o/c

H N A & Co LLP
Chartered Accountants
(Formerly known as Hiregange & Associates LLP)

Date: 16.01.2024
To
The Commissioner of Central Tax (Appeals-II),
Hyderabad GST Commisionerate,
GST Bhavan, 7th Floor,
L.B Stadium, Basheerbagh,
Hyderabad-500004.

Dear Sir,

Sub: Filing of Appeal in Form GST APL- 01.
Ref: Order-In-Original No. 28/2023-24-SEC-ADJN-ADC(GST) dated 12.10.2023 pertaining to **M/s. Nilgiri Estates.**

1. We have been authorized by M/s. Nilgiri Estates to submit an appeal to the above referred Order-In-Original No. 28/2023-24-SEC-ADJN-ADC(GST) dated 12.10.2023 and represent before your good office and to do necessary correspondence in the above referred matter. In this regard, we are herewith submitting the Appeal in Form APL-01 along with the authorization letter and other annexures referred in the appeal.

2. Further, the impugned order was received on 14.10.2023 through speed post. Copy of acknowledgment/proof of receipt of serving of OIO is enclosed along with the appeal memorandum. Thereby, while computing the time limit in legal proceedings the commencing date of the prescribed time limit (date of communication in the instant case) shall be excluded i.e., the time limit begins from the subsequent day of the date of communication of order. The same is clear from Section 12 of the Limitation Act, 1963. The relevant extract is as follows-

   "12 Exclusion of time in legal proceedings. - (1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded."

HNA & CO LLP Hyderabad Chartered Accountants

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3. Considering the above, the time limit of 3 months for filing the appeal starts from 15.10.2023 (as the first date shall be excluded for the purpose of computing the time limit) and the same expires on 14.01.2024. In this regard, we would like to submit that 14.01.2024 is a week off as it is Sunday and 15.01.2024 being a Public Holiday on the occasion of Makar Sankrathi. As per the provisions of Section 10 of General Clauses Act, 1897 read with Section 4 the Limitation Act, 1963, which prescribes that when the last day of the filing of appeal falls on a holiday and the Court being closed on a holiday, then the next working day should be construed as last day for filing of appeal. Hence, we were left with an option of filing the same on Tuesday, i.e., 16.01.2024. Hence, the appeal is filed with no delay and as such no condonation of appeal is required to be filed.

Thanking You,

Yours Faithfully,

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

CA VS Sudhir
Partner

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

Office of the Principal Commissioner of Customs & GST * Appeals-II Commissionerate, Hyderabad * अपील-II आयुक्तालय, हैदराबाद

16 JAN 2024

I.C. No:.....

Index

S.No.	Particulars	Annexure	Page Nos.
1	Form GST APL-01		001-004
2	Statement of Facts		005-006
3	Grounds of Appeal		007-060
4	Authorization		061-061
5	Copy of pre-deposit payment vide DRC-03 dated 16.01.2023	I	61A-61B
6	Order-In-Original No. 28/2023-24-SEC-ADJN-ADC(GST) dated 12.10.2023	II	062-133
7	Copy of Additional submissions vide letter dated 29.08.2023	III	134-218
8	SCN reply dated 31.07.2023	IV	219-261
9	Show Cause Notice Sl No. 06/2023-24 vide DIN: 20230556YS000000B958 dated 19.05.2023	V	262-286
10	DRC-01 Part A vide DIN 20230356YS0000666A1F dated 21.03.2023	VI	287-291
11	Reply to Spot memo vide letter dated 31.10.2022	VII	292-300
12	Spot memo dated 21.09.2022	VIII	301-305
13	Sale Deed dated 10.01.2020	IX	306-343
14	Agreement of construction dated 10.01.2020	X	344-363
15	Copy of statement showing the details of differential taxes upto the F.Y 2018-19 and difference between the output tax liability as per GSTR-3B Vs GSTR-01 and books	XI	364-364
16	Copy of DRC-03 vide ARN No. AD3608190006125 dated 09.08.2019	XII	365-366
17	Copy of DRC-03 vide ARN No. AD360620001467E dated 15.06.2020	XIII	367-368
18	Copy of Statement showing the details of ITC availed in GSTR-3B, ITC reflected in GSTR-2A and the differences along with the declarations of the suppliers	XIV	369-369
19	Copy of DRC-03 vide ARN No. AD36001200008202 dated 07.01.2020	XV	370-371
20	Partnership Deed	XVI	372-377

Form GST APL – 01

Form of Appeal to Appellate Authority

[Under Section 107(1) of the Central Goods and Service Tax Act, 2017]

[See rule 108(1)]

BEFORE THE COMMISSIONER OF CUSTOMS & INDIRECT TAXES HYDERABAD (APPEALS-II), 07TH FLOOR, GST BHAVAN, L.B. STADIUM ROAD, BASHEER BAGH, HYDERABAD – 500 004

(1) GSTIN/ Temporary ID/UIN-		36AAFN0766F1ZA	
(2) Legal Name of the Appellant		M/s. Nilgiri Estates	
(3) Trade name, if any-		-	
(4) Address		5-4-187/3, 2nd Floor, Soham Mansion, M.G Road, Secunderabad, Telangana- 500003	
(5) Order No.	28/2023-24-SEC-ADJN-ADC(GST)	Order Date	12.10.2023
(6) Designation and address of the officer passing the order appealed against		Additional Commissioner of Central Tax, Secunderabad GST Commissionerate, GST Bhawan, L.B Stadium Road, Basheerbagh, Hyderabad- 500004.	
(7) Date of communication of the order appealed against		14.10.2023	
(8) Name of the authorized representative		**CA. Lakshman Kumar K,** **C/o: H N A & Co. LLP,** Chartered Accountants, 4th Floor, West Block, Srida Anushka Pride, Above Lawrence and Mayo, Road No. 12, Banjara Hills, Hyderabad-500034 Email: laxman@hnaindia.com Mob: +91 8978114334	
(9) Details of the case under dispute			
i. Brief issue of the case under dispute		1. Whether there is any short payment of GST due to Non-inclusion of land value, rate alleged differences, comparison of Tax declared in GSTR-1 and paid in GSTR-3B 2. Whether any excess ITC availed due to difference between ITC in GSTR-3B with ITC reflected in with GSTR-2A.	
ii. Description and classification of goods/services in dispute		NA	
iii. Period of dispute		2017-18 to 2019-20	

iv. Amount under dispute

Description	Central tax	State/UT tax	Integrated tax	Cess
a. Tax/Cess	1,02,04,908	1,02,04,908	3,77,768	NA
b. Interest	Interest as applicable u/s 50 of CGST Act	NA	NA	NA
c. Penalty	74,36,289	74,36,289	37,777	NA
d. Fees	NA	NA	NA	NA
e. Other charges	NA	NA	NA	NA

v.	Market value of seized goods	NA
(10)	Whether the appellant wishes to be heard in person	Yes
(11)	Statement of Facts	**Annexure – A**
(12)	Grounds of Appeal	**Annexure-B**
(13)	Prayer	To set aside the impugned order to the extent aggrieved and grant the relief sought

(14) Amount of Demand Created, admitted, and disputed

Particulars of demand / Refund	Particulars		CGST	SGST	IGST	Cess	Total amount
	Amount of demand created (A)	a) Tax/Cess	1,02,04,908	1,02,04,908	3,77,768	NA	2,07,87,583
		b) Interest	Interest as applicable u/s 50 of CGST Act	NA	NA	NA	Interest as applicable u/s 50 of CGST Act
		c)Penalty	74,36,289	74,36,289	37,777	NA	1,49,10,354
		d)Fees	NA	NA	NA	NA	NA
		e) other charges	NA	NA	NA	NA	NA
	Amount of demand admitted (B)	a) Tax/Cess	NIL	NA	NA	NA	NA
		b) Interest	NIL	NA	NA	NA	NA
		c)Penalty	NIL	NA	NA	NA	NA
		d)Fees	NA	NA	NA	NA	NA
		e) other charges	NA	NA	NA	NA	NA
	Amount of demand di	a) Tax/Cess	1,02,04,908	1,02,04,908	3,77,768	NA	2,07,87,583
		b) Interest	Interest as applicable	NA	NA	NA	Interest as applicable

NILGIRI ESTATES

	spute d (C)		u/s 50 of CGST Act				u/s 50 of CGST/SGST Act
		c)Penalty	74,36,289	74,36,289	37,777	NA	1,49,10,354
		d)Fees	NA	NA	NA	NA	NA
		e) other charges	NA	NA	NA	NA	NA

(15) Details of payment of admitted amount and pre-deposit: -

a) Details of payment required

Particulars			Central tax	State/ UT tax	Integrated tax	Cess	Total
	a) Admitted amount	Tax/Cess	NA	NA	NA	NA	NA
		Interest	NA	NA	NA	NA	NA
		Penalty	NA	NA	NA	NA	NA
		Fees	NA	NA	NA	NA	NA
		Other charges	NA	NA	NA	NA	NA
	b) Pre-Deposit (10% of disputed tax or 25Cr. Whichever is lower)	Tax/Cess	10,20,491/-	10,20,491/-	37,777/-	NA	NA

b) Details of payment of admitted amount and pre-deposit (pre-deposit 10% of the disputed tax and cess)

Sr. No.	Description	Tax payable	Paid through cash/credit ledger	Debit entry No.	Amount of tax paid			
1	2	3	4	5	6	7	8	9
1	Integrated tax	NA	Cash Ledger	NA	NA			
		NA	Credit Ledger	NA	NA	NA	NA	NA
2	Central tax	NA	Cash Ledger	NA	NA	NA	NA	NA
		NA	Credit Ledger	NA	NA	NA	NA	NA
3	State/UT tax	NA	Cash Ledger	NA	NA	NA	NA	NA
		NA	Credit Ledger	NA	NA	NA	NA	NA
4	Cess	NA	Cash Ledger	NA	NA	NA	NA	NA
		NA	Credit Ledger	NA	NA	NA	NA	NA

