OFFICE OF THE COMMISSIONER OF CENTRAL TAXES & CUSTOMS
AUDIT - II COMMISSIONERATE
केंद्रीय कर और सीमा शुल्क आयुक्त का कार्यालय, लेखापरीक्षा -द्वितीय आयुक्तालय
1-98/B 20,21-Sanvi Yamuna Pride, Krithika Lay Out, Madhapur, Hyderabad-500081
१-९८/बी,२०,२१ -सान्वी यमुना प्राइड, कृतिका ले आउट, माधापुर, हैदराबाद - ५०००८१

C.No. V/Audit II/C-I/28/2021-22/Gr.15 Date: 21.09.2022
DIN-20220956YS000041414A

To
M/s NILGIRI ESTATES
5-4-187/3 And 4, 2nd Floor, Soham Mansion,
MG Road, Secunderabad, Rangareddy, Telangana, 500003.
GST Registration No: 36AAHFN0766F1ZA

Gentlemen,

Subject: - GST Audit on the accounts of M/s. Nilgiri Estates for the Period July 2017 -March 2018, 2018 -2019 & 2019-20 –Certain objections – Issue of Spot Memo – Regarding.

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During the course of audit, on verification of your books of accounts, records and returns relating to GST for the period from July 2017 to March, 2020, the following irregularities have been noticed. You are liable to discharge tax along with applicable interest and penalty on the same.

Para-I: Short payment of GST due to adopting wrong method of valuation:

During the course of audit, on verifying the payment of tax towards the amount received for sale of constructed buildings to customers, it is found that the value of land is applied voluntarily and the same is reduced up to approximately half of the total sale value for arriving the taxable value instead of the same to be taken as one third of the total amount charged for supply.

As per the para 2 of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 *"the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.*

Explanation .– For the purposes of paragraph 2, "total amount" means the sum total of,-

(a) consideration charged for aforesaid service; and

(b) amount charged for transfer of land or undivided share of land, as the case may be"

By not following the method for valuation provided in the said notification as one third of the total value as the value of land, the taxpayer wilfully declared approximately half of the total value as the value of land and short paid the tax on the differential value. The sale deed and Flat History documents for each construction also confirm that the sale of land is not separate from the whole composite supply and the value of land is inclusive of various instalments demanded from customers.

In view of the above, there is short payment of total tax of **Rs.1,21,41,750/- (CGST- Rs.60,70,875/- and SGST Rs.60,70,875/-)** during the period of F.Y.2017-18 (from July,2017 to March,2018) to F.Y.2019=20. The details are given in the Annexure attached herewith.

Hence, you are liable to pay the above tax of **Rs.1,21,41,750/- (CGST-Rs.60,70,875/- and SGST Rs.60,70,875/-)** during the period of F.Y.2017-18 (from July,2017 to March,2018) to F.Y.2019-20 along with applicable Interest in terms of Section 50 (1) of the CGST Act, 2017 and Penalty in terms of Section 74 of the CGST Act, 2017.

Para-II- Short payment of GST on amount forfeited from the customers-

During the course of audit, it is observed that there are certain amount forfeited from the customers for not following the conditions laid down in the agreements made between the taxpayer and their customers during the period of F.Y.2017-18 (from July,2017 to March,2018) and F.Y.2018-19 which taxes are not paid for. The details are given hereunder.

Period	Amount forfeited in Rs.	CGST	SGST	Total
2017-18	25000	2250	2250	4500
2018-19	55000	4950	4950	9900
TOTAL	**80000**	**7200**	**7200**	**14400**

Hence, you are liable to pay the above tax of **Rs.14,400/- (CGST- Rs.7,200/- and SGST Rs.7,200/-)** during the period of F.Y.2017-18 (from July,2017 to March,2018) and F.Y.2018-19 along with applicable Interest in terms of Section 50 (1) of the CGST Act, 2017 and Penalty in terms of Section 74 of the CGST Act, 2017.

Para-III- Short payment of tax due to difference in tax rate-

During the course of audit, on verifying the returns it is observed that during the period F.Y. 2017-18 (From July,2017 to March,2018) the taxpayer has paid tax at the rate of 12% instead of 18% specified in Notification No.11/2017 CT (Rate) dt.28.06.2017 including CGST and SGST which caused a short payment of **Rs.19,82,815/- including CGST of Rs.9,91,407/- and SGST of Rs.9,91,407/-** for the period F.Y. 2017-18 (From July,2017 to March,2018). The details are given in the Annexure attached herewith.

Hence, you are liable to pay the above tax of **Rs.19,82,815/- including CGST of Rs.9,91,407/- and SGST of Rs.9,91,407/-** for the period F.Y. 2017-18 (From July,2017 to March,2018). along with applicable Interest in terms of Section 50 (1) of the CGST Act, 2017 and Penalty in terms of Section 74 of the CGST Act, 2017.

Para-IV: Short payment of GST on comparison of Tax liabilities declared in GSTR-1 and GSTR-3B :

During the course of audit, on comparison of tax liability declared in GSTR-1 with GSTR-3B it is observed that there is short payment of total tax of **Rs.27,16,554/- (IGST-Rs.0/-, CGST- Rs.13,58,277/- and SGST Rs.13,58,277/-) during the period of F.Y.2018-19**. The details are given hereunder.

