



H N A & Co LLP
Chartered Accountants

(Formerly known as Hiregange & Associates LLP)

Date: 16.02.2024

To,
The Assistant Commissioner of Central Tax,
Secunderabad GST Division,
Salike Senate, D.No. 2-4-416 & 417,
Ramgopalpet, M.G. Road,
Secunderabad-500003.

Dear Sir,

Sub: Filing of Reply to Show Cause Notice in Form GST DRC – 06.

Ref: SCN No. 46/2023-24 vide DIN :20231256YO00008328CE dated 29.12.2023 pertaining to **M/s. Nilgiri Estates.**

1. We have been authorized by M/s. Nilgiri Estates to submit the SCN reply to the above referred SCN No. 46/2023-24 vide DIN :20231256YO00008328CE dated 29.12.2023 and represent before your good office and to do necessary correspondence in the above referred matter. A copy of authorization is attached to the reply.
2. In this regard, we are herewith submitting the SCN reply along with authorization letter and other annexures referred in the reply.

We shall be glad to provide any other information in this regard. Kindly acknowledge the receipt of the reply and post the hearing at the earliest.

Thanking You,

Yours faithfully,

For M/s. H N A & Co. LLP
Chartered Accountants

R. Lakshman Kumar
CA Lakshman Kumar K
Partner



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FORM GST DRC - 06*[See rule 142(4)]***Reply to the Show Cause Notice**

1.GSTIN	36AAHFN0766F1ZA	
2.Name	M/s Nilgiri Estates	
3.Details of Show Cause Notice	SCN No. 46/2023-24 vide DIN :20231256YO00008328CE	Date of issue: 29.12.2023
4.Financial Year	2018-19	
5.Reply		
Given as Annexure A		
6.Documents uploaded: YES		
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.

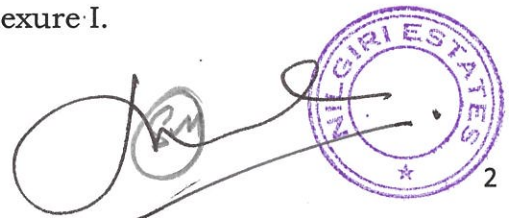

Signature of Authorised Signatory



ANNEXURE A

FACTS OF THE CASE:

1. M/s. Nilgiri Estates (hereinafter referred as "Noticee") located at 5-4-187/3, 2nd Floor, Soham Mansion, M.G.Road, Secunderabad, Telangana-500003 *inter alia* engaged in the business of Construction & sale of Villas and is registered with the Goods and Service Tax Department vide GSTIN 36AAHFN0766F1ZA in the state of Telangana. The Noticee has been paying applicable GST and filing returns regularly after disclosing the required disclosures therein.
2. In the year 2022, the GST department has conducted the audit for the period July 2017 to March 2019 and has issued FAR No.518/2022-23 dated 04.11.2022 (copy of FAR is enclosed as Annexure-Vii) *inter alia* making observation that there was short payment of GST in GSTR-3B when compared to liability declared in GSTR-1 for FY 2018-19 & also there was excess availment of ITC in GSTR-3B when compared to ITC reflected in GSTR-2A. It was followed by the issuance of a Show Cause Notice vide SI No. 06/2023-24 dated 19.05.2023. Copy of SCN enclosed as Annexure-vi.
3. In response to the SCN dated 19.05.2023, the Noticee furnished its reply vide submissions dated 31.07.2023 & and also filed additional submissions dated 29.08.2023 thereby stating that the demands proposed vide the SCN has already been discharged and thus the demands proposed are not maintainable per se in law. The department did not consider the submissions instead passed the Order-In-Original No. 28/2023-24-SEC-ADJN-ADC(GST) dated 12.10.2023 confirming the aforesaid demands proposed in SCN dated 19.05.2023. Copy of OIO dated 12.10.2023 is enclosed as Annexure-iv.
4. Further, the summary of the OIO was uploaded electronically in GST portal vide reference No. ZD3612230078888 dated 05.12.2023 along with copy of OIO. Copy of summary order in Form DRC-07 enclosed as Annexure iii. Aggrieved by the OIO, Noticee filed an appeal on 16.01.2024 after making required pre-deposit. Copy of the appeal acknowledgment enclosed as Annexure ii.
5. To the utter surprise of the Noticee, Noticee is in receipt of the impugned SCN No. 46/2023-24 dated 29.12.2023 which was received on 02.01.2024 through registered proposing the following demands which were the very same demands that were already proposed & adjudicated by Additional Commissioner of Central Tax, Hyderabad who had passed the OIO dated 12.10.2023. Copy of SCN No. 46/2023-24 dated 29.12.2023 enclosed as Annexure I.


