

Form GST ASMT - 11*[See rule 99(2)]***Reply to the notice issued under section 61 intimating discrepancies
in the returns**

1. GSTIN	36AAHCG4562D1ZP	
2. Name	M/s. GV Research Centers Private Limited	
3. Details of the notice	Ref. No. ZD360722008424M	Date: 08.07.2022
4. Tax Period	April 2021 to March 2022	
5. Reply to the discrepancies		
Sr.No.	Discrepancy	Reply
1.	ITC attributable to exempted and non-GST supply under Rule 42 of CGST Rules, 2017	Given as Annexure-A
2.	ITC availed on restricted supplies under Section 17(5) of CGST Act, 2017	

6. Amount admitted and paid if any- No Such payments

7. Verification-

I, M/s. GV Research Centers Private Limited, 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 there from.

For M/s. GV Research Centers Private Limited**Authorised Signatory**

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. Noticee is in receipt of thape present ASMT-10 vide reference No. ZD360722008424M dated 08.07.2022 for the period April 2021 to March 2022, proposing to demand an amount of Rs. 1,99,81,600/- stating that there is a difference between the tax liability disclosed in GSTR-01, GSTR-3B and GSTR-2A.
- D. Noticee herein below makes the submission in response to the allegations and propositions made in the ASMT-10.

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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

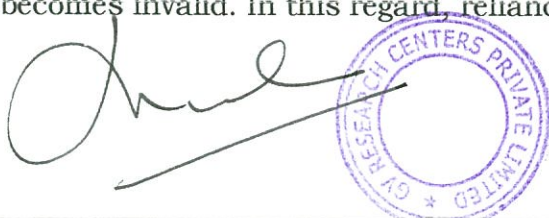
3. Noticee submits that the impugned notice has been issued proposing to demand an amount of Rs. 1,99,81,600/- towards differences between the amounts declared in GSTR-01, GSTR-3B and GSTR-2A which shows that the issue is relating to discrepancy in returns filed by the Noticee.

Notice issued on assumptions and presumptions

4. 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.)
5. 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

6. 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



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- 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)

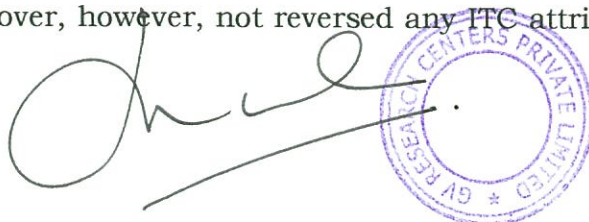
From the invariable decisions of various High Courts, it is clear that the notice without details is not valid and the same needs to be dropped.

7. 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
8. Noticee submits that the impugned notice has proposed to demand following amounts

SI No	Particulars	Amount (CGST+SGST)
A	ITC attributable to exempted and non-GST supply under Rule 42 of CGST Rules, 2017	1,61,27,897
B	ITC availed on restricted supplies under Section 17(5) of CGST Act, 2017	38,53,702
	Total	1,99,81,600

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

9. Noticee submits that the impugned notice has stated that the Noticee has declared an amount of Rs. 4,39,267/- 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. 1,61,27,897/- attributable to exempted and non-GST turnover under Rule 42 and 43 of the CGST Act, 2017.

10. 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 and 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.

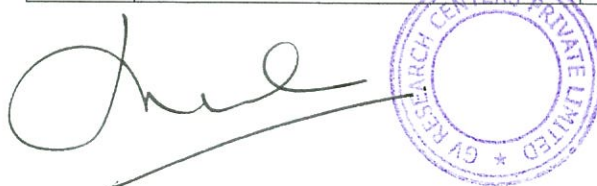
11. With respect to the amount declared in GSTR-3B as exempted supplies the same is towards scrap sales which is neither for supply of goods nor for supply of services. Therefore, the same shall not be considered as a supply at all. Once it is not a supply, then the same cannot be treated as an exempted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

12. Noticee submits that the impugned notice has alleged that the Noticee has availed an amount of Rs. 38,53,702/- on inputs or input services covered under Section 17(5) of the CGST Act, 2017.

13. In this regard, Noticee submits that Noticee has not availed ITC amounting to Rs. 20,13,971/-. The details of the same is as follows:

S.No.	Particulars	Amount
A	Total ineligible ITC as per the Notice	38,53,702
B	Total ITC not availed	20,13,971
C	Total ITC availed	18,39,731



Therefore, Noticee requests to take the same in record and drop the proceedings initiated (Copy of Statement showing the details of availment are enclosed as Annexure ____).

14. 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.

ITC is rightly eligible if commercial property is given on lease

15. 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.
16. 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
17. 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.*"

18. 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.
19. 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.

Denying the ITC will result in cascading effect which is not the intention of the Statute

20. 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.



