Form GST DRC-06

[See rule 142(4)]

Reply to the Show Cause Notice

ARN: ZD361121069824E **Date: 26/11/2021**

1. GSTIN	36AAHFB7046A1ZT	
2. Name	B & C ESTATES	
3. Details of Show Cause Notice	Reference No. ZD361121003679L	Date of issue 12/11/2021
4. Financial Year	2017-2018	
5. Reply		
With reference to above, we are in the receipt of the above letter dat ed 12.11.2021 intimating about SCN reply which has been fixed on 26.11 .2021. In this regard, we wish to intimate that Sudhir V S, partner of M/s. Hiregange & Associates, authorized representative of our case, w ho is supposed to appear for Personal Hearing, is not able to attend o n the scheduled date because he is busy in addressing the "Training pr ogramme on Accounting and auditing aspect involved in the GST law" organized by ICAI for Hyderabad IV Commissionerate at Posnett Bhavan, Ramkote, Hyderabad (Copy of the programme schedule is enclosed for your reference). Therefore, we kindly request you to gra nt me a 30 days time to submit SCN reply. We sincerely regret for th e inconvenience caused to you in this regard. Kindly acknowledge the r		
6. Documents uploaded		
NA		
7. Option for personal hearing	☐ Yes	☑ No

8.Verification-

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my/our knowledge and belief and nothing has been concealed therefrom.

Signature of Authorized Signatory
Name : SOHAMMODI
Designation / Status: Managing Partner
Date: 26/11/2021

FORM GST DRC – 06

[See rule 142(4)]

Reply to the Show Cause Notice

1.GSTIN	36AAHFB7046A1ZT	
2.Name	B & C Estates	
3.Details of Show Cause Notice	Ref. No. ZD361121003679L	Date of issue: 12.11.2021
4.Financial Year	2017-18	
5.Reply		
Given as Annexure A		
6.Documents uploaded I. Form DRC-03 dated 24.02.2020		
7.Option for personal hearing	Yes- Required	☐ No

8.Verification –

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorised Signatory

ANNEXURE A:

FACTS OF THE CASE:

A. M/s. B & C Estates (hereinafter referred as "Noticee") located at 5-4-187/3 and 4, 2nd Floor, Soham Mansion, MG Road, Secunderabad, Ranga Reddy, Telangana – 500003 is *inter alia* engaged in provision of taxable services viz. Works Contract services, and are registered with Goods and Service Tax Department vide GSTIN No 36AAHFB7046A1ZT.

B. Noticee is regularly discharging GST and filing periodical returns. Noticee has also filed the Annual Return for the period 2017-18 and also filed reconciliation statement in GSTR-9C for the period 2017-18 (July 2017 to March 2018)

C. The Deputy Commissioner of State Tax (STU), Audit, Begumpet Division has issued a Notice vide letter dated 22.12.2020 intimating that an amount of Rs.8,18,712/- towards CGST and SGST each is payable on account of difference between GSTR-3B and GSTR-09.

D. Noticee has submitted a reply to the above referred notice and the issue is pending for adjudication.

E. Subsequently, Noticee is in receipt of the present Show Cause Notice issued by the Deputy Commissioner of State Tax, Begumpet STU-2, Begumpet Division vide reference No. ZD361121003679L dated 12.11.2021 for the period July 2017 to March 2018, proposing to demand an amount of Rs. 1,24,97,192/-.

F. In response to the above notice, Noticee is herewith making the following submissions.

Submissions

1. Noticee submits that they deny all the allegations made in Show Cause Notice (SCN) as they are not factually/legally correct.

2. Noticee submits that the provisions (including Rules, Notifications & Circulars issued thereunder) of both the CGST Act, 2017 and the Telangana GST Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act, 2017 would also mean a reference to the same provision under the TGST Act, 2017. Similarly, the provisions of CGST Act, 2017 are adopted by IGST Act, 2017 thereby the reference to CGST provisions be considered for IGST purpose also, wherever arises.

In Re: Impugned notice is not valid

3. Notice submits that the issue relating to excess declaration of taxes in GSTR-09 and difference in ITC between the GSTR-2A and GSTR-3B was already raised and the same is pending for adjudication. Since the issue is prejudice before the adjudication, the issuance of present notice on the same grounds is not correct and the same needs to be dropped.

4. Noticee submits that the impugned notice has been issued proposing to demand an amount of Rs. 1,24,97,192/- towards differences between the amounts declared in GSTR-01, GSTR-3B and GSTR-09 which shows that the issue is relating to discrepancy in returns filed by the Noticee.