2

- i. An amount of Rs.27,66,974/- [Rs. 13,83,487/-CGST and Rs13,83,487/-SGST] (Rupees Twenty Seven Lakhs Sixty Six Thousand Nine Hundred and Seventy Four only), as discussed supra in Para 2 should not be demanded from them under Section 73(1) of the CGST Act, 2017 and similar provisions as laid in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.
- ii. An amount of Rs. 20,63,272 /- [Rs. 10,31,636/- CGST and Rs. 10,31,636/-SGST] (Rupees Twenty Lakhs Sixty Three Thousand Two Hundred and Seventy Two only), as discussed supra in Para 3 should not be demanded from them under Section 73(1) of the CGST Act, 2017 and similar provisions
6. Noticee herein below makes the submissions in response to the allegations and propositions made in the impugned SCN which are independent and without prejudice to one another.

Submissions

7. Noticee submits that they deny all the allegations made in Show Cause Notice (SCN) dated 29.12.2023 as they are not factually/legally correct.
8. 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

Notice has been issued based on assumptions and presumptions.

9. Noticee submits that impugned SCN is issued with prejudged and premeditated conclusions on various issues raised in the notice. That being the 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.)**.
10. 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)**

11. Noticee further submits that the impugned notice has been issued both for CGST and SGST. However, as per Section 6 of the 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.

The present demand is already raised in previous SCN dated 19.05.2023 and adjudicated vide OIO 12.10.2023:

12. Without prejudice to the above submissions, Noticee submits that the audit wing of Central tax has already conducted the detailed audit *inter alia* verified the records of sales and purchases and reconciled the differences between GSTR-1, GSTR-3B and GSTR-2A and made certain observations which were finally culminated into issuance of earlier SCN dated 19.05.2023 *inter alia* vide

a. Para III of such SCN has raised the demand of alleged short payment of tax on comparison of GSTR-1 & GSTR-3B for the FY 2018-19

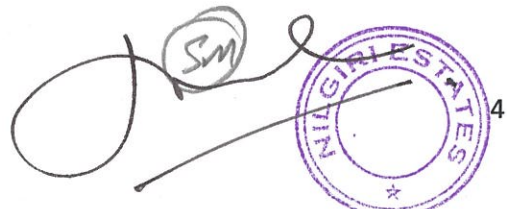
b. Para IV of such SCN has raised the demand of alleged ITC on comparison of GSTR-3B & GSTR-2A for FY 2018-19

Thus, previous SCN dated 19.05.2023 has raised very same demands that were raised in the impugned SCN. Thereby, the present demand is clearly duplicated, unwarranted and requires to be dropped outrightly.

13. Furthermore, the returns verification is one of the basis features of GST audit by the department as evident from the Para 5.5.4 & 5.8.3 of GST Audit Manual, 2019 issued by CBIC (Relevant extracts are enclosed as annexure IX). Therefore, the demand proposed vide the impugned SCN is completely duplicated, fallacious and devoid of any merit.

14. Noticee further submits that in response to the previous SCN dated 19.05.2023, the Noticee has filed the submissions dated 31.07.2023 & additional submissions dated 29.08.2023. (Copy of the submissions are enclosed as Annexure-V). Thereafter, Additional Commissioner of Central tax has passed Order-In-Original No. 28/2023-24-SEC-ADJN-ADC(GST) dated 12.10.2023 confirming the aforesaid demands proposed in SCN dated 19.05.2023 including the aforesaid demands. Thus, there was no necessity to raise the very same demands covering same period and same issue again in the present SCN.

15. Further, the summary of the OIO was uploaded electronically in GST portal by your good office vide reference No. ZD3612230078888 dated 05.12.2023 along with copy

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of OIO. That being a case, issuance of the present SCN for very same issues covering the same period do not sustain in law.

