

FORM GST DRC - 06*[See rule 142(4)]***Reply to the Show Cause Notice**

1.GSTIN	36AABCM4761E1ZM	
2.Name	Modi Properties Private Limited	
3.Details of Show Cause Notice	Ref. No. ZD3611210031381	Date of issue: 12.11.2021
4.Financial Year	2018-19	
5.Reply	Given as Annexure A	
6.Documents uploaded	I. Annexure to DRC-06 II. DRC-03 dated 30-12-2020. ARN No. AD361220004794F III. GSTR-3B of September-2018 IV. Extract of GST ITC as per 3B and 2A from GSTIN	
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

Reply to the Notice:

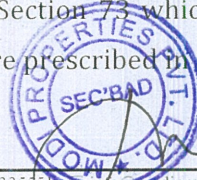
M/s. Modi Properties Private Limited (hereinafter referred as "Noticee") is engaged in providing administration services and is registered with Goods and Services Tax department vide GSTIN No: 36AABCM4761E1ZM. In response to the above, Noticee herein makes the below submissions

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. Noticee submits that the impugned notice has been issued proposing to demand an amount of Rs. 18,79,496 /- 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.
4. 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.
5. However, in the instant case Noticee has not received any notice in FORM GST 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.



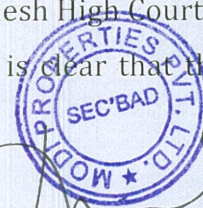
Notice issued on assumptions and presumptions

6. 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.)*
7. 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 CGST Act, 2017. 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

8. 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 notice 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.



9. 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.

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

SI No	Particulars	Amount
A	Tax on Outward Supplies under declared on reconciliation of data in GSTR-09	45,477
B	Excess ITC claimed in GSTR-09 over GSTR-3B	1,296
C	ITC attributable to exempted and non-GST supply under Rule 42 of CGST Rules, 2017	3,58,205
D	ITC availed on restricted supplies under Section 17(5) of CGST Act, 2017	14,74,517
	Total	18,79,496

In Re: No under declaration of tax on Outward supplies

11. Noticee submits that the impugned notice has stated that the Noticee has not correctly declared tax on its outward supplies on reconciliations of turnover in GSTR-09.

12. Noticee submits that the amount of tax CGST Rs 22,738 and SGST Rs 22,738 has been already already paid vide DRC-03 dated 30-12-2020. Hence, the demand to that extent needs to be dropped.

In Re: No excess ITC availed in GSTR-3B over GSTR-09

13. Noticee submits that the impugned notice has stated that the Noticee has reversed excess ITC in GSTR-09 when compared with ITC declared as reversed in GSTR-3B which has resulted in underpayment of tax.

14. Noticee submits that the amount of ITC CGST Rs 648 and SGST Rs 648 has been already been reversed in the GSTR-3B of Sep-2018 under the table 4B (2). Hence, the demand to that extent needs to be dropped.

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. 2,08,52,210/- as exempted 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. 3,58,206/- 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

- 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
- Impugned notice has considered the entire ITC availed during the period as the common credit whereas the reversal under Rule 42 and 43 is required to be made only on common ITC used for provision of both taxable and exempted turnover. Further, the impugned notice has considered the amount declared in table 13 of GSTR-09 for the purpose of Rule 42 reversal which was not at all availed during the period 2018-19

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	13,89,496
5E	Nil Rated	0
5F	Non-GST supply (includes 'no supply')	1,94,62,714
Total		2,08,52,210

18. With respect to amount declared in Table 5D Exempted supply, Noticee submits that the Noticee is engaged in providing administration services discharging applicable GST on the same.

Following are the items constituting exempt income

Interest Income Earned from banks	13,45,455
Rental Income from Residential Property	44,000
Profit on Sale of Immovable Property	2,57,730
Profits from investments in Partnership Firms	1,92,04,984
Total	2,08,52,210



19. 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. *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.*

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.

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

20. Noticee submits that the impugned notice has alleged that the Noticee has availed an amount of Rs. 14,74,517/- on inputs or input services covered under Section 17(5) of the CGST Act, 2017.

21. In this regard, Noticee submits that total amount of ITC claimed in the F.Y. 2018-19 is Rs 6,53,044/-. It is very absurd and vague to demand reversal of Rs 14,74,517/- as the credit of the same has not been availed. Hence, the impugned notice to that extent be dropped

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

For Modi Properties Private Limited



Authorised Signatory