NILGIRI ESTATES

c) Interest, Penalty, Late fee, and any other amount payable and paid

S.No.	Description	Amount Payable				Debit Entry No.	Amount paid			
1	2	3	4	5	6	7	8	9	10	11
1	Interest	NA	NA	NA	NA	NA	NA	NA	NA	NA
2	Penalty	NA				NA	NA			
3	Late Fee	NA	NA	NA	NA	NA	NA	NA	NA	NA
4	Others	NA	NA	NA	NA	NA	NA	NA	NA	NA

(16) Whether appeal is filed after the prescribed period – No

(17) If 'Yes' in item 16 –

a. Period of delay - NA

b. Reasons for delay – NA

(18) Place of supply wise details of the integrated tax paid (admitted amount only) mentioned in the Table in sub-clause (a) of clause 15 (item (a)), if any

Place of Supply (Name of State/UT)	Demand	Tax	Interest	Penalty	Other	Total
1	2	3	4	5	6	7
NA	Admitted amount [in the Table in sub-clause (a) of clause 15 (Item (a))]	NA	NA	NA	NA	NA

(19)

STATEMENT OF FACTS

A. M/s. Nilgiri Estates (hereinafter referred as "Appellant") located at 5-4-187/3, 2nd Floor, Soham Mansion, M.G.Road, Secunderabad, Telangana-500003 *inter alia* engaged in the business of Construction of Villas & Works Contract Services falling under the SAC code 9954 and is registered with the Goods and Service Tax Department vide GSTIN 36AAHFN0766F1ZA in the state of Telangana.

B. Appellant is the owner of the land situated at Ac. 10-06 gts., is Sy. No. 100/2, Rampally Village, Keesara Mandal, Medchal, Malkajgiri District and during the subject period, Appellant is engaged in construction of villas in the project, by name and style viz., 'Nilgiri Estate' and have been selling the same to various customers.

C. Since the transaction involves sale of land and provision of construction service, Appellant discharged the GST on the value of construction services and have not paid any GST on value of land as the same is out of the purview of GST.

D. While entering into agreement with the customers, the Appellant has clearly mentioned the value towards the land and the value towards construction services. Therefore, the Appellant has paid the GST on construction services which is in compliance with CGST Act, 2017 and there is no short payment of GST.

E. Appellant has disclosed the above referred details in their monthly returns and have also filed the Annual Returns for the period FY 2017-18 to 2019-20.

F. Subsequently, the GST department has conducted the audit for the period July 2017 to March 2019 and have issued a Spot memo vide DIN No. 20220956YS000041414A dated 21.09.2022 intimating various discrepancies with regards to non-payment of GST.

G. In this regard, Appellant filed a detailed reply vide letter dated 31.10.2022 clarifying the discrepancies as stated in the spot memo. (Copy of spot memo dated 21.09.2022 and letter dated 31.10.2022 is enclosed as Annexure-VIII & VII).

H. Subsequently, Form GST DRC-01A dated 21.03.2023 (Copy enclosed as Annexure-VI) was issued once again ignoring the submissions/documents submitted by Appellant.

I. Consequently, Appellant was issued Show Cause Notice Sl No. 06/2023-24 vide DIN 20230556YS000000B958 dated 19.05.2023 (Copy of the SCN is enclosed as Annexure-V) for FY 2017-18 to 2019-20, wherein various demands were proposed under section 74(1) of the CGST Act, 2017 which are as shown as under and applicable rate of interest and penalties were also levied.

   a. Demand of Rs. 1,21,41,750/- towards short payment of GST due to adopting wrong method of valuation for the FY 2017-18 to FY 2019-20.

NILGIRI ESTATES

b. Demand of Rs. 19,82,815/- towar ds short payment of tax due to difference in tax rate for the FY 2017-18.

c. Demand of Rs. 27,16,554/- towards short payment of GST on comparison of tax liabilities declared un GSTR-1 and GSTR-3B for FY 2018-19.

d. Demand of Rs. 38,58,144/- towards excess availment of ITC in GSTR 3B on comparison with the GSTR 2A for FY 2018-19 and 2019-20.

e. Demand of Rs. 1,69,159/- towards Non-reversal of ITC on receipt of credit notes for FY 2018-19 and 2019-20.

f. Interest of Rs. 1,420/- towards short payment of Interest towards late payment of tax.

g. Demand of Rs. 6,412/- towards non-payment of GST under RCM as per section 9(4) of the CGST Act, 2017 on rent and hamali paid to unregistered person.

h. Demand of Rs. 88,320/- towards irregular availment of Input Tax Credit [section 17(5)].

J. In response to the above referred SCN dated 19.05.2023, the Appellant furnished its reply vide submissions dated 31.07.2023 (Annexure-IV) and stated that the demands proposed vide the SCN has already been discharged by the Appellant and thus the demands proposed are not maintainable per se in law. The Appellant further furnished the additional submissions vide letter dated 29.08.2023 (Annexure-III) along with supporting documents.

K. The Ld. Adjudicating Authority passed the impugned order confirming the demands proposed in SCN (except dropping the demands mentioned at Sl. Nos. e, f & g stated at para I above) ignoring the various meritorious submissions/documents and judicial precedents. (OIO enclosed as Annexure-II)

L. Aggrieved by the impugned order, which is contrary to facts, law and evidence, apart from being contrary to a catena of judicial decisions and beset with grave and incurable legal infirmities, the Appellant prefers this appeal on the following grounds (which are alternate pleas and without prejudice to one another) amongst those to be urged at the time of hearing of the appeal.

NILGIRI ESTATES

GROUNDS OF APPEAL

1. Appellant submits that the impugned order is ex-facie illegal and untenable in law since the same is contrary to facts and judicial decisions.

2. Appellant 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 order is not valid

Violation of principles of natural justice

3. The Appellant submits that the submissions made by the Appellant are rejected without considering the same which is clearly a gross violation of the principles of natural justice.

4. Appellant submits that the impugned order has confirmed the demand without considering the various meritorious submissions made by the Appellant which shows that the same has been passed in violation of principles of natural justice, therefore, the impugned order is not valid and needs to be set aside on this count alone. In this regard, Appellant submits that the Hon'ble Supreme Court in case of Dharampal Satyapal Limited Vs DC of Gauhati 2015 (320) ELT 3 (SC) held that *"18. Natural justice is an expression of English Common Law. Natural justice is not a single theory - it is a family of views. In one sense administering justice itself is treated as natural justice. It is also called 'naturalist' approach to the phrase 'natural justice' and is related to 'moral naturalism.' Moral naturalism captures the essence of common-sense morality - that good and evil, right, and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.*

19. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi-judicial bodies, has assumed different connotation. It is developed with this fundamental in mind that

those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must be given to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as 'natural justice.' The principles of natural justice developed over a period of time, and which is still in vogue and valid even today were: (i) rule against bias, i.e., nemo iudex in causa sua; and (ii) opportunity of being heard to the concerned party, i.e., audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is duty to give reasons in support of decision, namely, passing of a 'reasoned order.'

Appellant submits that from the above referred decision of the Hon'ble Supreme Court, it is quite clear that every quasi-judicial authority is required to give reasons while confirming the demands. However, in the instant case the impugned order has not given any reasons as to why the submissions made by the Appellant are not correct. Hence, the impugned order is not correct and the same needs to be set aside.

5. Appellant submits that Section 75(6) of CGST Act, 2017 requires the adjudicating authority to set out all the relevant facts and the basis of his decision while passing any order. For easy reference, the same is extracted as follows

   (6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

   This shows that the adjudicating authority is obligated to set out the relevant facts and the basis on which the demand has been confirmed. However, in the instant case the impugned order has been passed without giving any reasons as to why the submissions made by the Appellant are not correct. This shows that the impugned order is violative of Section 75(6) of CGST Act, 2017 and the same needs to be set aside.

6. The Appellant submits that as per the following decisions under GST wherein it was held that non-speaking order are invalid.

   a. The Hon'ble High Court of Madras in the case of **TVS Motors Company Ltd V. Assistant Commissioner (2018 (16) G.S.T.L. 17 (Mad.))** while examining whether the adjudicating authority has followed the principles of natural justice or not held that **"5.** *This Court finds that though such a reply has been given, the same has not yet been considered nor adjudicated upon. On a reading of the*

impugned order, it clearly shows that it is not in the nature of a show cause notice, but a demand by itself whereby the Appellant's claim for transitional credit has been rejected and that they have been directed to reverse the credit along with interest within 15 days from the date of receipt of a copy of the impugned order, failing which, penal action would be initiated for recovery of arrears under Section 79 of the said Act.

6. *The respondent states that the impugned order is only a show cause notice. This Court is unable to agree with the said stand taken by the Learned Senior Panel Counsel appearing for the Revenue, as a show cause notice cannot pre-judge the issue. Had the first respondent issued a notice calling upon the Appellant to state as to why the transitional credit claimed by them cannot be granted or should be directed to be reversed, then it would be a different matter? However, in the impugned proceedings, the first respondent denied the credit and all that has been granted is 15 days' time to reverse the credit, which, according to the first respondent, is inadmissible. These are sufficient grounds to hold that the impugned order is in violation of the principles of natural justice. On this ground alone, the Appellant is entitled to succeed."*

b. Bright Load Logistics Vs Joint Commissioner of Commercial Taxes (Appeals), Davanagere 2021 (48) GSTL 151 (Kar)

c. Swastik Traders Vs State of UP 2019 (29) GSTL 389 (All)

d. Kalebudde Logistics Vs Commercial Tax Officer, Hubballi 2021 (48) GSTL 238 (Kar)

7. Appellant submits that the entire order seems to have been issued with revenue bias without appreciating the statutory provisions, the intention of the same and the objective of the transaction/activity and nature of the business. Appellant submits that the impugned order has been issued without examining the activities carried out by the Appellant. In case the department had examined all these aspects, the department would not have passed the impugned order. Appellant submits that it is the duty of the authority to consider the facts of the case properly before passing the order. Therefore, impugned order issued without considering the facts of the case is not valid and the same needs to be set aside.

