjiSelvaan V.S., M.Sc.(Agri.), M.B.A.,/Joint Commissioner(ST)/Member
Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.

ORDER No. 41 /AAR/2020 DATED: 18.12.2020

GSTIN Number, if any / User id		33AAACT2015M1ZM
Legal Name of Applicant		Thirumalai Chemicals Limited
Registered Address/Address provided while obtaining user id		No.25A, Sipcot Industrial Complex, Sipcot, Ranipet- 632 403.
Details of Application		GST ARA- 01 Application Sl.No.16/2020/ARA dated 20.07.2020
Concerned Officer		State: Assistant Commissioner(ST) Ranipet (Sipcot). Centre: Chennai Outer Commissionerate.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		Factory / Manufacturing
A	Category	
B	Description (in Brief)	The applicant is engaged in the business of manufacture and trading of chemicals.
Issue/s on which advance ruling required		Determination of value of supply of goods or services or both
Question(s) on which advance ruling is required		1. The value to be adopted in respect of transfer to branches located outside the state. 2. whether the value of such supplies can be determined in terms of the second provision

	to Rule 28 in respect of supplies made to distinct units in accordance with clause (4) & (5) of section 25 of the CGST rules, 2017?
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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. Thirumalai Chemicals Limited, having their principal place of business at No.25A, SIPCOT Industrial Complex, SIPCOT, Ranipet- 632 403 (hereinafter called the Applicant) are registered under GST with GSTIN 33AAACT2015M1ZM. They are engaged in the business of manufacture and trading of chemicals. The applicant has preferred an application seeking advance ruling on the following questions:

1. The value to be adopted in respect of transfer to branches located outside the state.
2. whether the value of such supplies can be determined in terms of the second provision to rule 28 in respect of supplies made to distinct units in accordance with clause (4) & (5) of section 25 of the CGST rules, 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 are engaged in the business of manufacture and trading of Chemicals. They are the largest producers in the world for Phthalic Anhydride, Malic Acid and Fumaric Acid. Apart from this, they have revenues from Sales of power from wind operated generators & income from letting

out of storage facility. Apart from the units in Tamilnadu, they have units & branches located in Gujarat, Maharastra and Dadra & Nagar Haveli. Apart from the domestic and export sales they are also engaged in Stock transfer of their finished products to their units (depots) located in other states, who are distinct units as per Section 25 of the Act and to their agents in other States. At present, stock transfers from Ranipet are made to warehouses (depots) situated in Gujarat & Maharashtra being distinct entities. To reach out to the customers on time and to maintain optimum inventory at depot level, there is always movement of goods from factory to depot under the concept of stock transfers. Further, Rule 28 of GST Rules 2017 deals with valuation of a supply when it is made between distinct or related persons. They have stated that at present the valuation adopted for stock transfer to their distinct entities in other states are made in accordance with the provisions of Rule 28(a) of the CGST Rules, which says that the value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall- (a) be the open market value of such supply; i.e., they are adopting the 'Open market value' as provided under Rule 28(a) of CGST Rules, 2017. The distinct units are eligible to full input tax credit as per second proviso of Rule 28 of Central Goods and Services Tax Rules, 2017 and are availing input tax credit of the stock transfers received from the distinct unit at Tamilnadu. Further, the said stock transfers are sold by the distinct person from their depots.

2.2 The applicant has stated that apart from the depot, there is a factory at Gujarat and is incorporated as an additional place of business in the GST registration certificate of Gujarat. The factory is yet to commence the commercial production. The factory at Gujarat has acquired lot of machineries, equipment & inputs for its operation and due to which lot of input tax credit has been accumulated at the unit at Gujarat. Apart from this, there are input tax credit available due to payment of warehouse charges. The factory is yet to become operational and as such there is no sales resulting in outward GST liability. The applicant has also submitted that they have their Registered office at Maharashtra (Mumbai) and input tax credit accumulated at the Maharashtra office remain unutilized due to the fact that apart from the input tax credit availed based on stock transfer, there is accumulation of input tax credit due to receipts of inputs such as bank charges, RCM charges, consultancy charges etc., at the office. Apart from this, there are input tax credit available due to payment of warehouse charges. The applicant has submitted a