16. Noticee submits that the orders of Additional Commissioner of Central Tax, Hyderabad, being higher authority, clearly binds on the Assistant Commissioner of Central Tax, Hyderabad thereby not permitted to reagitate the very same issues that are already adjudicated especially when the demands are confirmed not even dropped by Additional Commissioner of Central Tax, Hyderabad.
17. Noticee submits that reopening of the already adjudicated assessment is not permitted in law. In this regard, Noticee places reliance on **UOI v. Vicco Laboratories 2007 (218) E.L.T. 647 (SC)**.
18. Further, it is submitted that two assessments are not permissible in law for the same period, especially on the same issue and same period. In this regard, Noticee places reliance on the following judicial pronouncements:

- a. **Duncans Industries Ltd. v. CCE 2006 (201) E.L.T. 517 (SC).**
- b. **Ambey Mining Pvt. Ltd. vs. Commissioner of State Tax, Dhurwa 2023 (76) G.S.T.L. 191 (Jhar.)** wherein the Hon'ble HC quashed the two show cause notices by two different authorities for the same period on the same issue.
- c. **V.S. Enterprises vs. State of UP 2022 (56) G.S.T.L. 287 (All.)** wherein Hon'ble HC held that multiple adjudication orders passed for overlapping tax periods involving same dispute by different adjudicating authorities would not be sustainable.
- d. **Core Health Ltd. Vs. Union of India 2006 (198) E.L.T. 21 (Guj.)** wherein the Hon'ble HC held that *"13. In the circumstances, the respondent authority, especially respondent No. 4, has failed to place any material on record to show, even prima facie, that it is entitled to assume jurisdiction for the purpose of issuance of impugned show cause notice for the same period and relating to the same issue which has already been adjudicated upon in past. Once the respondent authority fails to establish jurisdictional facts for assumption of jurisdiction as a natural corollary the impugned show cause notice cannot be allowed to stand and the same is accordingly quashed and set aside."*

In Re: There is no under declaration of output tax

19. Without prejudice to the above, it is further submitted that the alleged difference of output tax liability was factually incorrect and wherever there was short



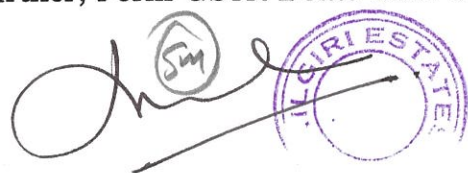
payment, it was paid voluntarily. The actual difference was quite less than the amount arrived by impugned SCN. The detailed explanation was already made to the previous SCN which may be considered here also.

In Re: There was no excess ITC availment as misconstrued in SCN:

20. Similarly, impugned SCN has proposed demand of Rs.16,06,954/- (first table in Para 3) towards alleged excess ITC availed in GSTR-3B on comparison to GSTR-2A. It is submitted that this demand was raised in the previous SCN (in fact more amount was demanded) and in any case, such alleged differences between ITC in GSTR-3B v. GSTR-2A is factually wrong as impugned SCN was based on the old GSTR-2A as on the date of filing annual returns. Once the updated GSTR-2A was considered, the actual difference was quite less than the amount arrived by impugned SCN. In any case, the mismatches were not due to the faults of Noticee but faults, if any of the suppliers of Noticee whom to be investigated first instead of direct recovery from Noticee.

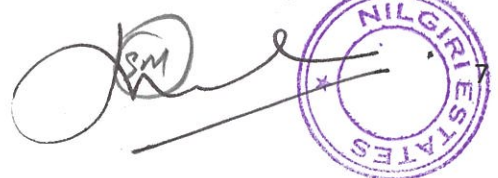
21. Noticee further submits that Noticee is rightly eligible for ITC for the following reasons even though such alleged ITC is not reflected in GSTR-2A:

- a. 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 have been satisfied.
- b. GSTR-2A cannot be taken as a basis to deny the ITC in accordance with Section 41, Section 42 of CGST Act, 2017, Rule 69 of CGST Rules, 2017.
- c. Finance Act, 2022 has omitted Section 42, 43 and 43A of the CGST Act, 2017 which deals ITC matching concept. 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.
- d. 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 statute.
- e. The Section 38 read with Rule 60 had prescribed the FORM GSTR 2 which is not made available till 30.09.2022. Further, Form GSTR 2 has been omitted



vide Notification No. 19/2022 Central Tax dated 28.09.2022 w.e.f. 01.10.2022.

