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. 61/2023-24 vide DIN :20231256YO0000BB29 dated 29.12.2023 pertaining to **M/s. Villa Orchids LLP.**

1. We have been authorized by M/s. Villa Orchids LLP to submit the SCN reply to the above referred SCN No. 61/2023-24 vide DIN :20231256YO0000BB29 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

H N A & CO LLP Hyderabad Chartered Accountants

सहायक/उप आयुक्त केन्द्रीय कर का कार्यालय O/o. Asst./Dy. Commissioner of Central Tax Secunderabad GST Division, Secunderabad GST Commissionerate
19 FEB 2024
I.C. No.....

4th Floor, West Block, Srida Anushka Pride, R.No. 12, Banjara Hills, Hyderabad, Telangana - 500 034. INDIA.
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FORM GST DRC – 06

[See rule 142(4)]

Reply to the Show Cause Notice

1.GSTIN	36AANFG4817C1ZH	
2.Name	Villa Orchids LLP	
3.Details of Show Cause Notice	Show Cause Notice No. 61/2023-24 dated 29.12.2023 uploaded on GST Common Portal vide reference no. ZN3601240373127 on 24.01.2024	Date of issue: 24.01.2024
4.Financial Year	April 2018 to March 2019	
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

VILLA ORCHIDS LLP

ANNEXURE A:

FACTS OF THE CASE:

A. M/s. Villa Orchids LLP (hereinafter referred as "Noticee") located at 2nd Floor, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad, Hyderabad, Telangana – 500003 is inter alia engaged in the business of construction & sale of Villas and is registered with the Goods and Services Tax department vide GSTIN No: 36AANFG4817C1ZH in the state of Telangana. The Noticee has been paying applicable GST and filing returns regularly after disclosing the required disclosures therein.

B. In the year 2021, the GST department has conducted the audit for the period July 2017 to March 2019 and has issued FAR No. 815/2020-21-GST dated 11.06.2021 (copy of FAR is enclosed as Annexure-VII) inter alia making observation that 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 Ref No. C.No. V/01/GST/78/2020-GR.12/CIR-I dated 05.01.2022. Copy of SCN enclosed as Annexure-VI

C. In response to the SCN dated 05.01.2022, the Noticee furnished its reply vide submissions dated 04.08.2023 thereby stating that the demands proposed vide the SCN are not maintainable per se in law. The department did not consider the submissions instead passed the Order-In-Original No. 33/2023-24-SEC-ADJN-ADC(GST) dated 01.11.2023 confirming the aforesaid demands proposed in SCN dated 05.01.2022. Copy of OIO dated 01.11.2023 is enclosed as Annexure-IV.

D. Further, the summary of the OIO was uploaded electronically in GST portal vide reference No. ZD361223007884G 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 13.02.2024 after making required pre-deposit. Copy of the appeal acknowledgment enclosed as Annexure II.

E. To the utter surprise, Noticee is in receipt of the impugned SCN No. 61/2023-24 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 01.11.2023. Copy of SCN No. 61/2023-24 dated 29.12.2023 enclosed as Annexure I.

   i. *An amount of Rs.1,03,856/- (CGST of Rs. 51,928/- & SGST of Rs. 51,928/-) on the ground there is under payment of tax*

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ii. *An amount of Rs. 50,17,912/- (CGST of Rs. 25,08,956/- & SGST of Rs. 25,08,956/-) on the ground that* ***there is excess availment of ITC in GSTR-3B when compared to GSTR-2A***

iii. *An amount of Rs. 12,404/- (CGST of Rs. 6,202/- & SGST of Rs. 6,202/-)*

F. 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

1. 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.
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

Notice issued on assumptions and presumptions

3. 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.).**
4. 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)**
5. 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

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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 05.01.2022 and adjudicated vide OIO 01.11.2023:

6. Noticee submits that as stated in statement of facts, the said demand proposed in the instant SCN of excess ITC availment in GSTR-3B was already proposed in SCN dated 05.01.2022 and the same was confirmed in OIO dated 01.11.2023. That is to say that the same department is attempting to recover an undecided demand two times. That being a case, issuance of the present SCN for very same issues covering the same period is patently illegal and without authority of law and clearly amounts to abuse of the process of law. More so, the orders of Ld. Additional Commissioner of Central Tax, being higher authority, clearly binds on the Ld. Assistant Commissioner thereby not permitted to reagitate the very same issues that are already adjudicated by Ld. Additional Commissioner especially when the demands are confirmed not even dropped Additional Commissioner of Central Tax, Hyderabad.
7. 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 05.01.2022 *inter alia* alleging that excess availment of ITC in GSTR-3B when compared to GSTR-2A which amounts to Rs. 44,51,756/- (CGST of Rs. 22,25,878/- & SGST of Rs. 22,25,878/-. Thus, previous SCN dated 05.01.2022 has raised very same demand that was raised in the impugned SCN. Thereby, the present demand is clearly duplicated, unwarranted and requires to be dropped outrightly.
8. 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 VIII). Therefore, the demand proposed vide the impugned SCN is completely duplicated, fallacious and devoid of any merit.
9. Noticee further submits that in response to the previous SCN dated 05.01.2022, the Noticee has filed the submissions dated 04.08.202. Thereafter, Additional Commissioner of Central tax has passed Order-In-Original No. 33/2023-24-SEC-ADJN-ADC(GST) dated 01.11.2023 confirming the aforesaid demand proposed in SCN dated 05.01.2022 includes the substantial demand raised in the instant

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SCN. Thus, there was no necessity to raise the very same demands covering same period and same issue again in the present SCN.

10. Further, the summary of the OIO was uploaded electronically in GST portal by your good office vide reference No. ZD361223007884G dated 05.12.2023 along with copy of OIO. That being a case, issuance of the present SCN for very same issues covering the same period do not sustain in law.

11. 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)**.

12. 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: No irregular availment of ITC:

13. Noticee submits that the impugned notice has alleged that the Noticee has excess claimed ITC of Rs. 50,17,912/- (CGST Rs. 25,08,956/- SGST Rs. 25,08,956/-) in GSTR-3B as compared to the tax declared by the suppliers of Noticee in GSTR-01 (Table 8A of GSTR-09).

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14. In this regard Noticee submits that the alleged excess ITC availed on comparison to GSTR-2A was factually wrong as impugned SCN was based on the old GSTR-2A as on the date of filing annual returns. The actual difference was quite less than the amount arrived by impugned SCN. In any case, 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 statue.

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

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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-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

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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.

15. 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: No availment of ineligible ITC and underpayment of taxes:

16. Noticee submits that the impugned SCN has alleged that Noticee has under declared ineligible ITC amounting to Rs. 12,404/- (CGST of Rs. 6,202/- & SGST of Rs. 6,202/-) in accordance with Section 17(5) of CGST Act, 2017. In this regard Noticee submits that the said ineligible ITC was never availed by Noticee and the same has been thoroughly verified by the audit wing of the Central Tax team. Thereby issuance of SCN proposing the demand on an issue which was already verified by number of officers is incorrect. Hence requests you to drop the said demand.

17. As concern to the demand proposed as under payment of tax amounting to Rs. 1,03,856/- (CGST of Rs. 51,928/- & SGST of Rs. 51,928/-), Noticee submits that appropriate submissions will be provided in due course of time.

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:

18. 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

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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.

19. 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.

20. 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.

21. 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.

22. 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 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.).

23. 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.

<u>Interest and penalties are not payable/imposable:</u>

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24. 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.
25. 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.).**
26. The Noticee respectfully submits that various High Courts in plethora of cases held that that GST is still in a "trial and error" phase.
27. 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.
28. Noticee craves leave to alter, add to and/or amend the above reply.
29. Noticee would also like to be heard in personal, before any Notice being passed in this regard.

For M/s. Villa Orchids LLP

SM

VILLA ORCHIDS LLP

Authorised Signatory

BEFORE THE ASSISTANT COMMISSIONER OF CENTRAL TAX, SECUNDERABAD GST DIVISION, SECUNDERABAD SALIKE SENATE, D.NO: 2-4-416 & 417, RAMGOPALPET, M.G. ROAD, SECUNDERABAD, HYDERABAD, TELANGANA – 500 003

Sub: Proceedings under Show Cause Notice vide 61/2023-24 dated 29.12.2023 issued to M/s. Villa Orchids LLP.