21. 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.
22. 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.
23. 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.
24. 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,



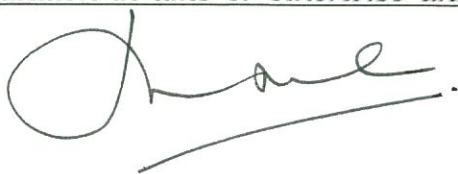
inasmuch as keeping in mind the language used in (1999) 2 SCC 361= 1999 (106) E.L.T. 3 (S.C.) (supra), the very purpose of the credit is to give benefit to the assessee. In that view of the matter, if the assessee is required to pay GST on the rental income arising out of the investment on which he has 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."

25. 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"

26. 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

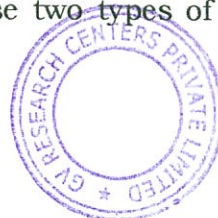


use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no correlation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular 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.

Violation of Article 14 and 19(1)(g) of the Constitution

27. 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.
28. 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.
29. 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

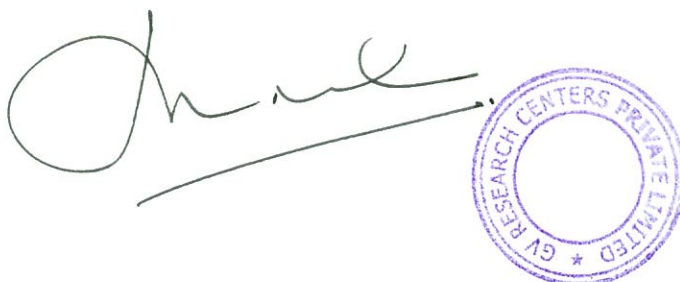


same footing amounts to self-contradiction wherein GST is not at all payable on the sale of building after receipt of occupancy certificate but GST is payable on lease amounts received from leasing of such building. This shows that Section 17(5)(d) is in violation of Article 14 of the Constitution of 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.

30. 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.
31. 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.
32. Further, with respect to the services received from M/s. Johnson Lifts Private Limited, Noticee submits that the same is towards purchase of lifts and the same amounts to purchase of plant and machinery which is not restricted under Section 17(5)(d) of the CGST Act, 2017 which is provided below: -

"(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation:— For the purposes of clauses (c) and (d), the expression —construction includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable proper."

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33. Noticee submits that from the above referred extract, it is clear that ITC is not eligible on goods or services which are used in the construction of immovable property. However, the restriction is not applicable in case of plant and machinery. Therefore, any ITC on goods or services which are received by a taxable person in relation to plant and machinery is rightly eligible. Hence, the impugned notice should be dropped to that extent.
34. Without prejudice to above, we would like to submit that we have reversed an amount of Rs.3,62,924/- with respect to ITC availed on inputs or input services received from M/s. Hestia and M/s. Johnson while filing the GSTR-3B for the month of October 2021. Hence, the demand to that extent needs to be dropped.

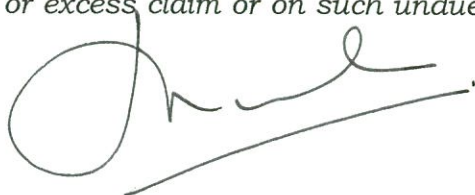
In Re: Interest under section 50 is not applicable

35. 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).
36. 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.

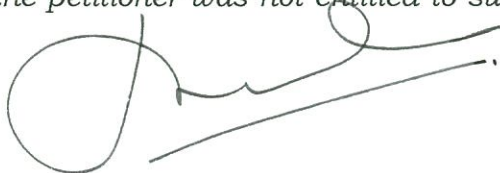
37. Noticee submits that the impugned notice has alleged that interest rate prescribed under Section 50 is applicable. In this regard, Noticee submits that the Finance Act, 2022 vide Section 110 has amended Section 50(3) which is in accordance with the GST Council in its 45th meeting GST Council Meeting 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."*
38. 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 ____.
39. 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, 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.);*

40. 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.

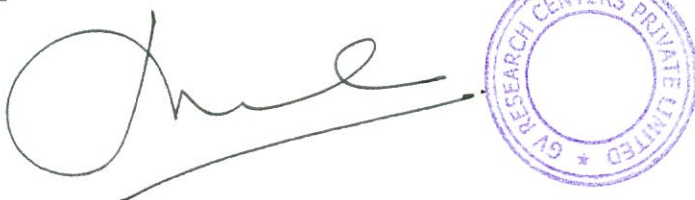
In Re: Penalties are not imposable:

41. 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.

42. 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).**

43. 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.

44. 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.

A handwritten signature in black ink is written over a circular purple stamp. The stamp contains the text "GV RESEARCH CENTRE PRIVATE LIMITED" around the perimeter and a small star in the center.

45. 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.
46. 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."*
47. 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 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.



48. 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."

49. 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.

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

51. 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



A handwritten signature in black ink, consisting of a large loop followed by several smaller, fluid strokes.

Authorised Signatory

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

Sub: Proceedings under Show Cause Notice vide Ref No. ZD360722008424M dated 08.07.2022 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


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	

