FORM GST DRC – 06

[See rule 142(4)]

Reply to the Show Cause Notice

1.GSTIN	36AAHCG4562D1ZP	
2.Name	GV Research Centers Private Limited	
3.Details of Show Cause Notice	Ref. No. ZD3602220020258	Date of issue: 05.02.2022
4.Financial Year	2020-21	
5.Reply		
Given as Annexure A		
6.Documents uploaded		
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

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ANNEXURE A:

FACTS OF THE CASE:

A. M/s. GV Research Centers Private Limited (hereinafter referred as "Noticee") located at 5-4-187/3, Soham mansion, MG Road, MG Road, Secunderabad, Hyderabad, Telangana – 500003 is *inter alia* engaged in the leasing of the constructed property on rent for labs and are registered with Goods and Services Tax department vide GSTIN No: 36AAHCG4562D1ZP.

B. For carrying out the above referred activities, Noticee has been receiving various inputs and input services for construction of commercial complex and have been availing the ITC of GST charged by the suppliers. The details of the availment are disclosed in the monthly returns.

C. Recently, the Noticee is in receipt of the present Show Cause Notice issued u/sec 73 vide reference No. ZD3602220020258 dated 05.02.2022 for the period April 2020 to March 2021, proposing to demand CGST of Rs. 21,43,094/- and SGST Rs. 21,43,094/- stating that there is a difference between the tax liability disclosed in GSTR-01, GSTR-3B and GSTR-2A.

D. In response to the above notice, Noticee is herewith making the following submissions.

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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.42,86,188/- 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 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. In this regard, reliance is placed on M/s. Vadivel Pyrotech Pvt Ltd Vs Assistant Commissioner (ST), Circle-II, CTD, Sivakasi West 2022 (10) TMI 784 – Madras High Court wherein it was held that *"6. To a pointed question as to whether Form ASMT 10 which ought to have been issued in respect of aspects forming the subject matter of the proceedings in GST*

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DRC-01 culminating in GST DRC-07 in view of the fact that the proceedings are pursuant to scrutiny of assessments, the learned Additional Government Pleader submitted that Form ASMT 10 was not issued other than the one issued on 22.12.2021, which does not cover the issues raised in the impugned proceeding. The learned Additional Government Pleader sought leave to issue notice in Form ASMT 10 in respect of the aspects forming the subject matter of the impugned proceedings and thereafter to assess in compliance with the procedure contemplated under the Act including Section 61.

7. Recording the same, the impugned order dated 09.05.2022 is set aside and the matter is remitted back to the Assessing Officer for redoing the assessment. It is open to the Respondent to issue appropriate Form (Form ASMT 10) and after affording a reasonable opportunity to the petitioner in the manner contemplated under the Act proceed further in accordance with law. The petitioner shall also co-operate in the proceedings."

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 noticee 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 (CGST+SGST)
A	Excess ITC availed in GSTR-3B when compared to ITC reflected in GSTR-2A	24,54,903
B	ITC attributable to exempted and non-GST supply under Rule 42 of CGST Rules, 2017	5,14,185
C	ITC availed on restricted supplies under Section 17(5) of CGST Act, 2017	13,17,098
	Total	**42,86,188**

In Re: No excess claim of ITC in GSTR-3B compared to the difference between GSTR-01 filed by the suppliers of the Noticee & GSTR-3B.:

11. Noticee submits that the impugned notice has alleged that the Noticee has excess claimed ITC of Rs. 24,54,903/- in GSTR-3B as compared to the tax declared by the suppliers of Noticee in GSTR-01.

12. Noticee submits that ITC cannot be denied merely due to non-reflection of invoices in GSTR-2A as all the conditions specified under Section 16 of CGST Act, 2017 has been satisfied. Further, Noticee submits that GSTR-2A cannot be

taken as a basis to deny the ITC in accordance with Section 41, Section 42, Rule 69 of CGST Rules, 2017.

13. Noticee submits that the condition for availment of credit is provided under section 16(2) of the Central Goods and Service Tax Act, 2017 which do not state that credit availed by the recipient needs to be reflected in GSTR-2A, further notice has also not been bought out as to which provision under the Central Goods and Service Tax, 2017 or rules made thereunder requires that credit can ,be availed only if the same is reflected in GSTR- 2A. Hence, issuance of the notice on such allegation, which is not envisaged under the provisions of the CGST/SGST Act,. Extract of section 16(2)(c) is given below:

   "Section 16(2)(c) subject to the provisions of section 41*, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply;"*

14. As seen from Section 16(2)(c), ITC can be availed subject to Section 41 of the GST Act which deals with the claim of ITC and the provisional acceptance thereof.

   "Section 41. Claim of input tax credit and provisional acceptance thereof

   (1) Every registered person shall, ***subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis*** *to his electronic credit ledger.*

   (2) The credit referred to in sub-section (1) shall be utilized only for payment of self-assessed output tax as per the return referred to in the said sub-section"

   From the above-referred section, it is clear that every registered person is entitled to take credit of eligible ITC as self-assessed in his return and the same will be credited to the electronic credit ledger on a provisional basis.

15. In this regard, it is submitted that Section 42, *ibid* specifies the mechanism for matching, reversal, and reclaim of ITC wherein it was clearly stated the details of every inward supply furnished by a registered person shall be matched with the corresponding details of outward supply furnished by the supplier in such manner and within such time as may be prescribed.

16. Further, Rule 69 of CGST Rules, 2017 specifies that the claim of ITC on inward supplies provisionally allowed under Section 41 shall be matched under Section

42 after the due date for furnishing the return in GSTR-03. Further, the first proviso to Rule 69 also states that if the time limit for furnishing Form GSTR-01 specified under Section 37 and Form GSTR-2 specified under Section 38 has been extended then the date of matching relating to the claim of the input tax credit shall also be extended accordingly.

