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Nilgiri Estates

Date: 26.11.2022

To
The Assistant Commissioner of Central Tax,
Audit Circle-I, Audit-II Commissionerate,
1-98/B/20,21, Sanvi Yamuna Pride,
Krithika Layout, Hitech City,
Hyderabad-500081

Dear Sir,

Sub: Reply to Final Audit Report

Ref: 1. Final Audit Report No. 518/2022-23 dated 04th November 2022
2. Monthly Monitoring Meeting held on 07.10.2022
3. Reply to Spot Memo dated 31st October 2022 acknowledged on 9th November 2022 Spot Memo vide DIN No. 20220956YS000041414A dated 21st September 2022

1. We have received the above referred Final Audit Report wherein it was mentioned that all the audit paragraphs have been accepted by the Commissioner and directed to issue a Show Cause Notice for the same.

2. In this regard, we would like to bring to your notice that we have received the above-referred Spot Memo dated 21.09.2022 informing the observations noted during the audit. In reply to the same, we have submitted a reply dated 30.09.2022 explaining why the observation made are not correct.

3. Further, we have also attended the MMC Meeting on 07.10.2022 before the Hon'ble Commissioner. During the course of submissions, the Hon'ble Commissioner had asked us to submit CA certificate with respect to the reconciliations involved. Considering the same, the said CA certificate was submitted on 09.11.2022 vide the above-referred reply to the Spot memo.

4. Subsequently, to our surprise, we received the Final Audit Report dated 04.11.2022 on 19.11.2022 which is back-dated implying that the submission made by us on 09.11.2022 was not considered while issuing the Final Audit Report.

5. In this regard, we would like to bring to your notice the following provision vide Section 65(6) read with Rule 101(4) of the CGST Rules, 2017:

   Section 65(6): - *"(6) On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings."*

   Rule 101(4): - *"(4) The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalize the findings of the audit after due consideration of the reply furnished."*

NILGIRI ESTATES ★ SEC'BAD

Office of the Commissioner of Central Tax
01 DEC 2022
Hyderabad-II Audit Commissionerate, Hyd.
हैदराबाद-II लेखा परीक्षा आयुक्तालय, हैदराबाद

6. We would like to submit that the above-referred Rule 101(4) provides that the Final Audit Report shall be issued only after due consideration of the reply furnished by the assessee. However, the above-referred Final Audit Report has not considered our submission made in our reply to spot memo. This shows that the above-referred Final Audit Report is in violation of Rule 101(4) of the CGST Rules, 2017.

7. Further, we would like to submit that the principles of natural justice shall not be considered as a mere formality and the submissions of the assessee shall be considered in true spirit. However, in the instant case the submissions made during the MMC Meeting and in our spot memo reply were not at all considered while issuing the final audit report. In this regard, we wish to rely upon the Orissa High Court Judgement in the case of M/s. Simon India Ltd. Vs CT and GST Officer **[2022 (11) TMI 552 - ORISSA HIGH COURT]** which held that the Final Audit Report is to be set aside due to violation of the Principles of Natural Justice stating:

   "On a plain reading of Section 65 (4) together with Section 65(6) of the OGST Act and Rule 101(4) of the OGST Rules, it is plain that the procedural requirement of the Petitioner having to be given 30 days' time to file a reply to the draft audit report was not followed in the present case. On that short ground, this Court sets aside the final audit report dated 30th June, 2022 issued under Section 65 (6) of the OGST Act."

8. Considering the above-referred submissions, it is humbly requested to revise the Final Audit Report after due consideration of the submissions made during the MMC Meeting and in our spot memo reply. We are hoping for a positive response in this regard.

We shall be glad to provide any clarification required in this regard. Kindly acknowledge the receipt of this letter and do the needful.

Thanking You,

Yours faithfully,
For NILGIRI ESTATES

Authorized Signatory