sampling data displaying the input tax credit availed by way of stock transfer and other purchases & expenses, wherein the percentage of excess input tax credit on stock transfer receipt to outward liability on sales at the depots as well the overall excess input tax credit available after adjusting the outward liability expressed in terms of both figures and percentage. They have stated that from the data it could be observed that the Stock transfer input tax credit availed during 2018-19 was in excess by 1.07% & 0.19% as compared to the outward liability discharged in Maharashtra & Gujarat, respectively and also there are accumulated input tax credit availed from other purchases and expenses at the respective places of business in Maharashtra & Gujarat. In view of the sampling data, the applicant's observation is that the amount of input tax credit with respect to Integrated Goods and Service Tax availed from Stock transfer receipt is more than sufficient to discharge the outward liability at the time of sales made at the depots. The above trend would be almost similar in other periods also and as such the accumulated and unutilized input tax credit continues to be on the higher scale. Except for sale of stock transfer receipts, no other sales are in place in Maharashtra & Gujarat. Hence, the inflow of input tax credit continues to surpass the outflow GST liability. This expresses the distinct person's inability for maximum utilization of input tax credit. In view of this, they need to revisit the existing pricing pattern adopted for stock transfers. The revised strategy is adopting a reduced or zero valuation for stock transfers fully in compliance with the provisions of Rule 28 of CGST Rules, 2017 without any deviations, wherein the outflow of GST liability would be either reduced or Zero and in turn the inflow of input tax credit on stock transfer receipts at depots would be greatly reduced or would be Zero. This would prompt the depots to focus their attention on the alternative source of accumulated input tax credit available which in turn would result in their maximum utilization. Further, they have stated that Going forward there would be maximum utilization of the entire input tax credit available which would result in unblocking of the accumulated and unutilized input tax credits, releasing of blocked capital and funds and ease of doing business.

2.3 On the issue for determination, the Applicant has stated that in the instant case, since the Tamilnadu unit is a distinct person, they are required to discharge the CGST/SGST/IGST as applicable while supplying/stock transferring the goods to their distinct units outside the State. They have referred to Rule 28 of GST Rules, 2017 and its proviso. They are of the view that the second proviso is applicable to their case, i.e., where the recipient is eligible for full input tax credit, the value declared in

the invoice shall be deemed to be the open market value of the goods or services. As input tax credit is not available unless there is an invoice or document of like nature [Section 16(2)(a)], the above proviso must be interpreted with reference to specific invoices. Hence all Invoices or documents of like nature under Section 16 of GST Act, of goods for further retail sale or for use in the business transferred to branches considered as distinct persons being located in States other than TamilNadu, are valid documents eligible for Input Tax Credit. If the second proviso is applied it is sufficient that they pay tax at the time of supply of goods from the state of Tamil Nadu on the value declared in the tax invoice while dispatching the supplies to other States. The goods received by the recipient are further sold or supplied to the consumers/customers based on the market price. At that time, the Applicant's distinct unit outside the Tamil Nadu State pays the applicable tax under GST provisions on the basis of the actual sales value to the customers at which these are supplied to them. The Applicant has further stated that if the transfer of goods from the State of Tamil Nadu is also to take place on the basis of market value, then though the unit outside the State will be eligible to claim input tax credit on such stock transfer receipts, the amount of input tax credit of stock transfers availed shall only be used for set off when the stocks are sold by the distinct units. In fact, there may remain an excess amount of input tax credit of stock transfer received & other input tax credit availed after setting the same toward the discharge of GST liability in respect of sales done at depots. Rule 28(a) provides that, the value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall be the open market value of such supply; With regard to the second proviso, when full input tax credit is available, it is provided that the value declared in the invoice is to be treated as open market value of the goods or services. In other words, there is no requirement that these provisos should be applied only sequentially. They are provided to take care of different situations and taking into account the fact that the open market value is specifically defined in Chapter IV of CGST Rules, 2017, the value declared in the invoices in respect of cases where the recipient is eligible to take full input tax credit will be the value relevant for payment of tax when the goods are transferred to the branch. It is only with the intention to avoid blocking of capital/funds, the legislature has provided a situation, where when the distinct person is eligible to take full input tax credit and is going to make further supply, then, in respect of initial supply, it is not necessary to adopt only open market value and pay higher tax and block such tax amounts. In

such a situation, till the credit is used by distinct unit, the credit amount will remain accumulated. On the other hand, when full credit is taken at a lower value and further supply is made at a higher value at the point of supply, the distinct unit will utilize the credit and also pay additional tax based on the open market value at the time of making further supply. They have also stated that there is nothing to show that the second provision is subordinate to the first provision of Rule 28. It independently deals with a scenario where the recipient is eligible for full input tax credit. Also, the second proviso does not restrict its application as in the first proviso, which is to be applied for cases of 'as such supply'. Therefore, the Applicant is of the opinion that they may adopt the value for supply to distinct person as provided under proviso 2 to Rule 28 of the CGST/TNGST Rules, 2017. Further, there is no specific regulation in the said Rules, that the Rules are to be applied seriatim. In case of full Input tax being available to the recipient as credit, the invoice value is declared as 'Open market value.

