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Serene Constructions LLP

Date: 26th November 2021

To,
Assistant Commissioner (ST)
Ramgopalpet-Ranigunj
Begumpet

Sir,

Sub: Reply to Notice dated 12th November 2021 u/s. 73-GST Act, 2017 - M/s.
Serene Constructions LLP, GSTIN: 36ACVFS7909P1ZV - DRC 01 - for the
Financial Period: 2017-18

We are in receipt of your notice dated 12-11-2021 issued for payment demand of SGST Rs.1,35,900/- and CGST Rs. 1,15,345/-

As per the said notice the details of the tax liability are as provided below.

Reply to Para 1A:

The excess input tax credit (ITC) claimed on account of non-reconciliation of information declared in GSTR-09:

In the said para, it is provided that ITC is not availed correctly when compared to GSTR 2A and hence a demand of CGST Rs 1,00,172 and SGST Rs 1,00,172 is raised.

It is to be noted that, Under Section 16(2)(c) of CGST Act payment of tax to Government, is subject to the provisions of Section 41 read with Rules 69 and 71. However, the ITC matching, reversal mechanism laid down under Section 41 read with rules is kept in abeyance. Therefore, till the provisions in this respect are given effect, the recipients are entitled to claim the ITC on the basis of tax invoice issued by the vendor without any consideration that such tax invoice is being reflected in GSTR-2A or not.

As held by Hon'ble Supreme Court in Tata Chemicals Limited v Commissioner, 2015 (320) ELT 45 (SC) when the law requires a particular thing to be done in a particular manner, it must be done in that manner only or not done at all. Therefore, ideally, the recipient cannot be asked to comply with this condition and reverse ITC when he has no mechanism to ensure whether the supplier has paid tax to the government or not.

Therefore, it is unjust to demand payment of tax under the relevant section.



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Reply to Para 2:

ITC to be reversed on non-business transactions and exempt supplies

“Under Sec 17(1) & (2) where the goods or services or both are used by the registered person partly for the purpose of business, partly for other purposes or partly used for effecting exempt supply and partly for taxable supply then the amount of credit shall be restricted to so much of the input tax as is attributable to the taxable supplies in the course of business.

Therefore the taxable person needs to make an apportionment of available input tax credit under Rule 42 & 43 to arrive at the eligible ITC”.

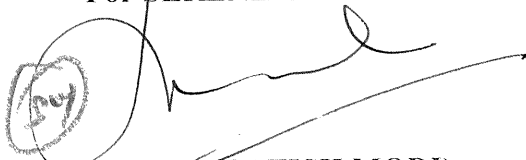
It is to be noted that ITC availed in GSTR 3B pertains to ITC on inward supplies used to affect outward taxable supplies. Goods and services on which ITC is availed is used completely to effect taxable supply.

Exempt supply reported in GSTR 9 pertains interest received on Bank FD on which no inward supply is made. There the same is not liable for reversal on proportionate basis.

Thanking you,

Yours Sincerely,

For SERENE CONSTRUCTIONS LLP



(SODHM SATISH MODI)
Authorised Signatory