5. In this regard, Noticee submits that Section 61 read with Rule 99 specifies that scrutiny of the returns shall be done based on the information available with the proper officer and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, under Rule 99(1), informing him of such discrepancy and seeking his explanation thereto. In case if the explanation provided by the Noticee is satisfactory, then no further action shall be taken in that regard. If the explanation provided is not satisfactory, then the proper officer can initiate appropriate action under Section 73 or Section 74.

6. However, in the instant case Noticee has not received any notice in FORM ASMT-10 requiring the Noticee to provide explanation for the discrepancy noticed in the returns. Instead, the proper officer has directly issued Form GST DRC-01 under Section 73 which shows that the impugned notice has been issued without following the procedure prescribed in Section 61 of CGST Act, 2017 and Rule 99 of CGST Rules, 2017.

Notice issued on assumptions and presumptions

7. Noticee submits that impugned SCN was issued with prejudged and premeditated conclusions on various issues raised in the notice. That being a case, issuance of SCN in that fashion is bad in law and requires to be dropped. In this regard, reliance is placed on Oryx Fisheries Pvt. Ltd. v. Union of India — 2011 (266) E.L.T. 422 (S.C.)

8. Noticee submits that the subject SCN is issued based on mere assumption and unwarranted inference, interpretation of the law without considering the intention of the law, documents on record, the scope of activities undertaken,

and the nature of activity involved, the incorrect basis of computation, creating its own assumptions, presumptions. Further, they have arrived at the conclusion without actual examination of facts, provisions of the Finance Act, 1994. In this regard, Noticee relies on the decision of the Hon'ble Supreme Court in case **Oudh Sugar Mills Limited v. UOI, 1978 (2) ELT 172 (SC)**

Notice is vague and lack of details

9. Noticee submits that the impugned notice has not given clear reasons as to how the Noticee has availed the irregular credit, therefore, the same is lack of details and hence, becomes invalid. In this regard, reliance is placed on

   a. CCE v. Brindavan Beverages (2007) 213 ELT 487(SC) the Hon'ble Supreme Court held that *"The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice."*

   b. Dayamay Enterprise Vs State of Tripura and 3 OR's. 2021 (4) TMI 1203 - Tripura High Court

   c. Mahavir Traders Vs Union of India (2020 (10) TMI 257 - Gujarat High Court)

   d. Teneron Limited Versus Sale Tax Officer Class II/Avato Goods and Service Tax & Anr. (2020 (1) TMI 1165 - Delhi High Court)

   e. Nissan Motor India Private Limited, Vs the State of Andhra Pradesh, The Assistant Commissioner (CT) (2021 (6) TMI 592 - Andhra Pradesh High Court)

   From the invariable decisions of various High Courts, it is clear that the notice without details is not valid and the same needs to be dropped.

10. Noticee further submits that the impugned notice has been issued both for CGST and SGST. However, as per Section 6 of CGST Act, 2017, a separate notice shall be issued for CGST and SGST. This shows that the Notice is issued not in accordance with the law and the same needs to be dropped.

11. Noticee submits that the impugned notice has proposed to demand following amounts

e. Only in exceptional cases like missing dealer etc. the recipient has to be called for to pay the amount which is clearly coming out from Para 18.3 of the minutes of 28th GST Council meeting held on 21.07.2018 in New Delhi

f. Even if there is differential ITC availed, the same is accompanied by a valid tax invoice containing all the particulars specified in Rule 36 of CGST Rules and the payment was also made to the suppliers. Hence, the Noticee is rightly eligible for ITC.

g. Noticee submit that under the earlier VAT laws there were provisions similar to Section 16(2) ibid which have been held by the Courts as unconstitutional. Relied on Arise India Limited vs. Commissioner of Trade and Taxes, Delhi - 2018-TIOL-11-SC-VAT AND M/s Tarapore and Company Jamshedpur v. State of Jharkhand - 2020-TIOL-93-HC-JHARKHAND-VAT.