2.4 The Applicant has submitted that, they will be entitled to adopt any value range for supply of these items to their branches when their branches are entitled to take full credit of the tax paid and such values, therefore, adopted by the Applicant are to be treated as open market value for the purpose of CGST Act and Rules. Also they have stated that that they propose to adopt a lesser price or Zero price as it may warrant for their stock transfer to their distinct units (depots) situated in different states to offset the accumulated input tax credit, which will pave way to avoid unnecessary blocking of capital/funds to the organization which in turn will ensure the smooth functioning of the business. Further due to the fact that lesser price being adopted in stock transfer would result in lesser accumulation of credit at the place of the stock transferor. However, these credit in turn would be utilized for their supplies to other unrelated customers by the Applicant. They have placed reliance on the following case laws to substantiate their contentions:

- APPELLATE AUTHORITY ADVANCE RULING No. AAAR/09/2019(AR), DATED 13th November 2019 in IN RE : SPECSMAKERS OPTICIANS PRIVATE LIMITED
- In Re : Gkb Lens Pvt. Ltd. - 2018 (13) G.S.T.L. 343 (A.A.R. - GST)
- In Re : Gkb Lens Pvt. Ltd - 2018 (17) G.S.T.L. 698 (App. A.A.R. - GST)
- In Re: Kansai Nerolac Paints Ltd.- 2019 (26) G.S.T.L. 257 (A.A.R. - GST)

They have submitted that they wish to determine & adopt the value of supply of goods (Stock transfer to their distinct persons) as per second proviso to Rule 28 of

CGST Rules, 2017, and apply the same by replacing the existing method of valuation of goods, i.e., open market value as prescribed under Rule 28(a) of CGST Rules 2017 and has sought to clarify the same.

3.1 Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media vide e-mail dated 31.07.2020. The applicant consented and the hearing for admission of the application was held on 20.08.2020. Shri. K.V.Srinivasamurthy, authorised representative participated in the hearing and reiterated the submissions made along with the application. The representative referred to the decision of the Tamilnadu Appellate authority for Advance Ruling in the case of M/s Specs makers and claimed their case is similar in acts. The applicant was asked to furnish the details of the finished products stock transferred from Ranipet with Invoices; current method of valuation adopted with related documentation; the list of recipients of these products from Maharashtra and Gujarat with sample invoices.

3.2 The applicant vide their letter dated 27.08.2020 submitted the following:

- A random selection of Sample invoices(copies) for a period of three months ranging from December 2019 to February 2020 pertaining to stock transfer from Ranipet to Gujarat Distinct person; Sales by the Gujarat Distinct person; stock transfer from Ranipet to Maharashtra Distinct person; Sales by Maharashtra distinct person
- Comparative Chart of Average price between Stock Transfer price & Sale Price based on the above sample data - (In percent)

Unit	Average Stock transfer Price	Average Sale price at Depot	% of Increase/(Decrease) of Stock transfer price to Sale price
Gujarat	₹ 64,076.00	₹ 64,624.00	(0.8%)
Maharashtra	₹ 64,622.00	₹ 64,480.00	0.2%

- With regard to the current method of valuation adopted for stock transfers made, the applicant stated that they adopt the "Open market Value" as provided under Rule 28(a) of the CGST Rules, 2017. A certificate to this has

been furnished by them. The said rate adopted is based on the immediately preceding approximate value of the sales done at the depots.