17. The Central Government vide Notification No.19/2017-CT dated 08.08.2017, 20/2017-CT dated 08.08.2017, 29/2017-CT dated 05.09.2017, 44/2018-CT dated 10.09.2018, has extended the time limit for filing GSTR-2 and GSTR-3. Further, vide Notification No.11/2019-CT dated 07.03.2019 stated that the time limit for furnishing the details or returns under Section 38(2) (GSTR-2) and Section 39(1) GSTR 3 for the months of July 2017 to June 2019 shall be notified subsequently.

18. From the above-referred Notifications, it is very clear that the requirement to file GSTR 2 and GSTR 3 has differed for the period July 2017 to June 2019 and subsequently, it was stated the due date for filing would be notified separately. In absence of a requirement to file GSTR-2 and GSTR-3, the matching mechanism prescribed under Section 42 read with Rule 69 will also get differed and become inoperative.

19. Once the mechanism prescribed under Section 42 to match the provisionally allowed ITC under Section 41 is not in operation, the final acceptance of ITC under Rule 70 is not possible thereby the assessee can use the provisionally allowed ITC until the due date for filing GSTR 2 and GSTR 3 is notified. Hence, there is no requirement to reverse the provisional ITC availed even though the supplier has not filed their monthly GSTR-3B returns till the mechanism to file GSTR 2 and GSTR 3 or any other new mechanism is made available.

20. Noticee further submits that Finance Act, 2022 has omitted Section 42, 43 and 43A of the CGST Act, 2017 which deals ITC matching concept. Noticee submits that the substituted Section 38 of the CGST Act, 2017 now states that only the eligible ITC which is available in the GSTR-2B (Auto generated statement) can be availed by the recipient. Now, GSTR-2B has become the main document relied upon by the tax authorities for verification of the accurate ITC claims.

Hence, omission of sections 42, 43 and 43A has eliminated the concept of the provisional ITC claim process, matching and reversals.

21. Once the mechanism prescribed under Section 42 to match the provisionally allowed ITC under Section 41 is not in operation and has been omitted by the Finance Act, 2022 the effect of such omission without any saving clause means the above provisions was not in existence or never existed in the statue. Hence, request you to drop the proceedings initiated.

22. Noticee submits that Section 38(1) of the CGST Act, 2017 provides as under:

"SECTION 38. Furnishing details of inward supplies. — (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37."

Therefore, the aforesaid provisions mandate for filing of GSTR 2 by incorporating the details of the invoices not declared by the vendors. Further, the ITC so declared is required to be matched and confirmed as per provisions of Sec. 42 and 43 of the CGST Act, 2017. Hence, Noticee submit that on one hand the law allows the recipient to even claim ITC in respect of the invoices for which the details have not been furnished by the vendors. On the other hand, Rule 60 of the CGST Rules, 2017 which deals with the procedure for filing of GSTR 2 in fact does not provide for its filing at all but only provides for the auto-population of the data filed by the vendors in GSTR 2A/2B. The same therefore clearly runs contrary to Sec. 38 discussed above.

23. The Section 38 read with Rule 60 had prescribed the FORM GSTR 2 which is not made available till 30.09.2022. Notification No. 20 Central Tax dated 10th Nov 2020 has substituted the existing rule to w.e.f. 1.1.2021 meaning thereby the requirement of Form GSTR 2 necessary in order to due compliance of Section 38. In the absence of the said form, it was not possible for the taxpayer

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to comply with the same. Further, Form GSTR 2 has been omitted vide Notification No. 19/2 Central Tax dated 28.09.2022 w.e.f. 01.10.2022.

24. Further, it is submitted that Section 42 clearly mentions the details and procedure of matching, reversal, and reclaim of input tax credit with regard to the inward supply. However, Section 42 and Rule 69 to 71 have been omitted w.e.f. 01.10.2022.

25. Noticee submits that the Rule 70 of CGST Rules 2017 which prescribed the final acceptance of input tax credit and communication thereof in Form GST MIS-1 and Rule 71 prescribes the communication and rectification of discrepancy in the claim of input tax credit in form GST MIS-02 and reversal of claim of input tax credit. Further, Rule 70 has been omitted vide Notification No. 19/2022 Central Tax dated 28.09.2022 w.e.f 01.10.2022.

26. It is submitted that neither the form has been prescribed by the law nor the same has been communicated to the Noticee therefore it is not possible to comply with the condition given in Section 42 read with Rule 69, Rule 70 and 71. Hence, the allegation of the impugned notice is not correct.

27. Noticee submits that as Section 41 allows the provisional availment and utilization of ITC, there is no violation of section 16(2)(c) of GST Act 2017, therefore, the ITC availed by Noticee is rightly eligible. Hence, request you to drop the proceedings initiated.

28. The above view is also fortified from the press release dated 18.10.2018 wherein it was stated that *"It is clarified that the furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and the facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act. The apprehension that ITC can be availed only on the basis of reconciliation between FORM GSTR-2A and FORM GSTR-3B conducted before the due date for filing of return in FORM GSTR-3B for the month of September 2018 is unfounded as the same exercise can be done thereafter also.*

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From this, it is clear that input tax credit can be availed even if the same is not indicated in Form GSTR 2A and hence the notice issued is contrary to the same.

29. Without prejudice to the above, Noticee submits that even if the matching mechanism is in place, the unmatched ITC amount will get directly added to the electronic liability ledger of the assessee under sub-section (5) of Section 42 and there is no requirement to reverse the ITC availed.

30. Noticee submits that only in exceptional cases like missing dealer etc. the recipient has to be called for to pay the amount which is coming out from Para 18.3 of the minutes of 28th GST Council meeting held on 21.07.2018 in New Delhi which is as under:

"18.3---- He highlighted that a major change proposed was that no input tax credit can be availed by the recipient where goods or services have not been received before filing of a return by the supplier. This would reduce the number of pending invoices for which input tax credit is to be taken. There ***would be no automatic reversal of input tax credit*** *at the recipient's end where tax had not been paid by the supplier.* ***Revenue administration shall first try to recover the tax from the seller and only in some exceptional circumstances like missing dealer, shell companies, closure of business by the supplier, input tax credit shall be recovered from the recipient by following the due process of serving of notice and personal hearing****. He stated that though this would be part of IT architecture, in the law there would continue to be a provision making the seller and the buyer jointly and severally responsible for recovery of tax, which was not paid by the supplier but credit of which had been taken by the recipient. This would ensure that the security of credit was not diluted completely."*

Thereby, issuing the notice without checking with our vendors the reason for non-filing of the returns etc. runs against the recommendations of the GST council.