Unreasoned Order

8. Appellant submits that the impugned order has not given any reason why the submissions made by the Appellant in the adjudication are not considered. This

NILGIRI ESTATES

clearly shows that the impugned order has not considered any of the submissions or documents on record while confirming the demand.

9. In this regard, the Appellant submits that it is the duty of authority who is passing the order to prove beyond doubt why and how the particular submission made by the Appellant was not applicable and not acceptable. As the impugned order has not given any reason for rejecting the above-referred submissions, the impugned order is not reasoned order and hence not valid. Reliance is placed on Sant Lal Gupta Vs Modern Coop.G.H.Society Ltd. — 2010 (262) E.L.T. 6 (S.C.) wherein it was held that *"The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."*

- **Chennai Citi Centre Holdings Pvt Ltd Vs the Designated Committee** 2021-TIOL-1711-HC-MAD-ST
- **Mcnally Bharat Engineering Company Ltd and Anr Vs Assistant Commissioner of The Income Tax 2021**-TIOL-1706-HC-KOL-IT Calcutta High Court

Demand has been confirmed based on assumptions and presumptions.

10. Appellant submits that impugned order was passed with prejudged and premeditated conclusions on various issues raised in the show cause 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.)

11. Appellant 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, Appellant relies on the decision of the Hon'ble Supreme Court in case **Oudh Sugar Mills Limited v. UOI, 1978 (2) ELT 172 (SC)**

Demand confirmed is vague and lack of details:

12. Appellant submits that the entire order seems to have been confirmed with revenue bias without appreciating the statutory provisions, intention of the same and also the objective of the transaction/activity/agreement. In the case of J.A. Motor Spirit Vs. State of Tamil Nadu 2017 (345) E.L.T. 205 (Mad.) the Hon'ble High Court of Madras held that, *"if the issuing authority has prejudged the issue at the stage of the show cause notice, submission of reply would become farce and will be injurious to principles of natural justice.* Therefore, such Show Cause Notice is not sustainable under the law and the impugned order passed based on such invalid SCN is requested to be set aside.

13. Appellant submits that it is settled law that order shall be confirmed informing reasons for the charges against Appellant *qua* assessee so that Appellant can take his defense and prove his innocence/understating. Further, authorities while issuing SCN must take care to manifestly keep open mind as they are to act fairly in adjudging guilt or otherwise. Instead of this, impugned SCN was issued with pre-judged & premeditated conclusion on the 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.) *"It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony."*

14. Appellant submits that the impugned order has not stated any reason as to why the differential income is taxable and has not given any reference to the provision which states that the same is taxable. This shows that the impugned order is vague, and lack of details and it is settled law that once there is an allegation in the SCN and upon that the order is passed proposing the demand to be confirmed cannot be sustained as SCN is the basis/foundation for raising any demand and it shall specify the charges based on which the demand is proposed along with relevant statutory provisions. In this regard, Appellant wishes to rely on the

    i) In case of CCE v. Brindavan Beverages (2007) 213 ELT 487(SC) wherein it was 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 Appellant was not given proper opportunity to meet the allegations indicated in the show cause notice."

ii) Larger bench decision in case of Crystic Resins (India) Pvt. Ltd., vs CCE, 1985 (019) ELT 0285 Tri.-Del which has made the following observations on uncertainty in the SCN and said the SCN is not valid. *"If show cause notice is not properly worded in as much as it does not disclose essential particulars of the charge any action based upon it should be held to be null and void." "The utmost accuracy and certainty must be the aim of a notice of this kind, and not a shot in the dark ....."*.

iii) Dayamay Enterprise Vs State of Tripura and 3 OR's. 2021 (4) TMI 1203 - Tripura High Court

iv) Mahavir Traders Vs Union of India (2020 (10) TMI 257 - Gujarat High Court)

v) Teneron Limited Versus Sale Tax Officer Class II/Avato Goods and Service Tax & Anr. (2020 (1) TMI 1165 - Delhi High Court)

vi) Nissan Motor India Private Limited, Vs the State of Andhra Pradesh, The Assistant Commissioner (CT) (2021 (6) TMI 592 - Andhra Pradesh High Court)

Based on the above submissions it is clear that the SCN and the impugned order is bad in law.

Order is not uploaded online:

15. Appellant has not received any summary of the demand order in Form DRC-07 electronically to date which is mandated as per Rule 142(5) of CGST Rules, 2017 when an Order is passed under Section 74 of CGST Act, 2017. In this regard, the Appellant submits that Rule 142(5) of CGST Rules, 2017 reads as follows:

> *"142(5) – A summary of order issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 127 or section 129 or section 130, a summary thereof electronically in Form GST DRC-07 specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax."*

16. Appellant submits that summary of the order in Form DRC – 07 was neither uploaded online nor served through speed post along with Order. Thus, the order is not issued in consonance with the Rules framed under this act, and on this ground alone the entire order is liable to be quashed.

17. In this regard, Appellant wishes to rely on the Judgement of Hon'ble Madhya Pradesh High Court in Mr. Akash Garg vs. The State of MP [2020-TIOL-2013-HC-MP-GST] wherein the Hon'ble High Court has held that

"6.1 A bare perusal of the aforesaid provision reveals that the only mode prescribed for communicating the show-cause notice/order is by way of uploading the same on website of the revenue.

The State in its reply has provided no material to show that show-cause notice/orders No.11 and 11a dated 10.06.2020 were uploaded on website of revenue. In fact, learned AAG, Shri Mody, fairly concedes that the show-cause notice/orders were communicated to Appellant by E-mail and were not uploaded on website of the revenue.

8. It is trite principle of law that when a particular procedure is prescribed to perform a particular act then all other procedures/modes except the one prescribed are excluded. This principle becomes all the more stringent when statutorily prescribed as is the case herein.

9. In view of above discussion, this Court has no manner of doubt that statutory procedure prescribed for communicating show-cause notice/order under Rule 142(1) of CGST Act having not been followed by the revenue, the impugned demand dated 18.09.2020 vide Annexure P/1 and P/2 pertaining to financial year 2018-2019 and 2019-2020 and tax period September, 2018 to March, 2019 and April, 2019 to May, 2019 respectively, deserves to be and is struck down."

The same view was taken by the High Court of Madhya Pradesh in case of **Ram Prasad Sharma Vs Chief Commissioner, MPGST, DIV-2, Gwalior 2020(11) TMI 787 – Madhya Pradesh High Court.**

18. Appellant further submits that CBIC vide **Instruction No. 4/2023-GST [F.NO.20016/41/2023-CBIC], dated 23-11-2023** has clarified that uploading the SCN and its summary online is mandatory as per the GST provisions. The relevant extracts of the instructions are reproduced below:

"4. It is highlighted that non-issuance of the summary of such notices/ orders electronically on the portal is in clear violation of the explicit provisions of CGST Rules. Besides, serving/ uploading the summary of notices/ orders electronically on the portal not only makes the said notices/ orders available electronically to

NILGIRI ESTATES

the taxpayers on the portal, but also helps in keeping a track of such proceedings and consequential action in respect of recovery, appeal etc, subsequent to issuance of such notices/ orders. Accordingly, any deviation from this requirement under CGST Rules may adversely impact record keeping under GST. Further, such an action may also impact further proceedings of appeal and/ or recovery to be done seamlessly on the portal."

In absence of adherence to the statutory mandate, the impugned proceedings are void ab initio and requires to be dropped on this count alone.

Separate SCN to be issued for CGST & SGST:

19. Appellant further submits that three types of ITC and outward supplies are proposed to be denied and demanded in the present SCN i.e. ITC of IGST, CGST and SGST availed under the corresponding enactments which are separately enacted. Section 6(2) of CGST Act, 2017 also specifies that separate notice and orders are required to be issued. That being the case, the separate notice is required to be issued raising the demands under that corresponding law. For instance, the demand raised under IGST law requires separate notice and CGST demand requires separate notice whereas in the present case, all three demands are raised in a single notice and no bifurcation for the same has provided for. Hence, the notice is issued in violation of Section 6(2), ibid.

In Re: Appellant is not required to pay GST on land value

20. Appellant submits that as stated in the background facts, Appellant is an owner of land situated at Ac. 10-06 gts., is Sy. No. 100/2, Rampally Village, Keesara Mandal, Medchal, Malkajgiri District, During the subject period, Appellant was engaged in sale of land and construction of villas in the project namely 'Nilgiri Estate'.

21. Appellant submits that the building permit for Construction of Villa No's. 1 to 79, on part of the land was provided in March 2015 along with a small residential complex of flats. Subsequently, building permit was revised in October 2016 wherein the total of 188 villas were proposed to be constructed along with other amenities and facilities. The small residential complex of flats which was proposed to be constructed was deleted and in its place 4 villas were constructed bearing no's. 80A to 80D. The construction of 1 to 79 villas, referred to as Phase I were completed by June 2017 and the same were reflected in ST-3 returns under pre-GST period. Application for occupancy certificate was made on 2nd May 2018.

Further, the details of consideration received towards sale of Villa No's 80-185 in Phase-II are reflected in GST period.

22. Appellant submits that whenever the customers come to purchase Villa's in Phase-II, Appellant has been entering the following agreements.

    a. Agreement of Sale (AOS) for sale of Villas which clearly specifies the value agreed towards sale of land and value agreed towards construction services

    b. Sale deed towards sale of land which was registered in Sub-registrar office (Copy of sale deed enclosed as Annexure IX).

    c. Agreement of Construction for provision of construction services which was also registered in sub-registrar office (Copy of agreement of construction is enclosed as Annexure X)

23. Since the sale of land is neither a supply of goods nor a supply of service in accordance with Paragraph 5 of Schedule-III, Appellant have excluded the value towards sale of land while discharging GST and have paid GST on amount collected towards construction service as per the AOS. The same was disclosed in the periodical returns filed by the Appellant.