They have reiterated that there is no restriction that the Rule 28 and its proviso should be sequentially applied. If the recipient is eligible for full input tax credit, the invoice value will be deemed to be the open market value as provided under Proviso 2 to Rule 28 of the CGST Rules, 2017. With regard to the word "Proviso", the applicant has submitted as below:

- It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. In other words, Proviso 2 provides an exception to the wording "be the open market value of such supply" under Rule 28(a) of CGST Rules, 2017 by stating that the "Open market value" in the event of the recipient is eligible to avail input tax credit, shall be the one which is declared on the face of the invoice.
- A proviso qualifies the generality of the main enactment by providing an exception and taking out from the main provision, a portion, which, but for the proviso would be part of the main provision.
- A proviso, must, therefore, be considered in relation to the principal matter to which it stands as a proviso. A proviso should not be read as if providing by way of an addition to the main provision which is foreign to the principal provision itself. They have explained the term proviso in words of LORD MACMILLAN, LORD MACNAGHTEN, HIDYATULLAH.J & KAPUR .J , SARATHI IN INTERPRETAION OF STATUES
- A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction" as observed in: Union of India & Others vs. Dileep Kumar Singh (2015) AIR 1421 at 1426-27. It may be used merely to act as on optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision - S. SundaramPillai, Etc vs V.R. Pattabiraman Etc - 1985 AIR 582.
- They have stated that GST Act, 2017 is the main enactment, and GST Rules are subordinate legislation. As such the logic which applies to the enactment with respect to the word " Proviso" shall also be applicable in the similar manner in respect of Rules, since the same being

subordinate legislation to the main enactment and are governed by the said enactment.

4.1 The applicant during the hearing was asked to furnish the details of the finished products stock transferred from Ranipet with Invoices; Current method of Valuation adopted with relevant documentation; the list of recipients of these products from Maharashtra and Gujarat with Sample Invoices. The applicant vide their submissions dated 27.08.2020, had furnished the current method adopted by them for the stock transfers and sample invoices in respect of the product Phthalic anhydride. They did not furnish the details of the finished products, list of recipients, etc..The applicant was addressed vide e-mail dated 06.11.2020 seeking the proposed marketing pattern, Sample purchase orders for sale to the ultimate consumer with trail of stock transfer; the class of recipient of the stock transferred goods and they were also asked to confirm whether 'Phthalic Anhydride is dealt with. The applicant was asked to intimate whether they wished to be heard again virtually.

4.2 The applicant vide e-mail dated 17.11.2020 furnished an interim reply, wherein they stated that

- On the marketing pattern, generally there are three type of supplies
 - Direct supplies to the consumers from the factory (now at Ranipet, Tamilnadu)
 - Supplies from Depot/Agents situated in few states (generally customers who lift smaller quantities take it from depot/Agents)
 - Exports
- The above pattern is likely to exist in the future also excepting for the fact that there would be another factory operating from Gujarat doing similar activities and for the same product upon its commissioning
- Phthalic Anhydride is the major product. Apart from this, there are other products also, but the quantum is very minimal as compared to Phthalic anhydride
- Most of the recipients are industrial consumers. There are few traders also who again are probably supplying to small
- Industrial consumers

They sought additional time to furnish the details of Sample purchase orders for sale to the ultimate consumer with trail of stock transfer. The applicant furnished the copies of purchase Orders for which they had already furnished the invoice raised on

the customers by their Distinct units at Gujarat and Maharashtra vide their letter dated 28.11.2020

5.1 The central jurisdictional authority reported that there are no pending proceedings in the applicant's case on the issues raised by the applicant in the ARA application in their jurisdiction.

5.2 The State Jurisdictional authority who has the administrative jurisdiction over the applicant has stated the following:

- In the Rule 28, it has been specifically mentioned the method of valuation to be adopted for stock to their branches at outside the state and the method should be applied sequentially as there is no wording "or" between (a), (b), or (c) so as to suit their circumstances. Therefore, if open market value is available it has to be adopted and paid tax and in such cases, they cannot choose the next situation (b)
- On perusal of the details in their application it is seen that the units at other state have availed all input tax credit as per stock transfer invoice i.e be the open market value of the goods and services.
- In the year 2018-19 both in Maharashtra and Gujarat outward liability is lesser than the inward liability, value of closing stock available at the year end out of goods received as stock transfer has to be verified to ensure the excess input tax credit available after settings.
- The applicant has paid tax on the open market value and the other state unit has taken full input tax credit. If there is excess ITC cover and above the input tax credit every year (treating the closing stock as NIL) then the sale value at other end will be lesser than the stock transfer receipt at other end. The reasons for lesser sale value at the other end then the receipt value have to be verified to ensure the correctness of their claim.

The authority has stated that there is no show cause notice or issue pending adjudication on the issue raised by the applicant in their application.

