



H N A & Co LLP
Chartered Accountants

(Formerly known as Hiregange & Associates LLP)

Date: 29.08.2023

To

**The Additional Commissioner of Central Tax,
Secunderabad Commissionerate,
4th Floor, GST Bhavan,
L.B. Stadium Road, Basheerbagh,
Hyderabad-500004.**

Sub: Additional Submissions to Show Cause Notice reply dated 31.07.2023.

Ref:

- a. Personal hearing attended on 14.08.2023
- b. Reply to Show Cause Notice in DRC-06 dated 31.07.2023.
- c. Show Cause Notice no. 06/2023-24 dated 19.05.2023 for the period 2017-18 to 2019-20 pertaining to M/s. Nilagiri Estates

1. We are authorized to represent the above-referred entity and are in receipt of the above referred Show Cause Notice requiring us to submit a reply. Accordingly, we submitted a reply on 31.07.2023 and we have attended the personal hearing on 14.08.2023. During the course of hearing, we have requested some time to submit additional information.
2. We would like to bring to your notice that we are in receipt of the spot memo dated 21.09.2022 for which we have given a detailed explanation through the reply dated 30.09.2022. While issuing the Final Audit Report, the reply given to the spot memo is not at all considered and issued the above Final Audit Report dated 04.11.2022. The fact of not considering the explanations given in the spot memo was brought out by us in the reply against the FAR dated 26.11.2022. (Copy of FAR dated 04.11.2022 and reply to the FAR dated 26.11.2022 are enclosed as **Annexure 5**).

3. In this regard, we would like to bring to your notice that we have already discharged certain proposed amounts even before the issuance of SCN and certain demands after issuance of SCN which is mentioned in the below table:

4th Floor, West Block, Srida Anushka Pride, R.No. 12, Banjara Hills, Hyderabad,
Telangana - 500 034. INDIA.

040 2331 8128, 3516 2881

sudhir@hnaindia.com

www.hnallp.com

Bengaluru | Hyderabad | Visakhapatnam | Gurugram (NCR) | Mumbai | Pune | Chennai | Guwahati |
Vijayawada | Kolkata | Raipur | Kochi | Indore | Ahmedabad



Para No.	Demand Amount	Actual difference and paid amount	DRC-03 date	Paid through	Section
1	1,21,41,750/-	Disputed	NA	NA	74
2	19,82,815/-	5,89,131/-	09.08.2019 & 15.06.2020	Credit Ledger	74
3	27,16,554/-	5,15,480/-	09.08.2019	Credit Ledger	73
4	38,58,144/-	17,78,059/-	NA	NA	73
5	1,69,159/-	1,69,159/-	31.07.2023	Credit Ledger	73
6	1,420/-	1,420/-	31.07.2023	Cash Ledger	73
7	6,412/-	6,412/-	31.07.2023	Cash Ledger	73
8	88,320/-	88,320/-	07.01.2020	Credit ledger	74

4. With respect to interest on already paid demands, we would like to submit that we have sufficient credit ledger balance carry forwarding throughout the disputed period and have discharged the same through Electronic Credit ledger. Hence, we are of the bona fide belief that we are not liable to discharge the interest under Section 50 of CGST Act, 2017 in accordance with first proviso to Section 50(1) which provides that interest is applicable only on the liability which was discharged through Electronic Cash ledger. as stated in the below extract:

*(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'*

1[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period.



shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

*(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.

5. We submit that inference can be placed on proviso of sub-section (1) of section 50 for interest which is not liable to be paid if the tax is discharged through utilization Electronic Credit Ledger. We would like to submit that we have paid the taxes even before the issuance of show cause notice. Hence, the proposal of SCN demanding the interest is not correct and the same needs to be dropped. Since we have paid the taxes before issuance of notice, there is no requirement to issuance notice under Section 73 and we request you to drop the same.
6. We further submit that reliance is made on the judicial decisions for non-payment of interest for late payment of tax:
 - a. The Hon'ble High Court of Madras in the case of Refex Industries Vs AC of CGST 2020-TIOL-382-HC-MAD-GST held that interest is applicable only on liability payable through cash. Therefore, it is clear that interest is applicable only on GST paid through cash but not on payment made through ITC.
 - b. The Hon'ble High Court of Madras in the case of M/s. Voltech O And M Services Private Ltd. Versus Superintendent Of GST 2023 (2) TMI 722 - MADRAS HIGH COURT it was decided that "*The learned judges have held in clear terms that Section 50 of the GST Act can be applied demanding interest only in cases of belated cash payment towards GST, but not on input tax credit available all the while with the department to the credit of the assessee.*"



7. We also submit that section 50(3) of the CGST Act, 2017 was amended with retrospective effect from 01.07.2017 (vide section 111 of Finance Act, 2022) as notified through Notification No. 09/2022-CT dated 05.07.2022 to declare that interest is liable only on the portion of ITC utilized and no interest is liable on the mere availment of ITC. The amended provision reads as under:

“(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.”