24. The impugned order at para 12.2 stated that "*taxpayers submission is not tenable and the case laws relied upon by the taxpayer has no relevance to the facts of the instant case. Hence, I hold the tax demand of Rs. 1,21,41,750/- along with interest and penalty*".

25. In this regard, Appellant submits that the valuation adopted by the department as per the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 is not sustainable in law. In this regard, Appellant submits that under GST, the valuation mechanism has been prescribed in Section 15 of CGST Act, 2017. Section 15(1) states that the **value of supply of goods or services** or both shall be the ***transaction value*** which is the price actually paid or payable for the said supply of goods or services subject to the following conditions:

    - that the supplier and recipient are not related and
    - the price is the sole consideration

    This sub-section is applicable only in the following three scenarios:

    - Supply of Goods or
    - Supply of Services or
    - Both i.e., the composite supply of goods and services

The sub-section would not be applicable in case of a transaction involving the composite supply of goods, services **and immovable property.**

26. Sub-section (4) states that where the value of supply cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed i.e., the valuation mechanism as prescribed (in the Rules). On perusal of rules 27 to 35 of CGST Rules 2017, it is quite clear that none of the prescribe rules provides for valuation mechanism for transactions involving the supply of goods, service and immovable property. Therefore, even the valuation rules are not applicable in the instant case.

27. Further, sub-section (5) of Section 15 is the only sub-section that is left unexamined. This sub-section starts with a non-obstante clause and states *'Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government shall be determined in such manner as may be prescribed'*. From this subsection it states that the Central Government would be notifying certain services and the value of such notified supplies shall be determined in the manner as may be prescribed. The word 'prescribed' has been defined under Section 2(87) which means prescribed by rules made under this act on the recommendations of the council.

28. On a strict interpretation of Section 15(5) read with Section 2(87), it is evident that the Central Government can notify the supplies by way of a notification, but the value of such supplies shall be determined as prescribed in rules. Thus, it means the valuation mechanism cannot be notified in a notification itself. Unless the valuation mechanism is prescribed in rules, the same is not valid and the valuation mechanism prescribed by way of Notification is not valid.

29. To support the argument that the word 'prescribe' should be given limited meaning, reliance is placed on the Andhra Pradesh High Court decision in case of **GMR Aerospace Engineering [2019 (31) G.S.T.L. 596 -A.P.]** held that "*The word "prescribe" is verb. Generally, no enactment defines the word "prescribe". But the SEZ Act 2005 defines the word "prescribe" under Section 2(w) to mean the rules framed by the Central Government under the SEZ Act, 2005. The space is also not left unoccupied, as the Central Government has issued a set of Rules known as "the Special Economic Zones Rules, 2006", wherein the Central Government has prescribed the terms and conditions for grant of exemptions under Rule 22. Therefore, there is no question of comparing the terms and conditions prescribed in*

Rule 22 with the terms and conditions prescribed in the notifications issued under any one of five enactments listed in Section 26(1) to find out whether there was any inconsistency."

30. Reliance is also be placed on Patna High Court decision in case of Larsen & Toubro Ltd. Vs State of Bihar reported in [(2004) 134 STC 354] wherein it was observed as follows:

"21. The word "prescribed" according to the Clause (r) of Section 2 of the Act means prescribed by Rules made under the Act. When the State Legislature says that something is to be done in accordance with law then that is to be done in that manner and as prescribed and not otherwise. ***When the State Legislature says that the word "prescribed" means prescribed by the Rules then whatever is to be prescribed for making each and every section or any section of the Act workable must be prescribed under the Rules...***

26. There is submission of the respondents that the benefit can be given to the Appellants even if there is no rule to prescribe the manner and the extent relating to the deductions in relation to the other charges. We are of the view that this argument should not detain us unnecessarily because ***if the law requires a thing to be done then the State cannot say that that it stands above law*** *and would not provide/prescribe a particular thing in the Rules and would simply observe the directions issued by the Supreme Court.*

31. Even assuming that Government has notified the supply of services involving transfer of land or undivided share of land under Section 15(5) in the above-referred notification, the prescription of 1/3rd of the total amount charged as deemed land value will not hold good as the Government does not have the power to prescribe valuation mechanism in a notification under such sub-section and is only having power to notify "supplies". Hence, the same would not hold good.

32. Further, deemed deduction prescribed under Notification No.11/2017-CT(R) is conditional i.e., it would be applicable only when the transaction involves the transfer of land. Once the transaction does not involve any land then there is no question of 1/3rd deduction. It is pertinent to note that in case of conditional exemption, the claimant has the option to opt for the exemption or not opt for the same. Inference can be drawn from **Save Industry Vs CCE 2016 (45) STR 551 (Tri-Chennai)** in this regard. If it is made mandatory without giving any option to the assessee, then it would be open to challenge in a case where the actual land value is more.

NILGIRI ESTATES

33. The valuation mechanism provided in the Act and Rules do not contemplate the valuation of supply involving goods, services and land, therefore the measure of levy fails. However, the valuation mechanism is provided in Sl. No. 02 to Notification No. 11/2017-CT(R) and the contemplation of deduction through a notification cannot substitute the statutory machinery. Thereby, the valuation fails and once the valuation fails, the levy fails. The Hon'ble Supreme Court and various High Courts in a catena of judgments have held that notifying the valuation mechanism through a notification is not valid and have struck down such notifications wherein the valuation mechanism is prescribed. Few of the noted judgments in this regard are as follows:

a) **CIT Vs B.C. Srinivasa Shetty 1981 (2) SCC 460 – SC:** The Supreme Court examined the levy of capital gains tax on sale of goodwill and had noted that the machinery provisions did not provide for calculation of capital gains, which is the measure of tax for imposition of tax on gains from sale of capital assets where the cost of acquisition was not ascertainable. The Court held that the charging sections and the computation provisions together constitute an integrated code and the transaction to which the computation provisions cannot be applied must be regarded as never intended to be subjected to charge of tax.

b) **The Supreme Court in case of Govind Saran Ganga Saran v. CST, AIR 1985 SC [2002-TIOL-589-SC-CT]** held that "6. *The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity.*" (In the instant case of 1/3rd land deduction, there is a vagueness in the measure on which the GST is applicable as the Notification has not given the option to taxpayers to claim the actual land value as deduction).

c) **Suresh Kumar Bansal Vs UOI – 2016 (43) S.T.R – Del HC** wherein the Hon'ble Delhi High Court in Para 53 held that *"As noticed earlier, in the present case,*

neither the Act nor the Rules framed therein provide for a machinery provision for excluding all components other than service components for ascertaining the measure of service tax. The abatement to the extent of 75% by a notification or a circular cannot substitute the lack of statutory machinery provisions to ascertain the value of services involved in a composite contract".

d) **Federation of Hotels & Restaurants Association of India 2016 (44) STR 3 (Del)** wherein it was held that *"74. The exemption from service tax on the provision of accommodation for a room having a declared tariff of less than Rs. 1,000 per day or equivalent is by Notification No. 12/2012, dated 17th March 2012. This is not provided in the Act or the Rules. In Commissioner of Central Excise and Customs, Kerala v. Larsen and Toubro Ltd. - (2016) 1 SCC 170, the Supreme Court affirmed the decision of the Orissa High Court in Larsen and Toubro Ltd. v. State of Orissa - (2008) 12 VST 31, to the effect that the machinery provisions for levy of the tax could not be provided by instructions and circulars. It was held by the Orissa High Court that "It is a well-settled principle that in matters of taxation either the statute or the Rules framed under the statute must cover the entire field. Taxation by way of administrative instructions which are not backed by any authority of law is unreasonable and is contrary to Article 265 of the Constitution of India.*

34. From the above-referred decisions, it is clear that the valuation mechanism shall be prescribed in the Act or Rules and cannot be prescribed by way of a notification. Further, it is important to note that Section 15 of CGST Act prescribes the valuation mechanism only for supply of goods or services or both and does not prescribe valuation mechanism for transactions involving immovable property.

35. When the law provides specific powers to prescribe certain things by issue of notifications, the same would be valid, few of such examples may be notification of rate of tax under section 9 and exemptions under section 11. Further, section 15(5) does not authorize the Government to prescribe the valuation mechanism in Notification. Even section 164 of CGST Act, 2017 states that the Government may on the recommendations of the council, by notification, make rules for carrying out the provisions of this act'. Therefore, the Notifications cannot go beyond the act to prescribe a deemed valuation which is not prescribed in the Act itself.

36. Further, even assuming the deemed valuation adopted by the department as per Notification No. 11/2017-CT(Rate) is correct, the Appellant submits that the same

is not justified and is unsustainable in law. It is a known fact that the land value may not be the same across the country as the same depends on the location of the land. In metros, the cost of land would be high and in towns and rural areas, it would be low. The cost of construction may not vary much when compared to the land value, whether in metros or in rural areas. Deeming 1/3rd of the total amount charged as land value would lead to levy of GST on the land value in metros, whereas in the non-metros the construction service would not get completely taxed. Thus, levy of GST on land value, indirectly not allowed under Article 246A of the Constitution of India is being levied due to the deeming fiction. We should also understand there would be cases where the land value is less than 1/3rd value and in such cases the Government is collecting less taxes.

37. During the 15th GST Council meeting, where GST rates on several goods and services were discussed, the Maharashtra and Gujarat State Finance Ministers opposed the 1/3rd land deduction proposed by the Fitment Committee. Maharashtra State Finance Minister was of the view that the flat cost consists of at least 50% of land cost in Maharashtra. Giving 30% land deduction will lead to litigation and Courts may give adverse judgements on this. He suggested giving the land value according to the ready reckoner or stamp duty value. The discussion in this meeting and consequently issue of notification No.11/2017-CT(R) dated 28.06.2017 deeming the value of land as 1/3rd of the total amount charged itself shows that the Government has acted arbitrarily and without any scientific reason to arrive at the basis of 1/3rd.