I SOHAM MODI PARTNER of M/s. Villa Orchids LLP, hereby authorizes and appoint HNA & CO LLP (formerly, Hiregange & Associates LLP), Chartered Accountants, Hyderabad 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/Appellant 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 13th February 2024 at Hyderabad

VILLA ORCHIDS LLP

Signature

I the undersigned partner of M/s HNA &Co LLP, Chartered Accountants, do hereby declare that the said M/s HNA & 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 CGST Act, 2017. I accept the above said appointment on behalf of M/s HNA & 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: 13.02.2024

Address for service:
HNA & Co LLP,
Chartered Accountants,
4th Floor, West Block, Anushka Pride,
above Lawrence & Mayo,
Road Number 12, Banjara Hills,
Hyderabad, Telangana 500034

For HNA & Co LLP
Chartered Accountants

R. Lakshman Kumar

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

HNA & CO LLP Hyderabad Chartered Accountants

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

Sl No.	Name	Qualification	Mem. /Roll No.	Signature
1	Sudhir V S	CA	219109	
2	Venkat Prasad P	CA	236558	
3	Srimannarayana S	CA	261612	
4	Revanth Krishna	CA	262586	
5	Akash Heda	CA	269711	

HNA & CO LLP Hyderabad Chartered Accountants

Annexure-1

केन्द्रीय कर सहायक कार्यालय,सिकंदराबाद माल 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.secdiv@gov.in

C.No GEXCOM/Adjn/GST/2903/2023-CGST-DIV-SNBD-COMMRTE-SECUNDERABAD Date: 29.12.2023

DIN: 20231256YO000000BB29

SHOW CAUSE NOTICE No.61/2023-24

Sub: -GST-On account of discrepancies observed during verification of Returns filed by **M/s. VILLA ORCHIDS LLP** (GSTIN: **36AANFG4817C1ZH**) for the FY 2018-19- Issue of Show Cause Notice under Section 73 of the CGST Act, 2017 – Regarding.

****

M/s. VILLA ORCHIDS LLP (here-in-after referred to as "Taxpayer"), situated at 2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, M.G ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003, are engaged in Works Contract Services falling under the HSN 00440410 & 995411. The taxpayer is registered with the Central GST Department with GSTIN: **36AANFG4817C1ZH** for the purpose of payment of GST and falls under the jurisdiction of Ramgopalpet-III CGST Range, Secunderabad GST Division, Secunderabad GST Commissionerate.

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.

The tax on outward supplies under declared on reconciliation of data in GSTR-09

2.1.1. 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.

2.1.2. 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

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of Rs 1,03,856/- 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.

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	6323140.00	6323140.00	12646280.00
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)		6323140.00	6323140.00	12646280.00
7	Less Total tax paid in cash	9	0.00	0.00	0.00
8	Less Tax paid by adjustment of ITC	9	6271212.00	6271212.00	12542424.00
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)		51928.00	51928.00	103856.00

2.2. ISSUE 1: Excess claim of ITC:

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

2.2.1. Under Section16(2)(c) of CGST Act, 2017, 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.

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

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Scrutiny of ITC availed:

S.No	Description	SGST	CGST	Total
1	2	3	4	5
1	ITC in the year as per Table 8A of GSTR-09	4804897.00	4804897.00	9609794.00
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)	4804897.00	4804897.00	9609794.00
9	ITC used in same year as per 4C of GSTR-3B	7313853.00	7313853.00	14627706.00
10	Net excess used (S.No 9-8)	2508956.00	2508956.00	5017912.00

Under declaration of Ineligible ITC:

2.2.3. Under Section 17(5) of the CGST Act, 2017 input tax credit shall not be available in respect of the list of commodities & services mentioned therein subject to certain conditions.

2.2.4. It is seen from GSTR-09 and other information that they have claimed ITC on these commodities and therefore the ITC claimed on these commodities or services is proposed to be recovered.