6. We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, oral submissions made at the time of Virtual hearing, written submissions made thereafter and the comments of the Jurisdictional Authorities. The applicant has sought ruling on the following questions:

1. The value to be adopted in respect of transfer to branches located outside the state.
2. Whether the value of such supplies can be determined in terms of the second provision to rule 28 in respect of supplies made to distinct units in accordance with clause (4) & (5) of section 25 of the CGST rules, 2017?

The ruling sought for is on the value to be adopted for supply to the 'Distinct persons'. As per Section 97 (2), the question raised is within the ambit of this authority and the application is accordingly admitted.

7.1 The facts of the case is that the applicant is engaged in the business of manufacture and trading of Chemicals. Apart from the domestic and export sales they are also engaged in Stock transfer of their finished products to their units (depots) located in other states as well as to their agents in other States. At present, stock transfers from Ranipet are made to warehouses (depots) situated in Gujarat & Maharashtra. The depots at Gujarat and Maharashtra are distinct units as per Section 25 of the CGST/TNGST Act and these distinct units are registered in the respective States. The present valuation adopted for stock transfer to their distinct units in other states are made in accordance with the provisions of Rule 28(a) of the CGST Rules, which says that the value of the supply of goods or services or both between distinct persons as specified in sub section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall be the open market value of such supplies. The said distinct units are eligible to avail full input tax credit on supplies made by the Ranipet unit Tamil Nadu as per second proviso of Rule 28 of CGST Rules, 2017. The distinct units are availing input tax credit of the stock transfers received from the distinct unit in Tamil Nadu and said stock transfers are sold by the distinct person to unrelated customers from their depots.

7.2 From the various submissions of the applicant such as Purchase orders, invoice raised by the applicant on their distinct units and the 'Tax invoice' raised by the distinct units on the ultimate customers, it is seen that the distinct units receives purchase orders from the unrelated ultimate consumers; the applicant mentions 'Stock Transfer' in the Invoices raised on the distinct units, the unit price for such stock transfer is based on the last rate adopted (approximate) at the depot of the distinct unit as per their certificate dated 27.08.2020 submitted by them and IGST at the appropriate rates are raised; the distinct unit raises 'Tax Invoice' on the unrelated

buyer quoting the value mentioned in the purchase order raised on them by such buyer along with the relevant taxes(IGST/CGST&SGST).

7.3 The clarification sought before us is whether the value to be adopted for supply to distinct persons can be determined in terms of the Second proviso to Rule 28 of the CGST Rules 2017. The applicant has stated that the distinct units have excess accumulated credits owing to various reasons and therefore they propose to change their valuation being adopted presently, which is the 'Open Market Value' as per Rule 28(a) of the CGST Rules 2017 to that provided under the second proviso to Rule 28 of the CGST Rules 2017. The question before us is to decide whether the method of valuation prescribed under the Second proviso is applicable to the supply to distinct persons of the applicant. We do not comment/give any opinion on the submissions of the applicant on the available excess ITC at their distinct units for want of jurisdiction and also considering that the issue raised before us is only on the value to be adopted for the supply which do not have any relation to the credit accumulation at the recipient end but for the fact that the recipient is eligible to avail the entire credit of tax paid by the applicant.

8.1 With the above facts, the relevant statutory provisions are examined. The Value of supply of goods and services are defined under Section 15 of CGST Act, 2017, which is as below:

15. (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this Act,—

(a) persons shall be deemed to be “related persons” if—

(i) such persons are officers or directors of one another's businesses;

- (ii) such persons are legally recognised partners in business;
- (iii) such persons are employer and employee;
- (iv) any person directly or indirectly owns controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family;
- (b) the term "person" also includes legal persons;
- (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

8.2 In the case at hand, the applicant and the distinct persons outside the state of Tamil Nadu are different legal persons hence, both are said to be related as per the explanation to Section 15. Therefore the value to be adopted is governed by rules prescribed as per Section 15(4) of CGST Act. Rule 28 of CGST Rules, 2017 provides the value to be adopted when the supply is between distinct persons and the same is as under:

Rule 28. Value of supply of goods or services or both between distinct or related persons, other than through an agent.-The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

- (a) be the open market value of such supply;
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order;

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

Explanation.-For the purposes of the provisions of this Chapter, the expressions-

(a) "open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;