- f. 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.
- g. 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.
- h. 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 order is not correct.
- i. Fact that there is no requirement to reconcile the invoices reflected in GSTR-2A vs GSTR-3B is also evident from the amendment in Section 16 of CGST Act, 2017 vide Section 100 of Finance Act, 2021. Hence, there is no requirement to reverse any credit in the absence of the legal requirement during the subject period.
- j. 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.
- k. The fact of payment or otherwise of the tax by the supplier is neither known to Noticee nor is verifiable by Noticee. 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 '*lex non-cogit ad impossibilia*'. 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.
- l. In the same context, Appellant also wish to place reliance on the decision in case of Arise India Limited vs. Commissioner of Trade and Taxes, Delhi-2018-



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TIOL-11-SC-VAT and M/s Tarapore and Company Jamshedpur v. State of Jharkhand - 2020-TIOL-93-HC-JHARKHAND-VAT.

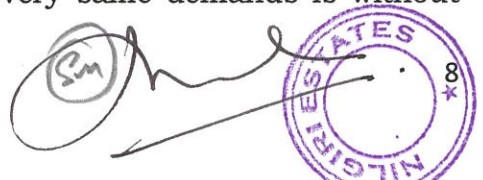
- m. Section 41 allows the provisional availment and utilization of ITC, there is no violation of section 16(2)(c) of CGST Act 2017
- n. The above view is also fortified from press release dated 18.10.2018
- o. Even if there is differential ITC availed, if the same is accompanied by a valid tax invoice containing all the particulars specified in Rule 36 of CGST Rules and the payment was also made to the suppliers, the Appellant is rightly eligible for ITC.
- p. Under the earlier VAT laws there were provisions similar to Section 16(2) ibid which have been held by the Courts as unconstitutional.

22. In this regard, Noticee relies on following decisions:

- **Suncraft Energy Pvt. Ltd. vs. Assistant Commissioner 2023 (77) G.S.T.L. 55 (Cal.) affirmed by Supreme Court as reported in 2024 (80) G.S.T.L. 225 (S.C.)**
- Diya Agencies v. State Tax Officer 2023 (9) TMI 955 - Kerala High Court
- Gargo Traders v. Joint Commissioner 2023 (6) TMI 533 - Calcutta High Court
- Henna Medicals v. State Tax Officers 2023 (10) TMI 98 - Kerala High Court
- D.Y. Beathel Enterprises Vs State Tax officer (Data Cell), (Investigation Wing), Tirunelveli 2021(3) TMI 1020-Madras High Court
- LGW Industries limited Vs UOI 2021 (12) TMI 834 -Calcutta High Court
- Bharat Aluminium Company Limited Vs UOI & Others 2021 (6) TMI 1052 - Chhattisgarh High Court
- Sanchita Kundu & Anr. Vs Assistant Commissioner of State Tax 2022 (5) TMI 786 - Calcutta High Court

In Re: ITC reversals shown in GSTR-9 was paid in Form GST DRC-03 and hence, there is no declaration of excess ITC reversals as alleged in SCN:

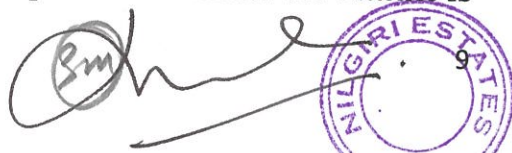
23. Impugned SCN has proposed Rs.4,56,318/- alleging that ITC said to be reversed in GSTR-9 but not reversed in GSTR-3B. In this regard, it is submitted that this demand is also factually incorrect as evident from the table 7(H1) & 7(H2) of GSTR-9 wherein the payment details related to such ITC reversals were disclosed and in fact, the payments made in Form GST DRC-03 were verified and acknowledged by jurisdictional officer vide Form DRC-04 No. 459710 dated 26.09.2023. Copy of DRC-03 & DRC-04 enclosed as annexure VIII. That being a case, issuance of the impugned SCN dated 29.12.2023 proposing the very same demands is without



application of mind, ignoring the details that are expressly disclosed in annual returns which are the basis for serving the impugned SCN and already verified by number of officers of the same department. Hence, impugned demands do not sustain and requires to be dropped.