h. **Noticee further submit that the fact that there is no requirement to reconcile the invoices reflected in GSTR-2A vs GSTR-3B is also evident from the amendment in Section 16 of CGST Act, 2017 vide Section 100 of Finance Act, 2021. Hence, there is no requirement to reverse any credit in absence of the legal requirement during the subject period.**

i. **Similarly, it is only Rule 36(4) of CGST Rules, 2017 as inserted w.e.f. 09.10.2019 has mandated the condition of reflection of vendor invoices in GSTR-2A with adhoc addition of the 20% (which was later changed to 10% & further to 5%). At that time, the CBIC vide Circular 123/42/2019 dated 11.11.2019 categorically clarified that the matching u/r. 36(4) is required only for the ITC availed after 09.10.2019 and not prior to that. Hence, the denial of the ITC for non-reflection in GSTR-2A is incorrect during the subject period.**

j. **Noticee further submits that the ITC proposed to be denied by the impugned notice is in the permissible limits of Rule 36(4), therefore, there is no irregular availment of ITC. Hence, the impugned notice needs to be dropped.**

k. Noticee wish to rely on recent Madras High Court decision in case of M/s. D.Y. Beathel Enterprises Vs State Tax officer (Data Cell), (Investigation Wing), Tirunelveli 2021(3) TMI 1020-Madras High Court and Jurisdictional High Court decision in case of Bhagyanagar Copper Pvt Ltd Vs CBIC and Others 2021-TIOL-2143-HC-Telangana-GST.

SI No	Particulars	Amount (CGST+SGST)
A	Tax on outward supplies under declared in GSTR-09	1,19,170/-
B	Excess ITC availed in GSTR-3B when compared to ITC reflected in GSTR-2A	15,18,253/-
C	ITC attributable to exempted supplies under Rule 42 of CGST Rules, 2017	87,15,000/-
D	ITC availed on restricted supplies under Section 17(5) of CGST Act, 2017	21,44,769/-
	Total	**1,24,97,192/-**

In Re: No short payment of GST

12. Noticee submits that the impugned notice has proposed to demand an amount of Rs. 1,19,170/- alleging that there is a difference between the taxes paid as disclosed in GSTR-3B returns and taxes paid as disclosed in GSTR-09 for the period July 2017 to March 2018.

13. In this regard, Noticee submits that the differential amount between GSTR-3B and GSTR-09 has been paid while filing GSTR-09 vide DRC -03 dated 24.02.2020 along with interest. Thereby, there is no short payment of GST to that extent. To evidence the same, Noticee is herewith submit the copy of Form DRC-03 dated 24.02.2020 as Annexure I. Hence, the demand to that extent needs to be dropped.

In Re: No irregular availment of ITC

14. Noticee submits that the impugned notice has proposed to deny ITC of Rs. 15,18,253/- stating that the same is in excess of ITC reflected in GSTR-2A for the period 2017-18. In this regard, Noticee submits that Noticee is rightly eligible for ITC for the following reasons

    a. ITC cannot be denied merely due to non-reflection of invoices in GSTR-2A as all the conditions specified under Section 16 of CGST Act, 2017 has been satisfied.

    b. GSTR-2A cannot be taken as a basis to deny the ITC in accordance with Section 41, Section 42, Rule 69 of CGST Rules, 2017.

    c. Section 41 allows the provisional availment and utilization of ITC, there is no violation of section 16(2)(c) of CGST Act 2017

    d. The above view is also fortified from press release dated 18.10.2018

In Re: Reversal under Rule 42 is not required for the exempted and non-GST supply declared by the Noticee in the GSTR-09

15. Noticee submits that the impugned notice has stated that the Noticee has declared an amount of Rs. 17,08,89,332/- as exempted and non-GST turnover, however, not reversed any ITC attributable to exempted turnover under Rule 42 and 43 of the CGST Act, 2017. In this regard, impugned notice has proposed to deny ITC of Rs. 87,15,000/- attributable to exempted and non-GST turnover under Rule 42 and 43 of the CGST Act, 2017.

16. In this regard, Noticee submits that the impugned notice is erroneous for the following reasons, thereby, the same needs to be dropped outrightly

    a. Impugned notice has not examined whether the turnover declared in table 5C, 5D, 5E and 5F of GSTR-09 is required to be considered for the purpose of reversal under Rule 42 and 43 of CGST Rules, 2017

    b. Impugned notice has considered the entire ITC availed during the period as the common credit whereas the reversal under Rule 42 ad 43 is required to be made only on common ITC used for provision of both taxable and exempted turnover.

    This shows that the impugned notice has been issued on incorrect basis and the same needs to be dropped.

