

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. ZD3611210031852	Date of issue: 12.11.2021
4.Financial Year	2019-20	
5.Reply		
Given as Annexure A		
6.Documents uploaded I. Annexure to DRC-06 II. DRC-03 dated 07-09-2019. ARN No. AD360919000369Q III. DRC-03 dated 17-09-2019. ARN No. AD3609190008270 IV. DRC-03 dated 30-11-2021. ARN No. AD361121036033T V. DRC-03 dated 30-11-2021. ARN No. AD361121036030Z VI. 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. 42,88,569/- 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	1,07,403
B	Excess ITC claimed in GSTR-09 over GSTR-3B	40,25,950
D	ITC availed on restricted supplies under Section 17(5) of CGST Act, 2017	1,55,216
	Total	42,88,569

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 53,701 and SGST Rs 53,701 has been already already paid vide DRC-03 dated 30-11-2021. 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 20,14,212 and SGST Rs 20,14,212 has been already been reversed vide DRC-03. Details of the DRC-03 filed are provided below. Hence, the demand to that extent needs to be dropped.

Date	ARN No.	CGST	SGST
07-09-2019	AD360919000369Q	7,67,177	7,67,177
17-09-2019	AD360919000827O	11,29,890	11,29,890
30-11-2021	AD361121036033T	1,17,146	1,17,146
	Total	20,14,213	20,14,213

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

15. Noticee submits that the impugned notice has alleged that the Noticee has availed an amount of Rs. 1,55,216/- on inputs or input services covered under Section 17(5) of the CGST Act, 2017.
16. In this regard, Noticee submits that it has not availed ITC on inward supplies from the registered dealers provided in the annexure to the notice. It is very absurd and vague to assume that, credit of Input Tax has been claimed in GSTR-3B on the basis that the invoice is appearing in GSTR -2A. Merit has not been placed on the fact that such input is not claimed or either reported as ineligible credit in Table-4 of GSTR-3B. Raising a tax demand on assumptions is bad -in-law and Hence, the impugned notice to that extent be dropped
17. Noticee craves leave to alter, add to and/or amend the above reply.

For Modi Properties Private Limited

Authorised Signatory