38. The Supreme Court in a catena of decisions held that any action undertaken by the Central Government or State Government arbitrarily would amount to a violation of Article 14 of the Constitution of India and becomes invalid. Further, it was also held that when the actual value is available the statutes or rules cannot prescribe a deemed value ignoring the actual value. Few of the decisions which had discussed this issue are as follows:

    a. **Supreme Court in case of Wipro Limited Vs UOI 2015 (319) ELT 177 (SC)** while examining the validity of deemed value of loading and unloading as 1% of the FOB value for the purpose of determining the assessable value for calculating the customs duty it was held that *"31. In contrast, however, the impugned amendment dated 5-7-1990 has changed the entire basis of inclusion of loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation. Whereas fundamental principle or*

basis remains unaltered insofar as other two costs, viz., the cost of transportation and the cost of insurance stipulated in clauses (a) and (c) of sub-rule (2) are concerned. In respect of these two costs, provision is retained by specifying that they would be applicable only if the actual cost is not ascertainable. In contrast, there is a complete deviation and departure insofar as loading, unloading and handling charges are concerned. ***The proviso now stipulates 1% of the free on-board value of the goods irrespective of the fact whether actual cost is ascertainable or not. Having referred to the scheme of Section 14 of the Rules in detail above, this cannot be countenanced. This proviso, introduces fiction as far as addition of cost of loading, unloading and handling charges is concerned even in those cases where actual cost paid on such an account is available and ascertainable. Obviously, it is contrary to the provisions of Section 14 and would clearly be ultra vires this provision. We are also of the opinion that when the actual charges paid are available and ascertainable, introducing a fiction for arriving at the purported cost of loading, unloading and handling charges is clearly arbitrary with no nexus with the objectives sought to be achieved. On the contrary, it goes against the objective behind Section 14 namely to accept the actual cost paid or payable and even in the absence thereof to arrive at the cost which is most proximate to the actual cost. Addition of 1% of free on-board value is thus, in the circumstance, clearly arbitrary and irrational and would be violative of Article 14 of the Constitution.***

This decision clearly states that when the actual value is available, the prescription of deemed value is not valid as the same is arbitrary and irrational. Since the background of the present issue and the issue involved in these decisions are one and the same, it can be concluded that the taxpayer can claim the actual value of land as deduction wherever available and the deeming of 1/3rd value as land value is arbitrary and irrational and will not hold good.

b. **The Supreme Court in case of Indian Acrylics Vs UOI 1999 (113) ELT 373 (SC) it was held that "***7. The exchange rate fixed by the Reserve Bank of India is the accepted and determinative rate of exchange for foreign exchange transactions.* ***If it is to be deviated from to the extent that the notification dated 27th March 1992 does, it must be shown that the Central Government had good reasons for doing so.*** *The Reserve Bank of India's rate, as we have pointed out, was Rs. 25.95, the rate fixed by the notification dated*

27th March 1992 was Rs. 31.44, so that there was difference of as much as Rs. 5.51. ***In the absence of any material placed on record by the respondents and in the absence of so much as a reason stated on affidavit in this behalf, the rate fixed by the notification dated 27th March, 1992 must be held to be arbitrary.***

This decision states the when the government is prescribing a deemed value deviating from the actual value available, then it must have a good reason for doing so. If there is no reason, the deemed value shall become invalid. On-going through the GST Council Meeting Minutes, it is quite evident that no reason has been recorded while deeming the value of land as 1/3rd of total amount.

c. The Supreme Court in case of **Hindustan Polymers case Vs Collector of CE 1989 (43) ELT 165 (SC)** held that the Excise Duty cannot be levied on notional values. The Supreme Court has made the following observations *"The scheme of the old Section 4 is indisputedly to determine the assessable value of the goods on the basis of the price charged by the assessee, less certain abatements. There was no question of making any additions to the price charged by the assessee. The essential basis of the "assessable value" of old Section 4 was the wholesale cash price charged by the assessee. To construe new Section 4 as now suggested would amount to departing from this concept and replacing it with the concept of a notional value comprising of the wholesale cash price plus certain notional charges. This would be a radical departure from old Section 4 and cannot be said to be on the same basis. It has to be borne in mind that the measure of excise duty is price and not value.".*

From this decision, it can be understood that the valuation cannot be extended beyond levy and in the instant case, the levy is on supply of goods and service wherein section 15 prescribes valuation mechanism for supply of goods and services. However, the notification No.11/2017-CT(R) dated 28.06.2017 prescribes the valuation mechanism for the transactions involving land, wherein it proposed to tax the notional value of 2/3rd of the value of the consideration received from their customers.

39. The valuation adopted by the Appellant is also supported by the Gujarat High Court decision in case of Munjaal Manishbhai Bhatt Vs UOI 2022-TIOL-663-HC-AHM-GST wherein the High Court has held that deeming fiction of 1/3rd land deduction is ultra-vires the statutory provisions wherever the actual land value is available. The relevant extract is as follows

"Thus, mandatory application of deeming fiction of 1/3 of total agreement value towards land even though the actual value of land is ascertainable is clearly contrary to the provisions and scheme of the CGST Act and therefore ultra-vires the statutory provisions."

40. Appellant would like to submit that from the above referred decision, it is clear that wherever the actual land value is available, the same can be taken as deduction for the purpose of payment of GST and the deeming fiction of 1/3rd land value as deduction is ultra-vires the statutory provisions. Hence, Appellant would like to submit that the compliance made by the Appellant is in accordance with the law and there is no short payment of GST, therefore, the demand of Rs. 1,21,41,750/- is requested to be set aside.

In Re: The Impugned order has violated the principle of Judicial Discipline

41. The Appellant respectfully submits that the GST demand of Rs.1,21,41,750/- confirmed by the Ld. Adjudicating Authority is arbitrary, illegal and *void ab initio* as the Ld. Adjudicating Authority has violated the principle of Judicial Discipline by not following the law declared by the Gujarat High Court in the case of **Munjanlal Manishbhai Bhatt Vs. Union of India 2022 (62) G.S.T.L. 262 (Guj.)** in as much as it read down the Paragraph 2 of Notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 to the effect that the deeming fiction of 1/3rd will not be mandatory in nature and will only be available at the option of the taxable person in cases where the actual value of land or undivided share in land is not ascertainable. The relevant portions of the HC decision are extracted below:

*"**Conclusion :***

122. *In the result, the impugned Paragraph 2 of the Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 and identical notification under the Gujarat Goods and Services Tax Act, 2017, which provide for a mandatory fixed rate of deduction of 1/3rd of total consideration towards the value of land is ultra vires the provisions as well as the scheme of the GST Acts. Application of such mandatory uniform rate of deduction is discriminatory, arbitrary and violative of Article 14 of the Constitution of India.*

123. *While we so conclude, the question is whether the impugned Paragraph 2 needs to be struck down or the same can be saved by reading it down. In our considered view, while maintaining the mandatory deduction of 1/3rd for value of land is not sustainable in cases where the value of land is clearly ascertainable or where the value of construction service can be derived with the aid of valuation rules, such deduction can be permitted at the option of taxable person*

particularly in cases where the value of land or undivided share of land is not ascertainable.

124. *The impugned Paragraph 2 of Notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 and the parallel State Tax Notification is read down to the effect that the deeming fiction of 1/3rd will not be mandatory in nature. It will only be available at the option of the taxable person in cases where the actual value of land or undivided share in land is not ascertainable."*

42. **The Hon'ble SC in Kusum Ingots & Alloys Ltd. vs. Union of India 2004 (168) E.L.T. 3 (S.C.)** held as under:

"22. The court must have the requisite territorial jurisdiction. An order passed on writ petition questioning the constitutionality of a Parliamentary Act whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act."

Therefore, the reading down of the notification by the Hon'ble High Court of Gujarat applies throughout the territory of India and there is no reason why the impugned order could ignore a binding precedent.

43. At all stages of Audit and adjudication, Appellant, after explaining the relevant provisions and principles, vehemently contended before Ld. Adjudicating Authority that land value is ascertainable and accordingly, there was no short payment of GST as misconstrued vide the impugned order and the Hon'ble Gujarat HC decision was also cited along with supporting customer agreements in evidence that value bifurcation towards land and construction is clearly available. Despite of the vehement submissions, while department completely ignored the submissions during the audit proceedings, the Ld. Adjudicating Authority vide Para 12.3 of impugned order merely held the case law is not relevant to the facts of the case present case but failed to explain the reasons for its inapplicability.

44. In this regard, the Appellant respectfully submits that the above referred finding of the Ld. Adjudicating Authority is a clear violation of principle of Judicial Discipline which stipulates that in the judicial hierarchy system, the decisions rendered by the Higher Courts are binding on lower courts which is commonly known as judicial precedent or stare decisis. The doctrine of Stare Decisis creates an obligation on courts to refer to precedents when taking a certain decision and this thereby reduces the burden on the courts by eliminating the requirement to

litigate on the same issues which are already pre-decided. The doctrine of Stare Decisis allows the public to presume that the foundational principles are rooted in the law rather than in the bias of the assessee's and thereby the said doctrine contributes to the integrity of our judicial system.

45. The Appellant respectfully submits that as stated above that the case of the Appellant is squarely covered by the Judgment of the Gujarat High Court in the case of Munjanlal Manishbhai Bhatt Vs. Union of India 2022 (62) G.S.T.L. 262 (Guj.), in this regard, the Appellant would like to submit that one of the important finding of the Gujarat High Court is reproduced under:

> ***124. The impugned paragraph 2 of Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 and the parallel State tax Notification is read down to the effect that the deeming fiction of 1/3rd will not be mandatory in nature. It will only be available at the option of the taxable person in cases where the actual value of land or undivided share in land is not ascertainable.***

46. From the above finding, Appellant submits that the Gujarat High Court has stated not completely strike down the Impugned Notification instead has read down the effect, meaning the deeming fiction of 1/3rd will only come into consequence when the actual value of land or undivided share in land is not attributable/ascertainable. In the present case of the Appellant, the Agreement of sale, Agreement of construction and sale deed is the evidence which proves the very fact that there has clearly been a demarcation of the consideration mentioned in the respective agreements and thereby, the deeming fiction of 1/3rd will not be liable in the case of the Appellant and thus the Impugned Notification will not be applied to the case of the Appellant. Thus, taking into account of the finding of the Gujarat High Court, Ld. Adjudicating Authority has completely violated the doctrine of Judicial Discipline while passing the Impugned Order.