Period	IGST	CGST	SGST	Total
June,2018	0	50,580	50,580	101160
March.2019	0	13,07,697	13,07,697	26,15,394
TOTAL	0	13,58,277	13,58,277	27,16,554

Since the tax paid in the monthly GSTR 3B returns filed under Section 39 of the CGST Act,2017 is comparatively less than the same declared in the monthly details of outward supplies furnished under Section 37 of CGST Act,2017 for the same periods.

Hence, you are liable to pay the above tax of **Rs.27,16,554/- (IGST- Rs.0/-, CGST- Rs.13,58,277/- and SGST Rs.13,58,277/-)** during the period of F.Y.2018-19 along with applicable Interest in terms of Section 50 (1) of the CGST Act, 2017 and Penalty in terms of Section 73 of the CGST Act, 2017.

Para-V: Excess availment of ITC in GSTR 3B on comparison with GSTR 2A :-

During the course of audit, on verification of records, it is observed that you have availed excess input tax credit to the tune of **Rs.38,58,144/- (IGST- Rs.3,77,768/-, CGST- Rs.17,40,188/- & SGST – Rs.17,40,188/-)** during the period of FY 2017-18, 2018-19 and 2019-20. The details are given in the table hereunder;;

Month	As per table 4A of GSTR 3B (Other than RCM)				As per GSTR 2A returns downloaded (Invoices issued by suppliers for the month)				Excess ITC availed in 3B than the tax paid invoices are available in 2A			
	IGST	CGST	SGST	CESS	IGST	CGST	SGST	CESS	IGST	CGST	SGST	CESS
Sept,17	22137	1151479	1151479	0	0	1311594	1311594	0	22137	Nil	Nil	Nil
Oct,17	0	646063	646063	0	22138	638165	638165	0	Nil	7898	7898	Nil
Nov,17	22137	529971	529971	0	0	597919	597919	0	22137	Nil	Nil	Nil
Dec,17	0	503698	503698	0	0	418059	418059	0	Nil	85639	85639	Nil
Feb,18	0	1510854	1510854	0	0	1249408	1249408	0	Nil	261446	261446	Nil
Mar,18	0	1340960	1340960	0	0	1089850	1089850	0	Nil	251110	251110	Nil
2017-18									44274	606093	606093	Nil
May,18	46328	685194	685194	0	49286	621064	621064	0	Nil	64130	64130	Nil
July,18	165461	397651	397651	0	12981	513067	513067	0	152480	Nil	Nil	Nil
Aug,18	11758	1262839	1262839	0	11758	1010147	1010147	0	Nil	252692	252692	Nil
Sept,18	65220	847235	847235	0	0	410681	410681	0	65220	436554	436554	Nil
Oct,18	0	454507	454507	0	16978	381575	381575	0	Nil	72932	72932	Nil
Nov,18	0	612948	612948	0	0	603697	603697	0	Nil	9251	9251	Nil
Dec,18	0	745118	745118	0	16301	717898	717898	0	Nil	27220	27220	Nil
Jan,19	0	447003	447003	0	201	439771	439771	0	Nil	7232	7232	Nil
Mar,19	0	737473	737473	0	0	674798	674798	0	Nil	62675	62675	Nil
2018-19									217700	932685	932685	
July,19	107866	456392	456392	0	0	426735	426735	0	107866	29657	29657	Nil
Sept,19	0	284359	284359	0	0	235008	235008	0	Nil	49351	49351	Nil
Oct,19	0	328904	328904	0	7928	311323	311323	0	Nil	17581	17581	Nil
Nov,19	7928	194439	194439	0	0	199840	199840	0	7928	Nil	Nil	Nil
Dec,19	0	406008	406008	0	0	341968	341968	0	Nil	64040	64040	Nil
Feb,20	0	287026	287026	0	0	246245	246245	0	Nil	40781	40781	Nil
2019-20									115794	201410	201410	Nil
								Grand Total	377768	1740188	1740188	Nil

Hence, the credit availed is inadmissible as per Section 16 of the CGST Act, 2017. You are therefore liable to pay the above amount of **Rs.38,58,144/- (IGST- Rs.3,77,768/-, CGST- Rs.17,40,188/- & SGST – Rs.17,40,188/-)** along with interest in terms of Section 50(1) of the CGST Act, 2017 and penalty in terms of Section 73 of the CGST Act, 2017 for the period of F.Y. 2017-18, 2018-19 and 2019-20.

Para - VI: Non-reversal of ITC on receipt of Credit Notes:-

During the course of audit, on verification of records, it is observed that you have received Credit Notes amounting of **Rs.1,69,159/- (IGST Rs.0/-, CGST- Rs.84,580/- and SGST -Rs.84,580/-)** in the period F.Y.2017-18, 2018-19 and F.Y.2019-20 as detailed in the annexure attached herewith and table given hereunder, where the input tax credit availed has to be reversed as per the provisions of the Section 34 of the CGST Act,2017.