31. Without prejudice to above, Noticee submits that even if there is differential ITC availed by the Noticee, the same is accompanied by a valid tax invoice containing all the particulars specified in Rule 36 of CGST Rules based on which Noticee has availed ITC. Further, Noticee submits that the value of such

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supplies including taxes has been paid to such vendors thereby satisfying all the other conditions specified in Section 16(2) of the CGST Act, 2017. As all the conditions of Section 16(2) are satisfied, the ITC on the same is eligible to the Noticee hence the impugned notice needs to be dropped.

32. Noticee submits that the fact of payment or otherwise of the tax by the supplier is neither known to us nor is verifiable by us. Thereby it can be said that such condition is impossible to perform and it is a known principle that the law does not compel a person to do something which he cannot possibly perform as the legal maxim goes: ***lex non-cogit ad impossibilia,* as was held in the case of:**
    a. *Indian Seamless Steel & Alloys Ltd Vs UOI, 2003 (156) ELT 945 (Bom.)*
    b. *Hico Enterprises Vs CC, 2005 (189) ELT 135 (T-LB). Affirmed by SC in 2008 (228) ELT 161 (SC)*

    Thereby it can be said that the condition, which is not possible to satisfy, need not be satisfied and shall be considered as deemed satisfied.

33. Noticee submits that Section 76 of CGST Act, 2017 provides the recovery mechanism to recovery the tax collected by the supplier but not paid to the government. Further, Section 73 and 74 also provides the recovery mechanism to recover the GST collected by way of issue of notice. In this regard, Noticee submits that the revenue department cannot straight away deny the ITC to the recipient of goods or services without exercising the above referred powers.

34. Noticee further submits that without impleading the supplier the department cannot deny ITC to the recipient. Further, Section 16(2) of CGST Act, 2017 states that if the tax is not remitted by the supplier the credit can be denied and to ascertain the same, the department should implead the supplier first. In the instant case, no such act is initiated by the department against the supplier instead proposed to deny the ITC to the recipient which is not correct.

35. Noticee submits that if the department directly takes action against the recipient in all cases, then the provisions of Section 73, 74 and 76 would be rendered *otiose*, which is not the legislative intent. Further, we would like to submit that the department cannot be a mute spectator or maintain sphinx like silence or dormant position. In this regard, Noticee wish to rely on recent

Madras High Court decision in case of M/s. **D.Y. Beathel Enterprises Vs State Tax officer (Data Cell), (Investigation Wing), Tirunelveli2021(3) TMI 1020-Madras High Court** wherein it was held that

"12. Therefore, if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer. In the case on hand, the respondent does not appear to have taken any recovery action against the seller / Charles and his wife Shanthi, on the present transactions.

13. The learned counsel for the petitioners draws my attention to the SCN, dated 27.10.2020, finalising the assessment of the seller by excluding the subject transactions alone. I am unable to appreciate the approach of the authorities. When it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him.

14. That apart in the enquiry in question, the Charles and his Wife ought to have been examined. They should have been confronted."

36. Noticee submit that the Input tax credit should not be denied only on the ground of the transaction not been reflected in GSTR-2A. In this regard, Noticee wish to place reliance on the judgement of Hon'ble Kerala High Court in the case of St. Joseph Tea Company Ltd., Paramount Enviro Energies Versus the State Tax Officer, Deputy Commissioner, State GST Department, Kottayam, State Goods and Service Tax Department, Goods and Service Tax Network Ltd. (2021 (7) TMI 988 - Kerala High Court) wherein it was held that "*7. In the circumstances, the only possible manner in which the issue can be resolved is for the petitioner to pay tax for the period covered by provisional registration from 01.07.2017 to 09.03.2018 along with applicable interest under Form GST DRC-03 dealing with intimation of payment made voluntarily or made against the show cause notice (SCN) or statement. If such payment is effected, the recipients of the petitioner under its provisional registration (ID) for the period from 01.07.20217 to 09.07.2018 shall not be denied ITC only on the ground that the transaction is not reflected in GSTR 2A. It will be open for the GST functionaries to verify the genuineness of the tax remitted, and credit taken. Ordered accordingly.*"

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37. Noticee further submits that for the default of the supplier, the recipient shall not be penalized therefore the impugned notice shall be dropped. In this regard, reliance is placed on On **Quest Merchandising India Pvt Ltd Vs Government of NCT of Delhi and others 2017-TIOl-2251-HC-DEL-VAT** wherein it was held that

"54. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. ***In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC."***

38. Noticee further submits that in case of Hon'ble Karnataka High Court in a writ petition filed by **M/s ONXY Designs Versus The Assistant Commissioner of Commercial Tax Bangalore 2019(6) TMI 941** relating to Karnataka VAT has held that *"It is clear that the benefit of input tax cannot be deprived to the purchaser dealer if the purchaser dealer satisfactorily demonstrates that while purchasing goods, he has paid the amount of tax to the selling dealer. If the selling dealer has not deposited the amount in full or a part thereof, it would be for the revenue to* proceed *against the selling dealer"*

39. Noticee submits that under the earlier VAT laws there were provisions similar to Section 16(2) *ibid* which have been held by the Courts as unconstitutional. Some of them are as follows

a. **Arise India Limited vs. Commissioner of Trade and Taxes, Delhi - 2018-TIOL-11-SC-VAT** was rendered favorable to the assessee. This decision was rendered in the context of section 9(2) (g) of the Delhi Value Added Tax Act, 2004 which is a similar provision wherein the credit availment of the recipient is dependent on the action taken by the supplier.

b. **M/s Tarapore and Company Jamshedpur v. the State of Jharkhand - 2020-TIOL-93-HC-JHARKHAND-VAT** This decision was rendered in the context of section 18 (8)(xvii) of Jharkhand Value Added Tax Act, 2005 similar to the above provision.