47. The Judgment of Munjanlal Manishbhai Bhatt (supra) is applicable to the present case of the Appellant on the basis of the following facts as stated below:

- As stated in the facts supra, the Appellant is an owner of the land situated at Ac. 10-06 gts., is Sy. No. 100/2, Rampally Village, Keesara Mandal, Medchal, Malkajgiri District. During the subject period, Appellant was

NILGIRI ESTATES

engaged in sale of land and construction of villas in the project namely 'Nilgiri Estate'.

- Appellant submits that whenever the customers come to purchase Villa's, Appellant has been entering into Agreements such as, Agreement of sale(AOS), Sale Deed and Agreement of Construction separately and distinctly the amounts were mentioned in the respective agreement under the clauses such as *"sale consideration"* and *"consideration for construction"* and the amounts are mentioned at the Annexure enclosed to the copies of agreement (Annexure-IX & X)

48. From the above background, it proves the very fact that the Appellant had entered into separate agreements and each agreement accounted distinct amount towards cost of land and construction of services. Therefore, as held in the *Munjanlal Manishbhai Bhatt* (supra) that when the value of land and value of construction services is ascertainable and in the case of the Appellant, separate values are mentioned by entering into separate agreements, thus, the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 mandating the to deduct the land value to only 1/3rd on the total value of the supply is not valid and contrary to the decision held in the case of Munjanlal Manishbhai Bhatt (supra). Hence, Appellant submits that when the High Court has held that the same is not valid and adopting the 1/3rd land value will only come into effect when the value of land is not ascertainable, then persistent demands from the lower authorities and Ld. Adjudicating Authority is a complete violation of Judicial Discipline which henceforth is not permissible in the eyes of law.

Hence, the Appellant respectfully submits before this Hon'ble High Court that the Ld. Adjudicating Authority has violated the core principle of the Judiciary System and condemned by not following the decisions of the Higher Courts which have already been observed, analysed and judgment has been passed on the similar facts and circumstances instead unjustifiably disregarded the decision of verdict of the Higher Courts and passed a fallacious order which has no foundation or reasoning.

49. The Hon'ble High Court of Madras in **Avigna Properties Pvt. Ltd. vs. State Tax Officer (2023) 7 Centax 203 (Mad.)** also carried the same view of above referred Gujarat HC in holding that deeming deduction of 1/3rd value towards land would not apply in cases where the assessee is in a position to supply the actual amount of the consideration received towards construction services and land cost.

50. The Appellant respectfully would like to bring on record before this Hon'ble Bench regarding the finding of the Ld. Adjudicating Authority with respect to allegation of the department alleging that the Appellant has adopted wrong method of valuation. The same is reproduced as under at Para 12.2 at Page 54 of the Impugned Order:

> *"12.2 The taxpayer contested the demand raised in the instant case by creating a hypothetical scene and by questioning on the notification no. 11/2017-Central Tax (Rate) dated 28.06.2017. They submitted that in metros, the cost of land would be high and in towns and rural areas, it would be low. The cost of construction may not be very much when compared to the land value, whether in metros or in rural areas. Deeming 1/3 of the total amount charged as land value lead to levy of GST on the land value in metros, whereas in the non-metros the construction service would not get completely taxed, Like this, creating a hypothetical scene they have raised many questions on the above said notification. And finally, by quoting some case laws they argues that where the actual land value is available, the same can be taken as deduction for the purpose of payment of GST and the deeming fiction of 1/3rd land value as deduction is ultra-vires the statutory provisions. Hence, they stated that their compliance is in accordance with the law and there is no short payment of GST. "*

51. The Appellant humbly submits that the Ld. Adjudicating Authority's conclusion is wholly incorrect, capricious, nonsensical, and legally flawed. The Appellant's current case is thoroughly dealt and settled by the judicial pronouncements enumerated in the SCN reply. Further the Ld. Adjudicating Authority is not legally righteous in law to ignore the decisions made by the Judiciary or find any flaws in the judgments that have already been decided. Considering there is no appropriate finding or rationale in the Impugned order that can set it apart from the verdicts of the higher courts and the supreme court, this establishes a blatant breach of the notion of judicial discipline on the part of Ld. Adjudicating Authority.

52. The Appellant respectfully submits that a non-speaking order is illegal and against the principles of natural justice. Speaking order means an order which contains reasoning of the Hon'ble Member/Authority which is differing from the interpretation of the Appellant. The failure to give reasons could lead to a very justifiable complaint that there was a breach of natural justice. A party has a right to know not only the decision, but also the reasons in support of the decision. Reasoned orders are necessary if judicial review is to be effective. The condition to

record reasons introduces clarity and excludes arbitrariness. The principle requiring reasons to be given, in support of an order is a basic principle of natural justice which must inform every quasi-judicial process and must be observed in its proper spirit and mere pretence of compliance with it could not satisfy the requirement as per law. In this regard, Appellant wishes to rely on **Sant Lal Gupta Vs Modern Coop.G.H.Society Ltd. — 2010 (262) E.L.T. 6 (S.C.)** wherein it was held that *"The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."*

In Re: Short payment of tax due to difference in tax rate

53. Appellant submits that the impugned order has provided a finding that the Appellant has paid the tax at the rate of 12% instead of 18% during FY 2017-18 and has confirmed the demand for an amount of Rs. 19,82,815/- (CGST Rs. 9,91,407/- SGST Rs. 9,91,407/-) being short payment of tax in terms of provisions of section 74(1) of the CGST Act, 2017.

54. In this regard, Appellant submits that the actual differential tax is only Rs. 9,98,852/-) but not Rs.. 19,82,815/-. Out of Rs. 9,98,852/-, the Appellant has issued debit notes for Rs. 9,25,202/- in December 2018, i.e., CGST of Rs. 4,62,601 & SGST of Rs. 4,62,601/- and disclosed in books and the same has been adjusted with excess output tax paid in earlier months (Copy of statement enclosed as Annexure-XI).

55. Further, at the end of 2018-19, the total output tax as per GSTR-3B is of Rs. 1,89,46,706/- and total output tax as per GSTR-1 and as per Books is of Rs. 1,94,62,187/- (Copy of statement enclosed as Annexure-XI). So, the difference between these amounts is Rs. 5,15,481/- which has been paid through DRC-03 dated 09.08.2019 acknowledged vide ARN No. AD3608190006125 (Copy of DRC-03 enclosed as Annexure-XII) and the difference between Rs. 9,98,852/- i.e., Rs. 73,650/- has been paid through DRC-03 dated 15.06.2020 acknowledged vide ARN No. AD360620001467E (Copy of DRC-03 enclosed as Annexure-XIII).

Thereby, there is short payment as alleged by the impugned notice and the same needs to be dropped to that extent.

56. Further, Appellant submits that the above referred explanation has been already submitted to department during the course of audit but the same was not considered while issuing the present Show Cause Notice. Furthermore, while passing the order, the Ld. Adjudicating Authority has stated at para 13.2 *"the taxpayer has also not submitted the relevant documents in support of their claim that they adjusted the amount of Rs. 9,25,202/- with excess output tax paid in earlier months"*. In this regard, Appellant submits that all the relevant documents have been enclosed, in fact statement had been provided which shows the differential amount and in case of any shortage, Appellant has discharged through DRC-03 and all this have been brought before the notice while filing reply to the show cause notice. This shows that the impugned order has not considered the submissions of the Appellant and vaguely passed the order without proper examination of facts and the same is invalid.

In Re: No Short payment of GST on comparison of Tax Liability declared in GSTR-1 and GSTR-3B:

57. The impugned order has provided a finding that the Appellant has short paid when compared the tax liability with GSTR-01 and GSTR-3B for the month of June 2018 and March 2019 and has confirmed the demand for an amount of Rs.27,16,554/- (CGST Rs. 13,58,277/- SGST Rs. 13,58,277/-) in terms of section 73 of CGST Act, 2017 along with applicable rate of interest under section 50 and imposed penalty under section 122(2)(a) read with section 73 of CGST Act, 2017.

58. In this regard, Appellant would like to bring to your notice that the impugned order has considered only the differences in the months in which there is an excess taxes declared in GSTR-01 and ignored the differences in the months in which excess taxes declared in GSTR-3B. The total GST liability declared in GSTR-01 for the period July 2017 to March 2020 is Rs. 2,68,55,480/- and the total liability declared in GSTR-3B for such period is Rs. 2,63,40,002/- leaving a difference of only Rs.5,15,480/-. Thus, if we take the differences of other months during the period July 2017 to March 2019 then we will be left with a differential amount of Rs. 5,15,480/- only instead of the alleged amount Rs.27,16,554/- as stated in the show cause notice.

59. Thus, difference amount of Rs. 5,15,480/- has been already paid through DRC-03 on 9th August 2019 vide ARN No.AD3608190006125 (Copy of DRC-03 and

Statement showing the difference between GSTR-01 and GSTR-3B is enclosed as annexure - XI). Therefore, it is requested to set aside the demand in this regard.

60. Further, Appellant submits that the above referred explanation has been already submitted to department during the course of audit but the same was not considered while issuing the present Show Cause Notice. This shows that the impugned order at para 14.1 has stated that *"however, they did not submit any documentary evidences in support of their claim"* has vaguely passed the order without proper examination of facts and the submissions and the same is invalid.