In Re: Impugned SCN is time barred and Notification No. 09/2023-C.T dated 31.03.2023 & Notification No. 56/2023-C.T dated 28.12.2023 are bad in law:

24. Noticee submits that the impugned SCN was issued under section 73 of CGST Act, 2017 which provides for adjudication of demand within 3 years from the due date of annual return of corresponding FY. For FY 2018-19, the annual return due date falls on 31.10.2020 and the 3 years time limit expires on 31.10.2023. Therefore, the last date for issuance of the show cause notice u/s. 73(2) of CGST Act, 2017 is 31.07.2023 only.
25. Citing the difficulties caused due to Covid-19, the Government has extended the time limit to 31.03.2024 exercising the powers u/s. 168A of CGST Act, 2017 as amended vide Notification No. 09/2023-C.T dated 31.03.2023. However, again exercising the powers u/s. 168A, ibid the time was further extended to 30.04.2024 by the Notification No. 56/2023-C.T dated 28.12.2023.
26. In this regard, it is submitted that extension of the time period prescribed for issuance of show cause notice under Section 73 (10) of the Goods and Service Tax Act, 2017 is not sustainable in law, in as much as COVID restrictions were uplifted long back in the year 2022 and the revenue had sufficient time to complete the scrutiny and audit process. Further, the 'force majeure' as defined u/s. 168A, ibid was never occurred from 2022 till the expiry of extended due date of 31.10.2023. Hence, the extension of time from 31.10.2023 to 31.03.2023 & again to 30.04.2024 runs beyond the mandate of Section 168A and is not sustained in the law. Similarly, the extending of the time limits prescribed under section 73, ibid by exercising the notification issued u/s. 168A, ibid runs contrary to the provisions of section 73(10) of CGST Act, 2017 as amended. Therefore, both the Notifications No. 09/2023 dated 31.03.2023 & 56/2023-C.T dated 28.03.2023 are illegal, arbitrary, unjust, improper, unfair and contrary to provisions of the CGST Act, 2017.
27. Noticee submits that it is settled law that any delegated legislation travelling beyond the Statutory provisions be 'ultra vires' and do not sustain in law. It is also manifestly arbitrary and violative of Article 14 of the Constitution of India.
28. The Noticee submits that it is a settled position of law that in indirect Taxes, demands proposed after the expiry of the time limit prescribed under the statute is



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time-barred and not enforceable in law. In this regard wish to place reliance on the judgment in the case of CCE vs Classic Strips Pvt Ltd 2015 (318) E.L.T. 20 (S.C.).

29. Therefore, the impugned demand raised for FY 2018-19 deserves to be dropped as the proceedings are deemed to be concluded in terms of Section 75(10) of CGST Act, 2017 in absence of passing the order before 31.10.2023 and also non-issuance of SCN in 3 months prior to 31.10.2023.

Interest and penalties are not payable/imposable:

30. The Noticee respectfully submits that issue involved in the present case is critical analysis of various provisions of GST provisions and Notifications issued thereunder. Therefore, it is settled position of the law that when the issue involved is interpretation of statutory provisions, the imposition of penalties not warranted.
31. The Noticee respectfully submits that no penalty should be imposed where the breach flows from the bona-fide belief that the offender is not liable to act in the manner prescribed by the statute. Reliance is placed on **Hindustan Steel Ltd. Vs State of Orissa 1978 (2) E.L.T. (J159) (S.C.)**.
32. The Noticee respectfully submits that various High Courts in plethora of cases held that that GST is still in a "trial and error" phase.
33. Noticee submits that GST is new law, which is developing day by day. Every day there will be notification or Circular clarifying the GST issues from the Government. It is undisputed fact the Government horridly implemented the GST Law without being much preparatory work and trade was not fully ready for GST implementation. Due dates & deadlines were extended many times for the first 3 years of implementation of the GST Law. The alleged violations are purely unintentional and without any malafide intentions as explained supra. When the issue involved is interpretation of Law, therefore failure/non-payment of tax with intent to evade cannot be attributed accordingly penalty under the provisions of the law cannot be imposed.
34. Noticee craves leave to alter, add to and/or amend the above reply.
35. Noticee would also like to be heard in personal, before any order being passed in this regard.