17. Noticee submits that the details of the turnover declared in table 5C, 5D, 5E and 5F of GSTR-09 are as follows:-

SI No in GSTR-09	Nature of supply	Amount
5C	Supplies on which tax is to be paid by the recipient on reverse charge	0
5D	Exempted	52,738
5E	Nil Rated	0
5F	Non-GST supply (includes 'no supply')	17,08,36,595
Total		**17,08,89,333**

18. With respect to amount declared in Table 5D as exempted supply, Noticee submits that the bifurcation of the same is as follows

S.No	Description of Service	Amount
A	Interest on Fixed Deposit	2,751
B	Creditors written off	42,814
C	Legal expenses	7,172
	Total	**1,02,738**

Interest Income

19. With respect to amount declared under Table 5 as exempted supply, Noticee submits that the same constitutes the interest income earned from banks. In this regard, Noticee submits that Explanation 1 to Rule 43 reads as follows

Explanation 1: -For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -

a. .....

b. *the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and*

c. .....

20. Noticee submits that from the above referred explanation, it is clear that the value of services for which the consideration is represented by way of interest or discount shall be excluded from the aggregate value of exempt supplies for the purposes of reversal under Rule 42 and 43 of the CGST Act, 2017. Therefore, there is no requirement to reverse any ITC with respect to interest income received by the Noticee. Hence, the impugned notice to that extent needs to be dropped.

Creditors written off

21. In this regard, Noticee submits that the amounts in respect of the creditors written off is neither supply of goods and nor supply of services. Therefore, the same shall not be considered as a supply at all. Once it is not a supply, then the same cannot be treated as an exempted supply for the purpose of reversal of ITC under Rule 42 of CGST Rules, 2017. Further, assuming that the ITC is required to be reversed, no inputs or input services are used for writing off the creditors. Hence, the demand proposed to that extent needs to be dropped.

22. With respect to amount declared in Table 5F as non-GST supply, Noticee submits that the bifurcation of the same is as follows

S.No	Description of Service	Amount
A	1/3rd Land Deduction	14,65,64,595
B	Post OC sales	2,42,22,000
C	Forfeiture amount	50,000
	Total	**17,08,36,595**

23. With respect to amount declared in Table 5F as 1/3rd land deduction, Noticee submits that the Noticee is engaged in construction of residential and commercial apartments and discharging applicable GST on the same. Noticee submits that SI No.02 to Notification No. 11/2017-CT (R) dated 28.06.2017 provides that the value of supply of construction services shall be equivalent to the total amount charged for such supply less 1/3rd of the land deduction charged for such supply. Therefore, the Noticee has declared the abatement provided of 1/3rd of the total amount charged as non-GST supply.

24. Noticee submits that since the entire transaction is taxable and the 1/3rd of the total amount charged is not considered as the value of supply, the same shall not be considered as the exempted supply for the purpose of reversal under Rule 42 or 43 of CGST Rules, 2017. Hence, the proposal of impugned notice is not correct and the same needs to be dropped. In this regard, reliance is placed on

    a. Gateway Hotels Vs CCE, Cochin 2020 (37) GSTL 210 (Tri-Bang) wherein it was held that "6..... *Further we find that as per Rule 2C of Service Tax (Determination of Value) Rules, 2006, value of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant has been fixed as 40% of the total value on the condition that Cenvat credit on inputs classified under Chapters 1 to 22 of CETA, 1985 are not taken. Further we find that when the statute itself prescribes a percentage as total value as the value of service, the remaining portion of the value would neither be considered as an abatement nor as an exemption and accordingly we hold that the restaurant service would not be covered under the definition of input service and hence the provisions of Rule 6 of CCR are not applicable.* ....."
    b. Sundaram Finance Ltd Vs CCE, Chennai 2018-TIOL-3288-CESTAT-MAD
    c. Order-in-Original No. MUM/CGST/MW/COMMR/AK/44-46/2020-21 dated 26.02.2021

25. Noticee further submits that the 1/3rd land deduction is only a adjustment in valuation prescribed under Section 15 of the CGST Act, 2017. Therefore, the same shall not be considered as exempted turnover for the purpose of Rule 42 of CGST Act, 2017. Hence, the demand to that extent needs to be dropped.

Forfeiture Amount

26. Noticee submits that the amounts received towards forfeiture is neither supply of goods and nor supply of services. Since, the same is received towards cancellation of flats, the same cannot be considered as taxable amount as it is only in the nature of compensation received. Therefore, the same shall not be considered as supply at all. Once it is not a supply, then the same cannot be treated as an exempted supply for the purpose of reversal of ITC under Rule 42 of CGST Rules, 2017. Further, assuming that the ITC is required to be reversed, no inputs or input services are used for receiving such amount. Hence, the demand proposed to that extent needs to be dropped.