Period	Value	IGST	CGST	SGST	Total
2017-18	108012	0	6802	6802	13603
2018-19	60846	0	5245	5245	10490
2019-20	805923	0	72533	72533	145066
TOTAL	974781	0	84580	84580	169159

Hence, you are liable to reverse the above amount of **Rs.1,69,159/- (CGST-Rs.84,580/- and SGST -Rs.84,580/-)** along with interest in terms of Section 50(1) of the CGST Act, 2017 and penalty in terms of Section 73 of the CGST Act, 2017.

Para-VII: Short payment of Interest towards late payment of tax :

During the course of audit, it is noticed that there is short payment of interest amount of **Rs.1,420/- (IGST-Rs.0/- ,CGST- Rs.710/- and SGST- Rs.710/-)** in 2017-18 towards the tax late paid. The details are given hereunder;

Period	IGST	CGST	SGST	Total
July,2017 to Mar,2018	0	710	710	1420
TOTAL	**0**	**710**	**710**	**1420**

Hence, you are liable to pay the above tax of **Rs.1,420/- (IGST-Rs.0/- ,CGST-Rs.710/- and SGST- Rs.710/-)** along with applicable Interest in terms of Section 50 (1) of the CGST Act, 2017 and Penalty in terms of Section 73 of the CGST Act, 2017.

Para-VIII: *Non-payment of GST under RCM as per Section 9(4)* of CGST Act,2017 on Rent paid to Unregistered person:-

During the course of audit, on verification of Profit and Loss Account, it is observed that, you have not paid GST under RCM on Rent paid during July, 2017 to October,2017 in respect of the business place as detailed below.

(i) GST on Rent under RCM-

Period	Value	CGST	SGST	Total
July,2017	16823	1514	1514	3028
August,2017	16823	1514	1514	3028
Sept.2017	16823	1514	1514	3028
Oct,2017	8412	757	757	1514
TOTAL	**58881**	**5299**	**5299**	**10598**

(ii) GST on Hamali Charges paid under RCM-

Period	Value	CGST	SGST	Total
July,2017	6926	623	623	1256
August,2017	6926	623	623	1256
Sept.2017	6926	623	623	1256
Oct,2017	3463	312	312	624
TOTAL	**24241**	**2181**	**2181**	**4362**

Grand Total	**83122**	**7480**	**7480**	**14960**

In terms of Section 9(4) of the CGST Act, 2017, GST is payable under Reverse Charge Mechanism (RCM) by the recipient of service in respect of the rent paid towards the service of renting of property from an unregistered person. This service is classified under SAC 997212 as per the scheme of classification of services under GST and attracts GST @ 18% vide Notification No.11/2017- Central Tax (Rate), dated 28.06.2017. Further, in terms of Section 9(4) of the CGST Act, 2017 read with Notification No. 8/2017-Central Tax (Rate), dated 28.06.2017 as amended, GST is payable under Reverse Charge Mechanism (RCM) by the registered person in respect of supply of goods or services or both received from an unregistered person (where the aggregate value of such supplies of Goods or Service or both received by a registered person from any or all the suppliers who is or are not registered exceeds Rs. 5,000/- in a day). Therefore, the services received against the payment made to unregistered persons are taxable at the rate of 18%.

Hence, you are liable to pay total GST amount to **Rs.14,960/- (CGST Rs.7,480/- + SGST Rs.7,480/-**) along with interest under section 50 (1) of the CGST Act, 2017 and penalty in terms of Section 73 of the CGST Act, 2017.

Para-IX :- Irregular availment of Input Tax Credit [Section 17(5)]:-

During the course of audit, on verification of records, it is observed that you have availed ineligible input tax credit for a total amount of **Rs.88,320/- including CGST – Rs.44,160/- and SGST- Rs.44,160/-** towards certain invoices where availment of input tax credit is inadmissible as per the Section 17 (5) of the CGST Act, 2017 for the period of F.Y. 2017-18, 2018-19 and 2019-20.

Service Category	Period	Value	IGST	CGST	SGST	Total
Car Rent Charges	2017-18	29,684	0	2,672	2,672	5,344
	2018-19	2,45,502	0	22,095	22,095	44,190
	2019-20	1,85,500	0	16,695	16,695	33,390
Medical Reimbursement	2019-20	29,982	0	2,698	2,698	5,396
Total		**4,90,668**	**0**	**44,160**	**44,160**	**88,320**

You are therefore liable to pay the amount of **Rs.88,320/- including CGST – Rs.44,160/- and SGST- Rs.44,160/-** along with interest in terms of Section 50(1) of the CGST Act, 2017 and penalty in terms of Section 74 of the CGST Act, 2017 for the period of F.Y. 2017-18, 2018-19 and 2019-20.

Yours faithfully,

21/09/2022

(SACHINDRA SINGH)/(सचीन्द्र सिंह)
SUPERINTENDENT/ अधीक्षक
Group -12, Circle-1/ ग्रुप-१२, सर्किल- १

Yours faithfully,

21/09/2022

(G.P.SUKUMAR) जी. पी .सुकुमार
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