For M/s. Nilgiri Estates

Authorised Signatory

**BEFORE THE ASSISTANT/DEPUTY COMMISSIONER OF CENTRAL TAX,
SECUNDERABAD DIVISION, SALIKE SENATE, 1st FLOOR, D.NO. 2-4-416 & 417,
RAMGOPALPET, MG ROAD, SECUNDERABAD, 500003.**

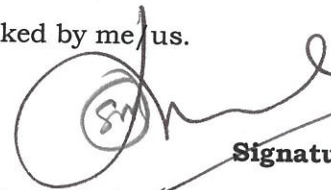
Sub: Proceedings under Show Cause Notice SCN No. 46/2023-24 vide DIN:20231256Y000008328CE dated 29.12.2023 issued to M/s. Nilgiri Estates

I, SOHAM MODI, PARTNER of M/s Nilgiri estates hereby authorizes and appoint M/s. H N A & Co. LLP (formerly known as M/s. 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: -

- 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.
- 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.
- 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 16th February, 2024 at Hyderabad


Signature

I the undersigned partner of M/s. H N A & Co. LLP (formerly known as M/s. Hiregange & Associates LLP), Chartered Accountants, do hereby declare that the said M/s. H N A & Co. 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. H N A & Co. LLP. 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: 16.02.2024

Address for service:

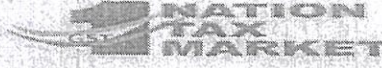
**H N A & Co. LLP,
Chartered Accountants,
4th Floor, West Block, Anushka Pride,
Above Himalaya Book World,
Road Number 12, Banjara Hills,
Hyderabad, Telangana 500034**

**For H N A & Co. LLP
Chartered Accountants**


**CA Lakshman Kumar K.
Partner (M.No. 241726)**

I Partner/employee/associate of M/s. H N A & Co. 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	Venkat Prasad P	CA, LLB	AP/3511/2023	
3	Srimannarayana S	CA	261612	
4	Revanth Krishna K	CA	262586	
5	Akash Heda	CA	269711	
6	Mohammed Shabaz	Advocate	TS/2223/2016	
7	Ankita Mehta	BBA LLB	TS/1578/2021	

		
केन्द्रीय कर सहायक कार्यालय, सिकंदराबाद नाल एवम सेवाकर मण्डल, सिकंदराबाद ।		
OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL TAX, SECUNDERABAD GST DIVISION, SECUNDERABAD		
SALIKE SENATE, D.No: 2-4-416 & 417, RAMGOPALPET, M.G. ROAD, SECUNDERABAD- 500 003		
Phone 7901243130 E-mail- cgst.secdlv@gov.in		
C. No. GEXCOM/ADJN/GST/2916/2023-CGST-DIV-SNBD-COMMRATE-SECUNDERABAD		
Date: 29.12.2023		

DIN: 20231256Y000008328CE

SHOW CAUSE NOTICE No.:46/2023-24

Sub: -GST-On account of discrepancies observed during verification of Returns filed by M/S NILGIRI ESTATES (GSTIN: 36AAHFN0766F1ZA) for the FY 2018-19- Issue of Show Cause Notice under Section 73 of the CGST Act, 2017 – Regarding.

M/S NILGIRI ESTATES (here-in-after referred to as "Taxpayer"), situated at 2nd FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003, is registered with the Centre GST Department with (GSTIN: 36AAHFN0766F1ZA) for the purpose of payment of GST and falls under the jurisdiction of Ramgopalpet-II CGST Range, Secunderabad GST Division, Secunderabad GST Commissionerate. Their business activities are 'WORKS CONTRACT SERVICES (HSNs-00440334, 00440410).

2. On verification of the records, by the Telangana State GST authority, the following discrepancies were observed.

2.1. **ISSUE 1: Under declaration of output tax.** It is observed that, the taxpayer has not correctly declared tax on his outward supplies on reconciliation of turnover in GSTR-01, GSTR-3B and GSTR-9 for the financial year 2018-19.