Post OC Sales

27. With respect to amount declared under Table 5F as Post OC sales, Noticee submits that Noticee has reversed the ITC to the extent of Rs.25,44,880/- towards SGST and Rs. 25,44,838/- towards CGST in the month of September 2021. To evidence the same Noticee is herewith enclosing the copy of GSTR-3B as Annexure II along with relevant workings. Since the ITC was already reversed, there is no requirement to again reverse the same now. Hence, the impugned notice to that extent needs to be dropped.

In Re: No ITC availed on restricted credits under Section 17(5)

28. Noticee submits that the impugned notice has alleged that the Noticee has availed an amount of Rs.39,81,733/- on inputs or input services covered under Section 17(5) of the CGST Act, 2017.

29. In this regard, Noticee submits that the Noticee is engaged in construction and sale of residential apartments and discharging GST on the same. The same can be evident from monthly GSTR-3B returns. For the purpose of supplying the above referred services, Noticee has been receiving the services from various suppliers engaged in provision of works contract services and availing ITC of GST charged by such supplies. This shows that the Noticee is using such services for the purpose of providing the outward supplies. Therefore, the Noticee is rightly eligible for ITC on the suppliers mentioned in the annexure to SCN.

30. Noticee submits that Section 17(5)(d) of the CGST Act, 2017 which restricts the ITC on works contract services reads as below: -

"(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation:— For the purposes of clauses (c) and (d), the expression —construction‖ includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable proper."

31. Noticee submits that from the above referred extract, it is clear that ITC is not eligible on goods or services which are used in the construction of immovable property on own account. However, the restriction is not applicable if such supply is used in the course of providing the same category of service. Therefore, any ITC on goods or services which are received by a taxable person in relation to further supply of same service is rightly eligible. Hence, the Noticee is rightly eligible for ITC and the impugned notice should be dropped to that extent

32. Noticee craves leave to alter, add to and/or amend the above reply.

33. Noticee would also like to be heard in personal, before any Notice being passed in this regard.

For M/s. B & C Estates

Authorised Signatory

BEFORE THE DEPUTY COMMISSIONER OF STATE TAX, BEGUMPET STU-2, BEGUMPET, TELANGANA.

Sub: Proceedings under Show Cause Notice vide Ref No. ZD361121003679L dated 12.11.2021 issued to M/s. B & C Estates

I, _____, _____ of M/s. B & C Estates hereby authorizes and appoint Hiregange & Associates LLP, Chartered Accountants, Bangalore or their partners and qualified staff who are authorized to act as an authorized representative under the relevant provisions of the law, to do all or any of the following acts: -

a. To act, appear and plead in the above-noted proceedings before the above authorities or any other authorities before whom the same may be posted or heard and to file and take back documents.
b. To sign, file verify and present pleadings, applications, appeals, cross-objections, revision, restoration, withdrawal and compromise applications, replies, objections and affidavits etc., as may be deemed necessary or proper in the above proceedings from time to time.
c. To Sub-delegate all or any of the aforesaid powers to any other representative and I/We do hereby agree to ratify and confirm acts done by our above-authorized representative or his substitute in the matter as my/our own acts as if done by me/us for all intents and purposes.

This authorization will remain in force till it is duly revoked by me/us. Executed this on 07th December 2021 at Hyderabad

Signature

I the undersigned partner of M/s Hiregange& Associates LLP, Chartered Accountants, do hereby declare that the said M/s Hiregange& Associates LLP is a registered firm of Chartered Accountants, and all its partners are Chartered Accountants holding certificate of practice and duly qualified to represent in above proceedings under Section 116 of the SGST Act, 2017. I accept the above-said appointment on behalf of M/s Hiregange& Associates. The firm will represent through any one or more of its partners or Staff members who are qualified to represent before the above authorities.

Dated: 06.12.2021

Address for service:
Hiregange& Associates LLP,
Chartered Accountants,
4th Floor, West Block, Anushka Pride,
Beside SBI Bank, Above Lawrence & Mayo
Road Number 12, Banjara Hills,
Hyderabad, Telangana 500034

For Hiregange& Associates LLP
Chartered Accountants

Venkata Prasad P
Partner (M.No. 236558)

I Partner/employee/associate of M/s Hiregange& Associates LLP duly qualified to represent in above proceedings in terms of the relevant law, also accept the above said authorization and appointment.

S.No.	Name	Qualification	Membership No.	Signature
1	**Sudhir V S**	**CA**	**219109**	
2	**Lakshman Kumar K**	**CA**	**241726**	
3	**Rasika Kasat**	**CA**	**243001**	