

o/c

Serene Constructions LLP

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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: 2018-19

We are in receipt of your notice dated 12-11-2021 issued for payment demand of SGST Rs.25,24,505/- and CGST Rs. 3,31,930/-

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 3,29,319 and SGST Rs 3,29,319 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.

Further, we would like to provide that, the difference is due to certain invoices pertaining to F.Y. 18-19, on which ITC has been availed in 18-19, but the supplier has reported the invoices in their returns in F.Y. 19-20 and hence it is not reflecting in GSTR-2A of 18-19.



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Date	GSTIN	Name of the Party	Invoice Number	GST Rate	Total Value	Taxable Value	IGST	CGST	SGST
15-02-2019	36AAJFP7241H1Z2	POINTEC ASSOCIATES	59	18	2352196	1993386.4	0	1,79,405	1,79,405
02-03-2019	36AAJFP7241H1Z2	POINTEC ASSOCIATES	POINTEC/62/18-19	18	959396.64	813048	0	73,174	73,174
20-03-2019	36AAJFP7241H1Z2	POINTEC ASSOCIATES	POINTEC/78/18-19	18	1100232	932400	0	83,916	83,916

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

Reply to Para 2:

Reconciliation of GSTR-01 with GSTR-09

In the said para it is provided that GST is liable to be paid of SGST Rs 21,92,575 on account of difference between in GSTR -01 and GSTR-09.

In this regards we would like to provide that there has been a clerical error in filling the Table 4A of GSTR-9 return. SGST liability that got entered is Rs 2,60,425 instead of Rs 24,60,425. However, there has not been any short payment of tax. Table 9 of GSTR-9 clearly provides that CGST liability of Rs 24,60,425 and SGST liability of Rs 24,60,425 is duly paid. Extract of the same is provided below.

9	Description	Tax Payable (₹)	Paid Through Cash (₹)	Paid Through ITC (₹)			
				Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6	7
A	Integrated Tax	0.00	0.00	0.00	0.00	0.00	
B	Central Tax	24,60,425.00	5,43,994.00	17,19,121.00		3,45,810.00	
C	State/UT Tax	24,60,425.00	7,85,044.00		16,87,621.00	1,36,260.00	
D	Cess	0.00	0.00				0.00
E	Interest	0.00	0.00				
F	Late Fees	230.00	230.00				
G	Penalty	0.00	0.00				
H	Other	0.00	0.00				

Reply to Para 3:

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.

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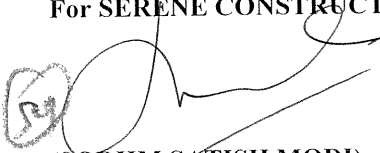
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Exempt supply reported in GSTR 9 pertains interest received on Bank FD on which no inward supply is made. There the same is not liable for reversal on proportionate basis.

Thanking you,

Yours Sincerely,

For SERENE CONSTRUCTIONS LLP



(SODHM SATISH MODI)
Authorised Signatory