The decisions in the above cases would be equally applicable to the present context of Section 16(2) *ibid*

40. **Noticee further submits that the fact that there is no requirement to reconcile the invoices reflected in GSTR-2A vs GSTR-3B is also evident from the proposed amendment in Section 16 of GST Act, 2017 in Finance Act, 2021 as introduced in Parliament. Hence, there is no requirement to reverse any credit in absence of the legal requirement during the subject period.**

41. **Similarly, it is only Rule 36(4) of CGST Rules, 2017 as inserted w.e.f. 09.10.2019 has mandated the condition of reflection of vendor invoices in GSTR-2A with Adhoc addition of the 20% (which was later changed to 10% & further to 5%). At that time, the CBIC vide Circular 123/42/2019 dated 11.11.2019 categorically clarified that the matching u/r. 36(4) is required only for the ITC availed after 09.10.2019 and not prior to that. Hence, the denial of the ITC for non-reflection in GSTR-2A is incorrect during the subject period.**

42. Noticee submits that Rule 36(4), ibid restricts the ITC on the invoices not uploaded by the suppliers. However, such restrictions were beyond the provisions of CGST Act, 2017 as amended more so when Section 42 & 43 of CGST Act, 2017 which requires the invoice matching is kept in abeyance and filing of Form GSTR-2 & Form GSTR-3 which implements the invoice matching in order to claim ITC was also deferred. Thus, the restriction under Rule 36(4), ibid is beyond the parent statute (CGST Act, 2017) and it is ultra vires. In this regard, reliance is placed on the Apex Court decision in the case of Union of India Vs S. Srinivasan 2012 (281) ELT 3 (SC) wherein it was held that *"If a rule goes beyond the rule making power conferred by the statute, the same has to be declared ultra vires. If a rule supplants any provision for which power has not been conferred, it becomes ultra vires. The basic test is to determine and consider the source of power which is relatable to the rule. Similarly, a rule must be in accord with the parent statute as it cannot travel beyond it." (Para 16)*.

Once any rule is ultra vires, the same need not be followed. Hence, the proposition to deny the ITC stating that invoices not reflected in GSTR-2A require to be dropped.

43. Noticee submits that the aforesaid Rule can be considered to be valid only if the provisions of the Act envisage such restriction. Noticee submits that Section 16(2) of the CGST Act, 2017 as presently applicable provides that a registered person shall not be entitled to ITC unless he satisfies the given four conditions. A perusal of the said provisions shall reveal that none of the conditions provides for the furnishing of the details of the invoice in GSTR 1 by the vendors. It may be noted that the actual payment condition under clause (c) cannot be inferred to include the condition of the furnishing of the details in GSTR 1. It is for the simple reason that the furnishing of the details of outward supplies is u/s 37 of the CGST Act, 2017 which is distinct and at present legally not linked with the furnishing of the return and payment of tax u/s 39 of the said Act. In fact, an amendment made u/s 75 by virtue of Finance Act, 2021 to the effect that the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39 and shall permit the direct recovery of the said tax so declared also confirms that the declaration of the details u/s 37 in GSTR 1 do not confirm the payment of tax. Hence, it can be stated that in absence of any provisions in the Act enabling the formulation of Rule 36(4), the same has to be declared as invalid.

44. The aforesaid view has also been recognized as evident from the rationale for the amendment under discussion (i.e., clause (aa)) as expressly stated in the minutes of the GST Council meeting. The agenda note (supra) clearly has recognized the said gap between the Act and the Rule by stating that the proposed amendment is aimed to "to complete this linkage of outward supplies declared by the supplier with the tax liability, by also limiting the credit availed in FORM GSTR 3B to that reflected in the GSTR2A of the recipient, subject to the additional amount available under rule 36(4)". Hence the amendment by way of clause (aa) leads to a conclusion that the provisions of Rule 36(4) shall not be valid till the said clause is notified.

45. Noticee submit that Section 38(1) of the CGST Act, 2017 permits the recipient to declare the details of the missing invoices in GSTR 2 and claim the ITC thereof subject to eventual matching. Clause (aa) on the other hand seeks to allow the ITC only if the details are furnished by the vendors. Hence, Noticee submit that

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the law is asking the recipient to do the impossible by (a) not making the provisional claim of ITC by filing GSTR 2 and asking the vendors to accept the liability and (b) determining the eligibility solely based on filings done by the said vendors which are not in the control of the recipient. Hence, based on the doctrine of supervening impossibility that the ITC of the genuine recipient cannot be denied by virtue of the provisions of clause (aa).

46. Noticee submits that based on the above submissions, it is clear that the ITC availed by the taxpayer is rightly eligible and there is no requirement to pay any interest on the same. Hence, the impugned notice to that extent needs to be dropped.

47. Noticee wishes to rely on recent decisions in case of:

   a. **Jurisdictional High Court decision in case of Bhagyanagar Copper Pvt Ltd Vs CBIC and Others 2021-TIOL-2143-HC-Telangana-GST**
   b. **M/s. LGW Industries limited Vs UOI 2021 (12) TMI 834-Calcutta High Court**
   c. **M/s. Bharat Aluminum Company Limited Vs UOI & Others 2021 (6) TMI**
   d. **M/s. Sanchita Kundu & Anr. Vs Assistant Commissioner of State Tax 2022 (5) TMI 786 - Calcutta High Court**

48. Noticee submits that in the case of **Global Ltd. v. UOI - 2014 (310) E.L.T. 833 (Guj.)** it was held that denial of ITC to the buyer of goods or services for default of the supplier of goods or services, will severely impact working capital and therefore substantially diminishes ability to continue business. Therefore, it is a serious affront to his right to carry on his trade or business guaranteed under Article 19(1)(g) of the Constitution.