In Re: Excess availment of ITC in GSTR-3B on comparison with GSTR-2A:

61. The impugned order has provided a finding that the Appellant has excessively availed ITC in GSTR-3B when compared with GSTR-2A during the period July 2017 to March 2020 and is proposing to demand an amount of Rs.38,58,144/- (IGST- 3,77,768/- CGST - Rs.17,40,188/- & SGST - Rs.17,40,188/-) in terms of section 73 of CGST Act, 2017 along with applicable rate of interest under section 50 and imposed penalty under section 122(2)(a) read with section 73 of CGST Act, 2017.

62. In this regard, Appellant would like to bring to your notice that the impugned order has considered only the months in which there is a less reflection of ITC in GSTR-2A and has ignored the months in which there is an excess reflection of ITC in GSTR-2A. Thus, once the ITC is compared on consolidated basis for a particular year, the difference is very less and in fact there is excess reflection of GSTR-2A during the period July 2017 to March 2018 whereas impugned order has stated that there is a difference of Rs.44,274/- of IGST, Rs.6,06,093/- of each of SGST and CGST.

63. Appellant would like to submit that once the differences are considered on consolidated basis, the actual difference is only to the tune of Rs.17,78,059/- (IGST - (48,829.95) CGST - 9,13,444 & SGST - 9,13,144) as against the amounts disputed by the impugned notice. Appellant would like to submit the statement showing the details of ITC availed in GSTR-3B, ITC reflected in GSTR-2A and the differences along with the declarations of the suppliers are enclosed as Annexure XIV

NILGIRI ESTATES

64. Without prejudice to the above, Appellant submits that ITC cannot be denied merely due to non-reflection of invoices in GSTR-2A as all the conditions specified under Section 16 of CGST Act, 2017 has been satisfied. Further, Appellant submits that GSTR-2A cannot be taken as a basis to deny the ITC in accordance with Section 41, Section 42, Rule 69 of CGST Rules, 2017 prevailing during the disputed period.

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

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

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

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

1. *Every registered person shall,* ***subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis*** *to his electronic credit ledger.*
2. *The credit referred to in sub-section (1) shall be utilized only for payment of self-assessed output tax as per the return referred to in the said sub-section"*

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

67. In this regard, it is submitted that Section 42, *ibid* specifies the mechanism for matching, reversal, and reclaim of ITC wherein it was clearly stated the details of every inward supply furnished by a registered person shall be matched with the

corresponding details of outward supply furnished by the supplier in such manner and within such time as may be prescribed.

68. Further, Rule 69 of CGST Rules, 2017 specifies that the claim of ITC on inward supplies provisionally allowed under Section 41 shall be matched under Section 42 after the due date for furnishing the return in GSTR-03. Further, the first proviso to Rule 69 also states that if the time limit for furnishing Form GSTR-01 specified under Section 37 and Form GSTR-2 specified under Section 38 has been extended then the date of matching relating to the claim of the input tax credit shall also be extended accordingly.

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

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

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

72. Appellant further submits that Finance Act, 2022 has omitted Section 42, 43 and 43A of the CGST Act, 2017 which deals ITC matching concept. Appellant submits that the substituted Section 38 of the CGST Act, 2017 now states that only the eligible ITC which is available in the GSTR-2B (Auto generated statement) can be

availed by the recipient. Now, GSTR-2B has become the main document relied upon by the tax authorities for verification of the accurate ITC claims. Hence, omission of sections 42, 43 and 43A has eliminated the concept of the provisional ITC claim process, matching and reversals.

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

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

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

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

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

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

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

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

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

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

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

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

NILGIRI ESTATES

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

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

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

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

83. Without prejudice to above, Appellant submits that even if there is differential ITC availed by the Appellant, the same is accompanied by a valid tax invoice containing all the particulars specified in Rule 36 of CGST Rules based on which Appellant has availed ITC. Further, Appellant submits that the value of such supplies including taxes has been paid to such vendors thereby satisfying all the other conditions specified in Section 16(2) of the CGST Act, 2017. As all the conditions of Section 16(2) are satisfied, the ITC on the same is eligible to the Appellant hence the impugned order needs to be set aside.

84. Appellant submits that the fact of payment or otherwise of the tax by the supplier is neither known to us nor is verifiable by us. Thereby it can be said that such condition is impossible to perform and it is a known principle that the law does

not compel a person to do something which he cannot possibly perform as the legal maxim goes: ***lex non-cogit ad impossibilia*, as was held in the case of:**

a. *Indian Seamless Steel & Alloys Ltd Vs UOI, 2003 (156) ELT 945 (Bom.)*

b. *Hico Enterprises Vs CC, 2005 (189) ELT 135 (T-LB). Affirmed by SC in 2008 (228) ELT 161 (SC)*

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

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

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

87. Appellant submits that if the department directly takes action against the recipient in all cases, then the provisions of Section 73, 74 and 76 would be rendered *otiose*, which is not the legislative intent. Further, we would like to submit that the department cannot be a mute spectator or maintain sphinx like silence or dormant position. In this regard, Appellant wish to rely on recent Madras High Court decision in case of M/s. **D.Y. Beathel Enterprises Vs State Tax officer (Data Cell), (Investigation Wing), Tirunelveli2021(3) TMI 1020-Madras High Court** wherein it was held that

> *"12. Therefore, if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer. In the case on hand, the respondent does not appear to have taken any recovery action against the seller / Charles and his wife Shanthi, on the present transactions.*
>
> *13. The learned counsel for the Appellants draws my attention to the SCN, dated 27.10.2020, finalising the assessment of the seller by excluding the subject transactions alone. I am unable to appreciate the approach of the*

authorities. When it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him.

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

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

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

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

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

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

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

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

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

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

93. **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.

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

Once any rule is ultra vires, the same need not be followed. Hence, the finding of the impugned order to deny the ITC stating that invoices not reflected in GSTR-2A requires to be set aside.

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

of tax. Hence, it can be stated that in absence of any provisions in the Act enabling the formulation of Rule 36(4), the same has to be declared as invalid.

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

97. Appellant submits that Section 38(1) of the CGST Act, 2017 permits the recipient to declare the details of the missing invoices in GSTR 2 and claim the ITC thereof subject to eventual matching. Clause (aa) on the other hand seeks to allow the ITC only if the details are furnished by the vendors. Hence, Appellant submit that the law is asking the recipient to do the impossible by (a) not making the provisional claim of ITC by filing GSTR 2 and asking the vendors to accept the liability and (b) determining the eligibility solely based on filings done by the said vendors which are not in the control of the recipient. Hence, based on the doctrine of supervening impossibility that the ITC of the genuine recipient cannot be denied by virtue of the provisions of clause (aa).

98. Appellant submits that based on the above submissions, it is clear that the ITC availed by the taxpayer is rightly eligible and there is no requirement to pay any interest on the same. Hence, the impugned order to that extent needs to be set aside.

99. Appellant wishes to rely on recent decisions in case of:

a. **Jurisdictional High Court decision in case of Bhagyanagar Copper Pvt Ltd Vs CBIC and Others 2021-TIOL-2143-HC-Telangana-GST**

b. **M/s. LGW Industries limited Vs UOI 2021 (12) TMI 834-Calcutta High Court**

c. **M/s. Bharat Aluminum Company Limited Vs UOI & Others 2021 (6) TMI**

d. **M/s. Sanchita Kundu & Anr. Vs Assistant Commissioner of State Tax 2022 (5) TMI 786 - Calcutta High Court**

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

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

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

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

In Re: Irregular availment of Input Tax Credit (Section 17(5)):

104. The impugned order has provided a finding that the Appellant has availed ITC of Rs. 88,320/- (CGST- Rs. 44,160/- & SGST- Rs. 44,160/-) in contravention of the provisions of section 17(5) for the period Jul'17 – March'20 and has stated that *"on verification of the facts and above said DRC003 dated 07.01.2020 submitted by the taxpayer, I find that vide above said DRC-03, an amount of Rs. 4,43,390/- was paid for tax period September 2018. Whereas the demand was raised in the notice is for the period from July 2017 to March, 2020. Hence, the taxpayers submission in this regard is not acceptable and I hold that the taxpayer is liable for payment of tax along with applicable interest and penalty as proposed in the notice".*

105. In this regard, Appellant would like to bring to your notice that the finding of the impugned order is not valid because firstly, the impugned order has not examined the fact that the Appellant has already reversed an amount of Rs. 88,320/- through DRC-03 on 07.01.2020 vide ARN No.AD3600120000820Z (Copy Attached as Annexure - XV which was already communicated while furnishing the submissions in response to the show cause notice. Hence, the finding of the Ld. Adjudicating Authority fails and the demand confirmed without considering the fact that there is no evasion of tax as the same has been reversed, then the demand confirmed in this regard is requested to be set aside.

In Re: No proper verification of documents was done by the Impugned order or the show cause notice therefore, violation of principles of natural justice:

106. The Appellant respectfully submits that with respect to the demand confirmed by the Ld. Adjudicating Authority on the factual connotation which are submitted as under:

a. Demand of Rs. 19,82,815/- towards short payment of tax due to difference in tax rate for the FY 2017-18.
b. Demand of Rs. 27,16,554/- towards short payment of GST on comparison of tax liabilities declared un GSTR-1 and GSTR-3B for FY 2018-19.
c. Demand of Rs. 38,58,144/- towards excess availment of ITC in GSTR 3B on comparison with the GSTR 2A for FY 2018-19 and 2019-20.

107. The Appellant respectfully submits that with respect to the above-referred demands, the Appellant has in detail submitted and enclosed supporting evidence along with their submissions. Appellant submits that there has been evasion of tax in fact, the discrepancies alleged for the disputed periods has been explained stating that while filing GST Returns in few months the Appellant has excessively paid the output tax when compared to the subsequent month and in case of any differences in the payment of tax, the same was discharged by voluntarily paying through DRC-03.