Thus, it is clear that interest is not applicable on availment of ITC per se but the utilization of ITC.

8. Further, Rule 88B of CGST Rules, 2017 was introduced with effect from the 1st July, 2017, vide Notification No. 14/2022-Central tax dated 05.07.2022 stating the manner of calculating interest on the wrongly utilised ITC wherein it was clearly provided that ITC said to be utilised only when the closing balance of ITC falls below the amount of wrongful ITC. The relevant extracts are given below:

“(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised, starting for the period from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.

*Explanation.—For the purposes of this sub-rule, —(1)input tax credit wrongly availed shall be construed to have been utilised, **when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.***

(2) the date of utilisation of such input tax credit shall be taken to be,

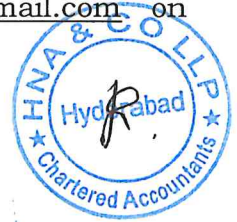


(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.;

In the instant case, the interest is not applicable during the period as the closing balance of ITC is higher than the alleged wrongful ITC. Hence, we request to consider the payment of tax liability through the DRC-03 for the paras 5 and 8 and drop interest on the same. (Copy of Electronic credit ledger is enclosed as **Annexure 1**).

9. With respect to demand raised for the difference between GSTR-1 vs GSTR-3B, we have given a summary of the difference in our above reply dated 31.07.2023. However, to evidence the summary given, we are herewith enclosing the GSTR-1 and GSTR-3B monthly filed return for the period 2017-18 to 2019-20 for your reference as **Annexure 2** (Since the returns are running into hundreds of pages, we have shared the same through E-mail to adjudication3@gmail.com on 29.08.2023). Further, we have also discharged the tax liability for the balance difference through DRC-03 dated 09.08.2019 and therefore, we request you to consider the same and drop the proceedings on this regard.
10. Further, for the difference between GSTR-2A vs GSTR-3B as mentioned in para-4 of the SCN, we have given the summary of difference of Rs. 17,78,059/- for the period 2017-18 to 2019-20. To evidence the same, we are herewith enclosing the copies of updated GSTR-2A for the period 2017-18 to 2019-20 as **Annexure 3** (Since the GSTR-2A for different years are running into hundreds of pages, we have shared the same through E-mail to adjudication3@gmail.com on 29.08.2023).



11. With respect to the Para-1 of the above referred SCN related to land deduction, we have already given the detailed explanation in the reply dated 31.07.2023. In this regard, we are herewith enclosing sample copies of the Agreement of Sale, Sale Deed and Agreement of Construction as **Annexure 4**. We would like to submit that the Agreement of Construction clearly mentions the value towards land and value towards construction. Therefore, we request your good self to consider the same and drop the impugned notice to that extent.

We shall be glad to furnish any further information/clarification required in this regard. Kindly acknowledge receipt of the above and do the needful.

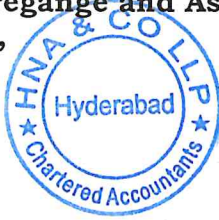
Thanking you,

Yours Truly

For M/s. H N A & Co. LLP,

**(Formerly known as Hiregange and Associates LLP),
Chartered Accountants,**

R. Lakshman Kumar
**CA Lakshman Kumar K
Partner**



Enclosures:

- i. Electronic credit ledger for the period 2017-18 to till date
- ii. GSTR-1 and GSTR-3B monthly filed return for the period 2017-18 to 2019-20 (Since the returns are running into hundreds of pages, we have shared the same through E-mail to adjudication3@gmail.com on 29.08.2023)
- iii. Updated GSTR-2A for the period 2017-18 to 2019-20 (Since the GSTR-2A for different years are running into hundreds of pages, we have shared the same through E-mail to adjudication3@gmail.com on 29.08.2023)
- iv. Sample copies of Agreement of sale, sale deed and Agreement for construction which specifically mentions the land value separately.
- v. Copy of FAR dated 04.11.2022 and reply to the FAR dated 26.11.2022