49. Noticee submits that the denial of ITC to the buyer of goods or services for default of the supplier of goods or services, is wholly unjustified and this causes the deprivation of the enjoyment of the property. Therefore, this is positively violative of the provision of Article 300A of the Constitution of India - **Central Excise, Pune v. Dai Ichi Karkaria Ltd., SC on 11 August 1999 [1999 (112) E.L.T. 353 (S.C.)]**

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50. Noticee submits that the denial of ITC to the buyer of goods or services for default of the supplier of goods or services, clearly frustrates the underlying objective of removal of cascading effect of tax as stated in the Statement of object and reasons of the Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014. it is an established principle of law that it is necessary to look into the mischief against which the statute is directed, other statutes in pari materia and the state of the law at the time.

51. Noticee submits that one also needs to consider that Article 265 of the Constitution which provides that no tax shall be levied or collected except by authority of law. Hence not only the levy but even the collection of the tax shall be only by authority of law.

In Re: Reversal under Rule 42 is not required for the exempted and non-GST supply declared by the Noticee in the GSTR-09

52. Noticee submits that the impugned notice has stated that the Noticee has declared an amount of Rs. 19,569/- as exempted and non-GST 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. 5,14,185/- attributable to exempted and non-GST turnover under Rule 42 and 43 of the CGST Act, 2017.

53. In this regard, Noticee submits that the impugned notice is erroneous for the following reasons, thereby, the same needs to be dropped outrightly

a) Impugned notice has not examined whether the turnover declared in GSTR-3B is required to be considered for the purpose of reversal under Rule 42 and 43 of CGST Rules, 2017.

b) Impugned notice has considered the entire ITC availed during the period as the common credit whereas the reversal under Rule 42 ad 43 is required to be made only on common ITC used for provision of both taxable and exempted turnover.

This shows that the impugned notice has been issued on incorrect basis and the same needs to be dropped.

54. With respect to the amount declared in GSTR-3B as exempted supplies the same is towards scrap sales which is neither for supply of goods nor for supply of services. Therefore, the same shall not be considered as a supply at all. Once it is not a supply, then the same cannot be treated as an exempted supply for

the purpose of reversal of ITC under Rule 42 of CGST Rules, 2017. Further, assuming that the ITC is required to be reversed, no inputs or input services are used for effecting such scrap sales. Hence, the demand proposed to that extent needs to be dropped.

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

55. Noticee submits that the impugned notice has alleged that the Noticee has availed an amount of Rs. 13,17,098/- on inputs or input services covered under Section 17(5) of the CGST Act, 2017.

56. In this regard, Noticee submits that the Noticee has received various inputs and input services for carrying out the constructions which would be given on rent and would be paying GST on the rental receipts. Since these inputs and inputs services are used for carrying out the rental services, Noticee has availed ITC of GST charged by their suppliers.

<u>ITC is rightly eligible if commercial property is given on lease</u>

57. Without prejudice to the above submissions, Noticee submits that the commercial property constructed would be given on lease and discharging the GST on lease amounts received from their customers. In this regard, Noticee is of the firm belief that input tax credit availed on goods and services used for construction of immovable property can be availed as the said constructed property is used for providing taxable supplies on which GST would be discharged.

58. Noticee submits that Section 17(5)(d) restricts ITC on goods or services or both received by a taxable person for construction of an immovable property
    - **on his own account,** including
    - when such goods and services are used in the course or furtherance of business

59. Noticee submits that CGST Act nowhere defines the phrase – **on his own account** and therefore the ordinary meaning of the said expression has to be taken. For this purpose, the dictionary meaning of the same can be referred which is as below –
    - **Chamber's 20th Century Dictionary** - On one's own account means *"for one's own sake"; "on one's responsibility".*

- **Concise Oxford Dictionary –** "On one's own account" means "*for and at one's own purpose and risk*"
- **Shorter Oxford Dictionary** - "On one's account" means "*in his behalf and at his expenses*"

From the above, the expression – on his own account means *"for his own purposes."*

60. In this regard, Noticee submits that the Noticee is carrying out the construction for the purpose of giving the same on rent and not for its own purpose. Hence, the same shall not be considered as constructed on own account and the impugned notice to that extent needs to be dropped. The restriction is applicable only when the construction has been done for the purpose of own usage and not for carrying out any business from such constructed premises. In the present case, Noticee intends to give the said constructed property on rent. In both cases, Noticee would be discharging tax on outward supply. Hence, the same shall not be considered as constructed on its own account. Thereby, Noticee is rightly eligible for ITC.

61. Noticee further submits that the rationale behind the introduction of Section 17(5) of CGST Act, 2017 is to block the ITC in respect of such situations where the goods or services or both are not utilized for the purpose of making inter alia further taxable supply. This shows that the intention is to cover the situations where there is no outward taxable supply, therefore, the same cannot be applied to the instant case where the Noticee would be discharging GST on lease income.

<u>Denying the ITC will result in cascading effect which is not the intention of the Statute</u>

62. Noticee submits that the 101st Constitutional Amendment Act 2016 clearly states in the Statement of Objectives for ushering in GST that it is to remove the cascading effect of taxes and allow the seamless flow of the Tax credit across the supply chain. It means that it should avoid tax on tax. To achieve this objective, GST law is designed to levy GST only on value addition at each stage of the supply chain starting from Manufacture or import and to the last retail level. This is with a facility of the Input credit of taxes paid on the procurements of goods or services or both made and allowing to utilize for payment of GST on the output. Any restrictions on ITC availment would result in the cascading effect of taxes and disturb the aforesaid object of GST.

63. Noticee submits that the interpretation of Section 17(5)(d) followed by the impugned notice will lead to a conclusion that Noticee is not entitled to avail benefit of input tax credit while paying output GST liability on rent received. It is undisputed fact that CGST and TSGST have been introduced to remove the cascading effect of various indirect taxes and reduce the multiplicity of indirect taxes.