2.2. The taxpayer has self-assessed the tax liability on outward supply and furnished the details of the same in returns specified under Section 37 of the CGST Act, 2017. In terms of provision of Section 59 of the CGST Act, 2017, 'every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39'. The taxpayer failed to discharge the self-assessed tax in the returns specified under Section 39 and the taxpayer was to pay taxes liable under Section 9 of the CGST Act, 2017 and therefore, the differential tax of Rs 27,66,974/- as detailed in table below, is liable for recovery under Section 73 of the CGST Act, 2017 along with applicable interest under Section 50 and penalty under Section 73 of the CGST Act, 2017 read with Section 122(2)(a) of the CGST Act, 2017.

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Table-1

Amount: INR

S.No	Issue	Table No. in GSTR-09	SGST	CGST	Total
1	2	3	4	5	6
1	Tax on taxable supplies as declared in GSTR-09	4N	6384137.00	6384137.00	12768274.00
2	Add net increase due to amendments (Increase in amendments (-) decrease in amendments)	10 (-) 11	0.00	0.00	0.00
3	Add tax on deemed supplies	16B	0.00	0.00	0.00
4	Add tax on unreturned goods	16C	0.00	0.00	0.00
5	Pending demands	15G	0.00	0.00	0.00
6	Total output tax liability as per the above in GSTR-09(S.NO 1+2+3+4+5)		6384137.00	6384137.00	12768274.00
7	Less Total tax paid in cash	9	0.00	0.00	0.00
8	Less Tax paid by adjustment of ITC	9	5000650.00	5000650.00	10001300.00
9	Less differential tax paid on amendments	14	0.00	0.00	0.00
10	Add differential tax paid on amendments related to previous year in current year	(14) of previous FY GSTR-09	0.00	0.00	0.00
11	Net tax payable (S.NO 6-7-8-9+10)		1383487.00	1383487.00	2766974.00

3. ISSUE 2: The excess input tax credit (ITC) claimed on account of non-reconciliation of information:

Under Section 16(2)(c) every registered person shall be entitled to take credit of ITC on supply of goods or services to him subject to the condition that the tax charged in respect of such supply has been actually paid to the Government either in cash or through utilization of ITC admissible in respect of such supply.

It is observed that the taxpayer has not correctly availed input tax on his inward supplies on reconciliation of turnovers in GSTR-09.

• Scrutiny of ITC availed:

Amt in Rs

S.No	Description	SGST	CGST	Total
1	2	3	4	5
1	ITC in the year as per Table 8A of GSTR-09	6803981.00	6803981.00	13607962.00
2	ITC from ISD table 4A (4)	0.00	0.00	0.00
3	ITC from imports table 4A (1) +4A (2)	0.00	0.00	0.00
4	Inward Supplies liability to reverse charge 4A (3) (other than 4A(1) & 4A(2))	0.00	0.00	0.00
5	ITC brought forward from previous FY to current FY, Table 8C of previous FY GSTR-09	0.00	0.00	0.00
6	ITC carried forward from present FY to subsequent FY, Table 8C of GSTR-09	0.00	0.00	0.00
7	Reversals in Table 4B of GSTR-3B	0.00	0.00	0.00
8	ITC Available for use in the same year (S.No 1+2+3+4+5-6-7)	6803981.00	6803981.00	13607962.00
9	ITC used in same year as per 4C of GSTR-3B	7607458.00	7607458.00	15214916.00
10	Net excess used (S.No 9-8)	803477.00	803477.00	1606954.00

• Scrutiny of ITC reversals:

		Amt in Rs.		
S.N	Description	SGST	CGST	Total
1	2	3	4	5
1	ITC reversed in Table 4(B) of GSTR-3B	0.00	0.00	0.00
2	ITC reversed in Table 7(I) of GSTR-09	228159.00	228159.00	456318.00
3	Excess ITC reversal showing in GSTR-09 as completed the GSTR-3B (S.No 2-1)	228159.00	228159.00	456318.00

From the above taxpayer has declared excess ITC reversal in GSTR 9 compared to ITC reversed in table 4(B) of GSTR-3B as detailed in table above.

Therefore, excess ITC of Rs. 20,63,272/- availed is required to be recovered under Section 73 of the CGST Act, 2017 along with applicable interest under Section 50 of the CGST Act, 2017 and penalty under Section 73 of the CGST Act, 2017 read with Section 122(2)(a) of the CGST Act, 2017.