S.No	Commodity/Service	HSN/SAC code	SGST	CGST	Total
1	2	3	4	5	6
1	Motor Vehicles	8702; 8703; 8711	1174.00	1174.00	2348.00
2	Motor Vehicle Insurance Service	997134	5028.00	5028.00	10056.00

S.No	Issue	Table no. in GSTR-09	SGST	CGST	Total
1	2	3	4	5	6
A	Total ineligible ITC u/s 17(5)		6202.00	6202.00	12404.00

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B	Ineligible ITC declared	7E or {Sum of 4D(1) of GSTR 3B of all months in FY} which ever is higher	0.00	0.00	0.00
C	Difference/excess ITC claimed	"If (SL.No A – Sl.NO B >0) then Lower of {SL.No A – Sl.NO B} or {(Sum of 4C of GSTR 3B of all months in current FY) – (13-12 of Previous FY GSTR-09) + (13-12 of current FY GSTR-09)}"	6202.00	6202.00	12404.00

2.2.5. From the above, the taxpayer is required to reverse the excess ITC claimed 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	2567086.00	2567086.00	5134172.00
2	Interest	In terms of Section 50 of the CGST Act, 2017		
3	Penalty	In terms of Section 73 of the CGST Act, 2017		

3. The DRC 01A vide DIN-20231256YO0000041994F dated 20.12.2023 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.

4. Now therefore, **M/s. VILLA ORCHIDS LLP** (here-in-after referred to as "Taxpayer"), situated at 2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, M.G ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003, are required to Show Cause to the Assistant Commissioner of Central Tax (Adjudicating Authority), Secunderabad GST Division, Secunderabad GST Commissionerate, Salike Senate,

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D.No.2-4-416&417, Ramgopalpet, MG Road, Secunderbad – 500003 within thirty days (30) from the date of issue of this notice as to why: -

(i) an amount of **Rs.1,03,856/- (CGST: Rs.51,928/- & SGST: Rs.51,928/- (Rupees One Lakh Three Thousand Eight Hundred and Fifty Six only)**, as discussed supra in Para 2.1 should not be demanded from them under Section 73(1) of the CGST Act, 2017/TSGST Act, 2017.

(ii) an amount of **Rs.50,30,316/- (CGST: Rs.25,15,158/- & SGST: Rs.25,15,158/- (Rupees Fifty Lakhs Thirty Thousand Three Hundred and Sixteen only)**, as discussed supra in Para 2.2 should not be demanded from them under Section 73(1) of the CGST Act, 2017/TSGST 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/TSGST 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/TSGST Act, 2017.

5. **M/s. VILLA ORCHIDS LLP** (here-in-after referred to as "Taxpayer"), situated at 2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, M.G ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003 having GSTIN No. **36AANFG4817C1ZH** are hereby directed to produce all the evidence upon which they intend to rely in support of their defence. They should also indicate in their written reply, whether they wish to be heard in person, before the case is adjudicated. If no mention is made in their written explanation, it would be presumed that they do not desire a personal hearing.

6. If no reply is received to this notice within the stipulated period of time as above or if they do not indicate their wish for a personal hearing or having indicated so, if they do not appear before the adjudicating authority when the case is posted for personal hearing, then it shall be construed that they do not have anything to state in their defence and the case shall be decided on merits ex-parte based on the material available on record, without any further notice/intimation to them.

7. M/s. **VILLA ORCHIDS LLP** 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,

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no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded".

8. 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.

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

(i) DRC-01A issued from C.No. GEXCOM/Adjn/GST/2903/2023-CGST-DIV-SNBD-COMMRTE-SECUNDERABAD dt. 20.12.2023 issued by the Assistant Commissioner of Central Tax (Adjudicating Authority), Secunderabad GST Division, Secunderabad GST Commissionerate.

(ii) Observation communicated by the Telangana GST Authority as per GSTR-9 and other returns filed by the taxpayer.

आर. सत्यनारायण
27/12/2023

(आर.सत्यनारायण)/(R.SATYANARAYANA)
सहायक आयुक्त/Assistant Commissioner
सिकंदराबाद मण्डल/ Secunderabad Division

To
M/s. VILLA ORCHIDS LLP
GSTIN: 36AANFG4817C1ZH
2ND FLOOR, 5-4-187/3 AND 4,
SOHAM MANSION, M.G ROAD,
SECUNDERABAD, Rangareddy, Telangana, 500003

Copy to:

1. Superintendent of Central Tax, Ramgopalpet-III 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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