64. Noticee submits that a huge quantity of goods and services is required in order to construct any commercial property. Such procurements contain a high amount of Input tax credit, if the analogy given by the notice is followed, the said input credit would be directly contributing in addition of the cost of the project which would have to be borne by the consumers. Such a sharp and inevitable increase in cost will make Noticee's commercial properties uncompetitive.

65. Noticee further submits that construction of the commercial property and letting it out the same will not result in a break in the tax chain but the interpretation followed by the impugned notice will treat Noticee different against those taxable persons provided in Section 16 who are enjoying free flow of Input tax credit. Therefore, the said notice should be dropped immediately as it is clearly against the basic principle of GST law.

66. In this regard, Noticee wishes to place reliance on Hon. Orissa High Court decision in the case of **Safari Retreats Private Limited vs. Chief Commissioner of CGST** [2019 (25) GSTL 341 (Ori.)] wherein it was held that –

"While considering the provisions of Section 17(5)(d), the narrow construction of interpretation put forward by the Department is frustrating the very objective of the Act, inasmuch as the petitioner in that case has to pay huge amount without any basis. Further, the petitioner would have paid GST if it disposed of the property after the completion certificate is granted and in case the property is sold prior to completion certificate, he would not be required to pay GST. But here he is retaining the property and is not using for his own purpose but he is letting out the property on which he is covered under the GST, but still he has to pay huge amount of GST, to which he is not liable.

20. In that view of the matter, in our considered opinion the provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed, reading of the provision by the Department, is not required to be accepted, *inasmuch as keeping in mind the language used in (1999) 2 SCC 361= 1999 (106) E.L.T. 3 (S.C.) (supra), the very purpose of the credit is to give benefit to the assessee. In that view of the matter, if the assessee is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have the input credit on the GST, which is required to pay under Section 17(5)(d) of the CGST Act."*

67. Further, in the case of **Eicher Motors Ltd. v. U.O.I.** [1999 (106) E.L.T. 3 (S.C.)] it was held that –

"6. We may look at the matter from another angle. If on the inputs the assessee had already paid the taxes on the basis that when the goods are utilised in the manufacture of further products as inputs thereto then the tax on these goods gets adjusted which are finished subsequently. Thus a right accrued to the assessee on the date when they paid the tax on the raw materials or the inputs and that right would continue until the facility available thereto gets worked out or until those goods existed. Therefore, it becomes clear that Section 37 of the Act does not enable the authorities concerned to make a rule which is impugned herein and, therefore, we may have no hesitation to hold that the rule cannot be applied to the goods manufactured prior to 16-3-1995 on which duty had been paid and credit facility thereto has been availed of for the purpose of manufacture of further goods"

68. Noticee also wishes to place reliance on the decision of the Hon'ble Supreme Court in the case of **Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd**. [1999 (112) E.L.T. 353 (S.C.)], paragraph-18 of which is quoted below :

"18. It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to

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<u>use the raw material in its excisable product. The credit is, therefore, indefeasible</u>. It should also be noted that there is no correlation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available."

From the above-referred decisions, it is clear that the ITC availed by the Noticee is rightly eligible and the allegation of the impugned notice is not correct.

<u>Violation of Article 14 and 19(1)(g) of the Constitution</u>

69. Noticee submits that the phrase "*own account*" by any stretch of imagination cannot be interpreted to mean that it covers a situation where the property is intended to be leased out. Even if the purposive intention is applied, it is apparent on the reading of Section 17(5)(d) that, in a situation where a movable asset after purchase is rented out then there are express provisions in Section 17 to allow the ITC on purchase of the movable asset against the output taxable supply of the renting of the movable asset. Thus, it cannot be said that the lawmakers intend the supply of movable and immovable property (in so far as utilization of the property for the purposes of renting) to be treated differently. Such interpretation would result in a violation of Article 14 and 19(1)(g) of the Constitution of India. Therefore, Noticee is rightly eligible for ITC and the impugned notice is required to be dropped to that extent.

70. Noticee submits that when the construction is undertaken on own account, the Noticee would not be paying any GST on the same, and in such circumstances, it is justifiable to say that ITC is restricted. However, in the instant case Noticee would be discharging GST on the lease amounts received from their customers. Consequently, in such a situation there is no break in the tax chain and Noticee is fully justified to avail the input tax credit. Therefore, denial of the input tax credit would be completely arbitrary and the impugned notice should be dropped to that extent.

71. Noticee submits that denial of input tax credit in respect of an immovable property which is meant and intended to be let out equates its position with sale of building before issuance of completion certificate. Noticee submits that these two transactions cannot be compared together for the purpose of levy of GST. Noticee submits that treating these two types of the transaction on the

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same footing amounts to self-contradiction wherein GST is not at all payable on the sale of building after receipt of occupancy certificate but GST is payable on lease amounts received from leasing of such building. This shows that Section 17(5)(d) is in violation of Article 14 of the Constitution of India. Thus, the impugned notice is violative of the Noticee's fundamental right to equality guaranteed by and under Article 14 of the Constitution, hence is liable to be quashed.

72. Noticee submits that the analogy followed by the impugned notice by denying the input tax credit on the construction of an immovable property will lead to double taxation i.e. firstly on the inputs consumed in the construction of the building and secondly, on the rentals generated by the same building. It is also a settled principle of interpretation of tax statutes, that interpretation should be adopted which avoids or obviates double taxation. This principle is also directly applicable to the present case.

73. Noticee further submits that denial of the said ITC would also be violative of the noticee's fundamental right to carry on business under Article 19(1)(g) of the Constitution as it would impose a wholly unwarranted and unreasonable and arbitrary restriction which would render buildings now constructed for letting out uncompetitive, by imposing the burden of double taxation of GST on such buildings. Hence, the impugned notice is not correct and the same needs to be dropped.