The above rules provides that the value to be adopted is to be the 'Open market Value' i.e., the price of sale charged to an independent buyer; if such 'open market value' is not available then value charges for like goods and quality is to be adopted; and if the value cannot be ascertained by both the above means, then the value is to be determined by cost construction or best judgement method. The Proviso to the above rule presents two scenario- (1) when the goods are intended for supply as such, then the supply to the related person can be valued at 90% of the ultimate sale value and this is at the option of the supplier; (2) when the recipient is eligible for full Input Tax Credit, then the value declared in the invoice is deemed to the 'Open Market Value'

8.3 We find that the Appellate Authority for Advance Ruling ,Tamil Nadu in the case of Specsmaakers Opticians Private Limited Vide AAAR order No.09/2019, Dated 13.11.2019 has examined the above Rule 28 and its provisos, in Para 7.3 of the said order. The same is extracted as under:

" 7.3 We find that there is no specific regulation in the said Rules, that the rules are to be applied seriatim. Further looking at the construction of the said rule, it is evident that when an 'Open Market Value' is available, sub-rule (b) and (c) may not be applicable but the same is not the case in respect of the provisos. Proviso 1 entitles the appellant to value at 90% of the ultimate sale value to the unrelated customer at the initial supply at his option in cases of 'as such supply'. A plain reading of this proviso gives an option to the person supplying to distinct or related person and do not mandate that the value of supply should be goods of the ultimate sale value, even in such a scenario. Proviso 2 states that when the tax paid is available as full input tax credit, then the invoice value is the

'Open Market Value'. Considering the constructions of the rule as above, we find that the law provides the taxpayer an option to adopt 90% of the price charged as value to be adopted initially (i.e., supply between distinct persons) and in the alternative, in case of full Input tax being available to the recipient as credit, the invoice value is declared as 'Open market value'. There is nothing to show that the second proviso is subordinate to the first. It independently deals with a scenario where the recipient is eligible for full input tax credit.

From the above, it is evident that the Value in respect of supply between distinct persons can be

1. The available Open Market Value;
2. In cases of 'as such' supply by the recipient, the supplier has an option to value the supply at 90% of the ultimate sale value;
3. When the recipient is eligible for full Input Tax credit, the 'Invoice value' is deemed to be the 'Open Market Value'

9.1 In the case at hand, the applicant supplies to their distinct persons, for which presently they adopt the approximate sale value of the distinct person. The distinct person undertakes supply to their ultimate-unrelated customer 'as such' and the value adopted is that on the Purchase Order issued to such distinct persons by the ultimate customer. Also, the distinct units are eligible to avail full Input Tax credit of the tax paid by the applicant. Therefore, following the judicial discipline, we hold that the value to be adopted by the applicant can be arrived at following the methodology of either of the three methods.

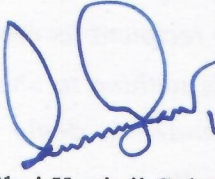
10. In view of the above, we rule as under:

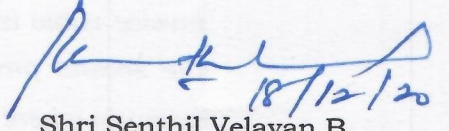
RULING

The applicant can adopt any one of the following three methods provided under Rule 28 of the CGST/ TNGST Rules 2017 read with Section 15 of the CGST/TNGST Act 2017 to arrive at the value in respect of supply to distinct persons

- a. Open Market Value as is presently being adopted by them;
- b. 90% of the ultimate sale value as raised by the distinct persons to the un-related ultimate customers based on the Purchase Orders in cases of 'as such' supplies;

- c. The distinct persons being eligible for full Input Tax credit of Taxes paid by the applicant, the 'Invoice value' is the deemed 'Open Market Value'


18/12/2020
Shri Kurinji Selvaan V.S.,
Member, TNGST.


18/12/20
Shri Senthil Velavan B,
Member, CGST.



To

M/s.Thirumalai Chemicals Limited,
No.25A, Sipcot Industrial Complex,
Sipcot, Ranipet. 632 403.

// BY SPEED POST WITH ACK.DUE //

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,
IInd Floor, Ezhilagam, Chepauk, Chennai - 600 005.

Copy to:

3. The Commissioner of GST & Central Excise,
Chennai (Outer) Commissionerate, Newry Towers,
No 2054, 1 block,
IInd Avenue, 12th Main Road,
Annanagar,
Chennai.600 040.
4. The Assistant Commissioner(ST)
Ranipet (Sipcot)17, Market Feder Road,
Navalpur, Ranipet 632 401.
5. Master File/ Spare - 2.