TOTAL TAX PAYABLE SUMMARY				
Sl. No.	Issue	SGST	CGST	Total
1	2	3	4	5
1	Total Tax due for issues 1 to 2.	2415123.00	2415123.00	4830246.00
2	Interest	In terms of Section 50 of the CGST Act, 2017		
3	Penalty	In terms of Section 73 of the CGST Act, 2017		

4. The DRC 01A vide DIN: 20231256YO0000888A4D dated 19.12.2023 issued to the taxpayer requesting to pay tax along with interest and applicable penalty. However the taxpayer neither paid dues nor submitted any reply till now.

5. Now therefore, **M/S NILGIRI ESTATES** (here-in-after referred to as "Taxpayer"), situated at 2nd FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003, are required to Show Cause to the **Assistant/Deputy Commissioner of Central Tax, Secunderabad Division, Salike Senate, 1st Floor, D. No. 2-4-416 & 417, Ramgopalpet, MG Road, Secunderabad 500003** within thirty days (30) from the date of issue of this notice as to why: -

- (i) an amount of **Rs.27,66,974/- [Rs.13,83,487/-CGST and Rs13,83,487/-SGST] (Rupees Twenty Seven Lakhs Sixty Six Thousand Nine Hundred and Seventy Four only)**, as discussed supra in Para 2 should not be demanded from them under Section 73(1) of the CGST Act, 2017 and similar provisions as laid in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.
- (ii) an amount of **Rs. 20,63,272 /- [Rs.10,31,636/- CGST and Rs.10,31,636/-SGST] (Rupees Twenty Lakhs Sixty Three Thousand Two Hundred and Seventy Two only)**, as discussed supra in Para 3 should not be demanded from them under Section 73(1) of the CGST Act, 2017 and similar provisions as laid in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.
- (iii) interest at the applicable rate should not be demanded from them on tax demanded at (i) & (ii) above under Section 50 of CGST Act, 2017 read with Section 20 of IGST Act and similar provisions under TGST Act, 2017.

- (iv) penalty should not be imposed on them demands at (i) & (ii) above under Section 73 of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and Section 20 of IGST Act, 2017 and similar provisions under TGST Act, 2017

6. M/s. NILGIRI ESTATES are also informed that in terms of Section 73(8) of the CGST Act, 2017 and TSGST, Act, 2017, "where any person chargeable with tax under Sub-Section (1) or Sub-Section (3) pays the said tax along with interest applicable under Section 50 within thirty days (30) of issue of the notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded".

7. This notice is issued without prejudice to any other action that may be initiated against them in terms of the provisions of Central Goods and Services Tax Act, 2017 and Telangana Goods and Services Tax Act, 2017 and Rules made thereunder and/or any other law for the time being in force and enforceable in India.

8. Reliance for issuance of the notice is placed on the following documents which are already available with the taxpayer:

- (i) DRC-01A vide DIN: 20231256YO0000888A4D dated 19.12.2023 issued by Assistant/Deputy Commissioner of Central Tax, Secunderabad Division, Salike Senate, 1st Floor, D. No. 2-4-416 & 417, Ramgopalpet, MG Road, Secunderabad 500003.
- (ii) Observation communicated by the Telangana GST Authority as per GSTR-9 and other returns filed by the taxpayer.

3412-2402/4121203
29/12/2023
(आर.सत्यनारायण)/(R.SATYANARAYANA)
सहायक आयुक्त/Assistant Commissioner
सिकंदराबाद मण्डल/ Secunderabad Division

To
M/s-NILGIRI ESTATES
GSTIN: 36AAHFN0766F1ZA
Address: 2ND FLOOR, 5-4-187/3 AND 4,
SOHAM MANSION, MG ROAD, SECUNDERABAD,
Rangareddy, Telangana, 500003

Copy to:

1. Superintendent of Central Tax, Ramgopalpet-II GST Range, Secunderabad GST Division - He is directed to serve the SCN on the Tax payer, obtain dated acknowledgement and submit the same to this office for record.
2. Office Copy/Spare-Copy.
3. Notice Board.

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ON INDIA GOVERNMENT SERVICE

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Office of the
अधीनस्थ का कार्यालय
Superintendent
केन्द्रिय कर (Central Tax)
आय का विभाग (Income Tax)
पारस (Pars)
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