In Re: Interest under section 50 is not applicable

74. Without prejudice to the foregoing, the Noticee submits that when tax is not applicable, the question of interest & also penalties does not arise. It is a natural corollary that when the principal is not payable there can be no question of paying any interest as held by the Supreme Court in Prathiba Processors Vs. UOI, 1996 (88) ELT 12 (SC).

75. Noticee submits that the impugned notice has alleged that the Noticee is liable to interest under Section 50 of CGST Act, 2017. In this regard, it is pertinent to examine Section 50 of CGST Act, 2017 which is extracted below for ready reference

    *(1)'Every person who is **liable to pay tax** in accordance with the provisions of this Act or the Rules made thereunder, but failed to **pay the tax or any part thereof to the Government within the period prescribed, shall for the***

period for which the tax or any part thereof remains unpaid, *pay on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council'*

(2)the interest under sub-section(1) shall be calculated, in ***such manner as may be prescribed****, from the day succeeding the day on which such tax was due to be paid*

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

76. Noticee submits that the impugned notice has alleged that interest rate prescribed under Section 50 is applicable. In this regard, Noticee submits that the Finance Act, 2022 vide Section 110 has amended Section 50(3) which is in accordance with the GST Council in its 45th meeting GST Council Meeting has clearly stated that the interest in cases of ineligible ITC availed and utilized should be charged at 18% w.e.f. 01.07.2017. The press release evidencing the same is as under *"In the spirit of earlier Council decision that interest is to be charged only in respect of net cash liability, section 50 (3) of the CGST Act to be amended retrospectively, w.e.f. 01.07.2017, to provide that interest is to be paid by a taxpayer on "ineligible ITC availed and utilized" and not on "ineligible ITC availed". It has also been decided that interest in such cases should be charged on ineligible ITC availed and utilized at 18% w.e.f. 01.07.2017."*

77. It is further submitted that ITC was not utilized and have been maintained sufficient balance of ITC in the electronic credit ledger throughout the subject period. The copy of Electronic credit ledger is enclosed as annexure __.

78. As we had not availed any benefit out of the ITC availed inadvertently, the imposition of interest on such ITC is not correct. As the credit was reversed before the utilization, the interest liability does not arise. In this regard, reliance is further placed on:

    a. Commissioner Cus., C.E. & S.T. v. Bharat Dynamics Ltd. 2016 (331) E.L.T. 182 (A.P.) wherein it was held that *"6. From the findings arrived at by the Tribunal as reproduced above, it is obvious that in March, 2010,*

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the appellant in accordance with the relevant provision of law, did seek clarification from the department to know whether the goods on clearance to the respondent-assessee are exempted from payment of Excise duty in terms of the notification and only in the absence of such clarification from the department, they took CENVAT credit during the intervening period i.e. from September, 2010 to March, 2011. It is also clearly observed that after getting clarification from TRU in April, 2011, the appellant reversed the entire amount of Cenvat credit. In that view of the matter, the specific contention put forth by the learned standing counsel that the respondent-assessee, without any eligibility, has taken the Cenvat credit, as such, they are liable to pay interest, is not sustainable."

b. CCE & ST, LUT Bangalore Vs. Bill Forge Pvt. Ltd—2012 (26) S.T.R. 204 (Kar.) wherein it was held that *"21. Interest is compensatory in character, and is imposed on an assessee, who has withheld payment of any tax, as and when it is due and payable. The levy of interest is on the actual amount which is withheld and the extent of delay in paying tax on the due date. If there is no liability to pay tax, there is no liability to pay interest. Section 11AB of the Act is attracted only on delayed payment of duty i.e., where only duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person liable to pay duty, shall in addition to the duty is liable to pay interest. Section do not stipulate interest is payable from the date of book entry, showing entitlement of Cenvat credit. Interest cannot be claimed from the date of wrong availment of CENVAT credit and that the interest would be payable from the date CENVAT credit is taken or utilized wrongly."*

c. B. Girijapathi Reddy & Company v. Commissioner — 2016 (344) E.L.T. 923 (Tri-Hyd);

d. Ganta Ramanaiah Naidu v. Commissioner — 2010 (18) S.T.R. 10 (Tribunal)

e. J.K. Tyre& Industries Ltd. Vs. CCE x., Mysore—2016(340) E.L.T 193 (Tri.-LB);

f. Commissioner v. Strategic Engineering (P) Ltd. — 2014 (310) E.L.T. 509 (Mad.);

g. Commissioner v. Bombay Dyeing and Mfg. Co. Ltd. — 2007 (215) E.L.T. 3 (S.C.);

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79. Noticee further wishes to rely on **Commercial Steel Engineering Corporation v. State of Bihar — 2019 (28) G.S.T.L. 579 (Pat.)** wherein it was held that *"The Assistant Commissioner of State Taxes has somewhere got confused to treat the transitional credit claimed by the dealer as an availment of the said credit when in fact an availment of a credit is a positive act and unless carried out for reducing any tax liability by its reflection in the return filed for any financial year, it cannot be a case of either availment or utilization. It is rightly argued by Mr. Kejriwal that even if the respondent no.3 was of the opinion that the petitioner was not entitled to such transitional credit at best, the claim could be rejected but such rejection of the claim for transitional credit does not bestow any statutory jurisdiction upon the assessing authority to correspondingly create a tax liability especially when neither any such outstanding liability exists nor such credit has been put to use."*

From the above referred submissions, it is clear that no interest is applicable when the credit is reversed before utilization. Further, the same was also clarified in the 45th GST Council Meeting wherein it was recommended to state that interest is applicable only on utilization and is not applicable on mere availment. Hence, Noticee request you to drop the further proceedings in this regard.

In Re: Penalties are not imposable:

80. Noticee has bonafide belief that the compliance made by them is legally permissible. And it is a settled proposition of law that when the assessee acts with a bonafide belief especially when there is doubt as to statute and not yet understood by the common public, there cannot be levy to penalty.

81. Further, Penalty, as the word suggests, **is punishment for an act of deliberate deception by the assessee with the intent to evade duty by adopting any of the means mentioned in the section.** Bona fide belief cannot be reason for imposition of the severe penalty. In this regard wishes to place a reliance on **Rajasthan Spinning & Weaving Mills [2009 (238)** E.L.T. **3 (S.C.) & Commissioner of Central Excise, Vapi Vs Kisan Mouldings Ltd 2010 (260) E.L.T 167 (S.C).**

82. Noticee submits that the Supreme Court in case of CIT Vs Reliance Petro Products Pvt Ltd (SC) 2010 (11) SCC (762) while examining the imposition of penalties under Section 271(1)(c) of Income Tax Act, 1961 held that penalties are not applicable in similar circumstances.

83. Noticee submits that from the above-referred decision of the Supreme Court, penalties cannot be imposed merely because the assessee has availed excess ITC over and above GSTR-2A which was not accepted or was not acceptable to the revenue when the assessee has acted on the bonafide belief that the ITC is not reversible. In the instant case also, Noticee has not availed any excess ITC on the bonafide belief that the same is eligible to be claimed which was not accepted by the department. Therefore, in these circumstances, the imposition of penalties is not warranted and the same needs to be dropped.

84. Noticee submits that it is pertinent to understand that the Supreme Court in the above-referred case has held that the penalties shall not be imposed even though the mens rea is not applicable for the imposition of penalties.

85. In addition to above, Noticee submits that where an authority is vested with discretionary powers, discretion has to be exercised by application of mind and by recording reasons to promote fairness, transparency and equity. In this regard the reliance is placed on the judgement of hon'ble Supreme Court in the case of **Maya Devi v. Raj Kumari Batra dated 08.09.2010 [Civil Appeal No.10249 of 2003]** wherein it was held that *"14. It is in the light of the above pronouncements unnecessary to say anything beyond what has been so eloquently said in support of the need to give reasons for orders made by Courts and statutory or other authorities exercising quasi-judicial functions. All that we may mention is that in a system governed by the rule of law, there is nothing like absolute or unbridled power exercisable at the whims and fancies of the repository of such power. There is nothing like a power without any limits or constraints. That is so even when a Court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well recognized and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity."*

86. Noticee further submits that it was held in the case of Collector of Customs v. Unitech Exports Ltd. 1999 (108) E.L.T. 462 (Tribunal) that-*"**It is settled position that penalty should not be imposed for the sake of levy. Penalty is not a source of Revenue.** Penalty can be imposed depending upon the facts and circumstances of the case that there is a clear finding by the authorities below that this case does not warrant imposition of penalty. **The respondent's Counsel has also relied upon the decision of the Supreme Court in the***

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case of M/s. Pratibha Processors v. Union of India reported in 1996 (88) E.L.T. 12 (S.C.) that penalty ordinarily levied for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. " Hence, Penalty cannot be imposed in the absence of deliberate defiance of law even if the statute provides for penalty. Therefore, on this ground it is requested to drop the penalty proceedings.

87. Noticee submits that the Supreme Court in case of Price Waterhouse Coopers Pvt. Ltd Vs Commissioner of Income Tax, Kolkata S.L.P.(C) No.10700 of 2009 held as follows

"20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars."

88. Notice submits that from all the above submissions, it is clear that imposition of penalties is not warranted therefore the impugned notice needs to be dropped.

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

90. Noticee would also like to be heard in personal, before any Notice being passed in this regard.

For M/s. GV Research Centers Private Limited

Authorised Signatory

BEFORE THE DEPUTY COMMISSIONER (ST), ENFORCEMENT, HOD, TELANGANA.

Sub: Proceedings under Show Cause Notice vide Ref No. ZD3602220020258 dated 05.02.2022 issued to M/s. GV Research Centers Private Limited

I, ____________________, ____________________ of M/s GV Research Centers Private Limited hereby authorizes and appoint Hiregange & Associates LLP, Chartered Accountants, Bangalore or their partners and qualified staff who are authorized to act as an authorized representative under the relevant provisions of the law, to do all or any of the following acts: -

a. To act, appear and plead in the above-noted proceedings before the above authorities or any other authorities before whom the same may be posted or heard and to file and take back documents.
b. To sign, file verify and present pleadings, applications, appeals, cross-objections, revision, restoration, withdrawal and compromise applications, replies, objections and affidavits etc., as may be deemed necessary or proper in the above proceedings from time to time.
c. To Sub-delegate all or any of the aforesaid powers to any other representative and I/We do hereby agree to ratify and confirm acts done by our above-authorized representative or his substitute in the matter as my/our own acts as if done by me/us for all intents and purposes.

This authorization will remain in force till it is duly revoked by me/us.

Executed this on 11th January 2023 at Hyderabad

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Signature

I the undersigned partner of M/s Hiregange & Associates LLP, Chartered Accountants, do hereby declare that the said M/s Hiregange& Associates LLP is a registered firm of Chartered Accountants, and all its partners are Chartered Accountants holding certificate of practice and duly qualified to represent in above proceedings under Section 116 of the SGST Act, 2017. I accept the above-said appointment on behalf of M/s Hiregange & Associates. The firm will represent through any one or more of its partners or Staff members who are qualified to represent before the above authorities.

Dated: 11.01.2023

Address for service:
Hiregange& Associates LLP,
Chartered Accountants,
4th Floor, West Block, Anushka Pride,
Opp. Ratnadeep Supermarket,
Road Number 12, Banjara Hills,
Hyderabad, Telangana 500034

For Hiregange& Associates LLP
Chartered Accountants

Venkata Prasad P
Partner (M.No. 236558)

I Partner/employee/associate of M/s Hiregange& Associates LLP duly qualified to represent in above proceedings in terms of the relevant law, also accept the above said authorization and appointment.

S.No.	Name	Qualification	Membership No.	Signature
1	Sudhir V S	CA	219109	
2	Lakshman Kumar K	CA	241726	
3	Rasika Kasat	CA	243001	
4	Srimannarayana S	CA	261612	

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