108. Thus, the issues involved in the show cause notice were a repetition of the allegations alleged by the department upon which the Appellant has explained in depth the submissions along with relevant supporting evidence, the same is evident from the below mentioned table. Therefore, when the issues have already been explained right from the stage of audit proceedings to the issuance of the show cause notice and even submitted before the Adjudicating Authority, upon which no reasonable finding has been made by the Respondent No. 1. In fact there

has been no discussion or verification of the submissions and the supporting documents submitted, this shows the non-application of mind while passing the Impugned order which is in violation of the principles of natural justice. The below table highlights the instances of ignoring the vital submissions/documents furnished by Appellant at Audit & Adjudication stage:

Sl. No.	Issues Involved	Main submissions	Spot Memo Reply dated 31.10.2022	Reply to SCN dated 31.07.2023
1	Short payment of GST due to adopting wrong method of valuation	Disputed in toto as actual land values are ascertainable and issue covered by Gujarat HC in Munjaal Manishbhai Bhatt Vs. Union of India 2022 (62) G.S.T.L. 262 (Guj.)	Para-I of the Reply.	Para 8-28 of the Reply. Sample agreements copies enclosed as Annexure-VI, VII & VIII to the SCN reply and again another sample agreement vide additional submissions dated 29.08.2023.
2	Short payment of tax due to difference in tax rate.	The actual difference was 5,89,131/- which got paid voluntarily.	Para-III of the Reply. Copy of the statement showing the payment of disputed output tax enclosed as Annexure-IV and Copy of DRC-03 enclosed as	Para 29-32 of the Reply. Statement showing the payment of disputed output tax enclosed as Annexure- IX and Copy of DRC-03 as Annexure-X & XI to the SCN reply.

			Annexure-V &VI.	
3	Short payment of GST on comparison of tax liabilities declared in GSTR-1 & GSTR-3B.	The actual difference was 5,15,480/- as SCN has taken only negative figures in mis-match instead of taking consolidated mis-matches. The actual difference amount got paid voluntarily.	Para IV of the Reply. Copy of DRC-03 and statement showing the difference between the GSTR-01 & GSTR-03 is enclosed as Annexure-VI	Para 33-36 of the Reply. Copy of DRC-03 and statement showing the difference between the GSTR-01 & GSTR-03 is enclosed as Annexure-IX. All copies of returns are sent through e-mail dated 19.05.2023.
4	Excess availment of ITC in GSTR-3B on comparison with GSTR-2A.	The actual difference was 17,78,059/- as SCN has taken only negative figures in mis-match instead of taking consolidated mis-matches. The mismatches was not due to the faults of Appellant but faults, if any of the suppliers of Appellant whom to be investigated first instead of direct recovery from Appellant	Para V of the Reply. Copy of statement showing the details of ITC availed in GSTR-3B, ITC reflected in GSTR-2A, and the differences are enclosed as Annexure-VII.	Para 37-79 of the Reply. Copy of statement showing the details of ITC availed in GSTR-3B, ITC reflected in GSTR-2A, and the differences are enclosed as Annexure-XII. The copies of returns & GSTR-2A are sent through e-

				mail dated 19.05.2023.

In light of the above legal and factual position, this shows the negligence of impugned order as well as the show cause notice has not verified the records/supporting documents/reconciliations furnished by Appellant and shown utter ignorance and moreover never asked for any further details or clarifications needed instead of harping upon that documents were not submitted. The very lack of proper verification and misconstruing of the facts which are readily available from the GST Portal by the Authorities both at audit stage and adjudication stage. For the various contested demands, Appellant did not provide any new evidence, rather, it was simply a matter of completely reading the Returns and confirming their authenticity before creating the impugned demands.

109. Appellant further submits that Ld. Adjudicating Authority imposed penalties for the payments made voluntarily and well before issuance of SCN which is contrary to the plain language of the section 73/74 of CGST Act, 2017 as amended.

110. In addition to the above, the Appellant places reliance on the following decisions wherein the Apex Court/Higher Courts had set aside the GST demand when it was found that there was a factual mis-read of the figures by the assessing officer which proposing GST demand.

- Commissioner of Commercial Tax V/s Vriddhi Infratech India Pvt. Ltd. Passed by the Supreme Court of India (2023) 13 Centax 150 (S.C)
- Vriddhi Infratech India Pvt. Ltd. V/s Commissioner of Commercial Tax passed by the High Court of Judicature at Allahabad [Lucknow Bench] (2023) 13 Centax 149 (All.)

111. In light of the above legal and factual position, this shows the negligence of Authorities to not to verify the record/supporting documents/reconciliation neither considered the above factual submissions and moreover did not provide any reasonable finding to justify that the Appellant has short paid the tax or excessively availed ITC. Thus, the very lack of proper verification and misconstruing of the facts which are readily available as can be seen from the GST Portal, as a result, the Appellant did not provide any new evidence; rather, it was

simply a matter of properly reading the Returns and confirming their authenticity before issuing the show cause notice.

In Re: Demand under Section 73 and Section 74 cannot be invoked in the same order:

112. Appellant submits that the impugned order has invoked both section 73 and section 74 which means that for one leg of the transaction the impugned order is stating that the short payment / non-payment is for the reason other than fraud and on for the other leg of the transaction its stating that its due to fraud, which is not correct. Appellant submits that Section 73 & Section 74 speaks about the issuance of the complete order and levying penalty for the reason of fraud or the reason other than fraud. Hence, the order cannot be issued by invoking both sections. Thereby, the impugned proceedings under Section 74 are not correct and the same needs to be set aside.

113. Appellant further submits that penalty under Section 73(9) can be imposed only when there is short payment of tax and the same is not applicable to irregular ITC. This is clearly evident from the differentiation made in Section 73(1) between short payment of tax, irregular availment of ITC and erroneous refund. Hence, the penalty proposed under Section 73 is not applicable with respect to demand proposed under the category irregular availment of ITC.

114. To substantiate the same, Appellant is providing the relevant extracts of the penalty stated from the order for ready reference:

a. *I impose a penalty of Rs. 1,31,016/- on the amount demanded vide S.No.(i) under **Section 73(9)** of CGST Act, 2017 and TSGST Act, 2017*

b. *I confirm the demand of 84,329/- (Rupees Eighty four Thousand Three Hundred and Twenty Nine Only) being the irregular availment of input tax credit in excess of GSTR-2A (3B Vs. 2A) under Section 73(9) of CGST Act, 2017 and TSGST Act, 2017; And I drop an amount of Rs. 5,26,623/ discussed at para 19 above*

- *I confirm the demand of interest payable on the amount mentioned at No.(iii) above, under Section 50(1) of CGST Act, 2017 and TSGST Act, 2017;*
- *I impose a penalty of Rs. 84,329/- on the amount demanded vide S.No. 5 under **Section 74(9)** of CGST Act, 2017 and TSGST Act, 2017,*

c. *I impose a penalty of Rs. 93,988/- (Rupees Ninety Three Thousand Nine Hundred and Eighty Eight Only) on the amount demanded vide S.No (vi) under* ***Section 73(9)*** *of CGST Act, 2017 and TSGST Act, 2017;*

d. *I impose a penalty of Rs. 1,62,826/- (Rupees One Lakh Sixty Two Thousand Eight - Hundred and Twenty Six Only) under* ***Section 73(9)*** *of CGST Act and TSGST Act, 2017 against the demand mentioned at Sl. No.(x)*

In Re: Demand under Section 74 is not applicable:

115. Without prejudice to the above, Appellant also submits that when the time limit for issuance of order under Section 73 is not expired, the invocation of Section 74 is not warranted. In this regard, reliance is placed on **Godavari Khore Cane Transport Company Pvt. Ltd. v. Commissioner** 2012 (26) S.T.R. 310 (Tribunal) wherein it was held that *"It thus appears, the allegation of suppression of facts was raised in the show-cause notice for the sole purpose of invoking the proviso to Section 73(1) of the Finance Act, 1994 and not for any other purpose.* ***As a matter of fact, it was not necessary for the department to invoke the proviso to Section 73(1) ibid for demanding service tax from the assessee for the aforesaid period, which is within the normal period of limitation prescribed under Section 73(1). In this scenario, the penalty imposed by the Commissioner under Section 78 of the Finance Act, 1994 on the assessee on the ground of suppression of taxable value of the service cannot be sustained. We, therefore, set aside the penalty imposed under Section 78 of the Finance Act, 1994 on the Appellant in Appeal No. ST/68/2009."***

116. In this regard, Appellant submits that Section 74 can be invoked only when there is the short payment of tax by reason of fraud, or any willful misstatement or suppression of facts to evade tax. The relevant portion is extracted for ready reference

"74. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice."

117. Appellant submits that every transaction is properly recorded in the books and during the course of the audit Appellant has submitted all the relevant information asked for without any hesitation as and when required. Further, respecting the judicial proceedings Appellant has given a proper response during the audit. Appellant submits that no information is suppressed. The allegation of suppression of true facts is not correct.

In Re: Penalties and interest are not payable/imposable:

Imposition of interest is not valid:

118. Appellant submits that Appellant is of the vehement belief that the input availed by Appellant is not required to reverse and there is no short payment of GST, therefore, the question of interest and penalty does not arise. Further, it is a natural corollary that when the principal is not payable there can be no question of paying any interest and penalty as held by the Supreme Court in Prathiba Processors Vs UOI, 1996 (88) ELT 12 (SC).

119. Further, the finding of the impugned order towards imposing interest on the rent paid and hamali charges on unregistered person. In this regard, Appellant submits that the Appellant has already discharged the payment of Rs. 6,412/- vide DRC-03 . Hence, imposition of interest on the same is not sustainable in law. Therefore, the interest in this regard needs to be set aside.

120. Further, Appellant submits that the impugned order has stated that the Appellant 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.

121. Appellant submits that on careful perusal of the provisions of Section 50(1) envisages the payment of interest only in case of failure to pay tax to Government and for the period for which it remains unpaid. In the said section, there is no reference as to how to compute the interest payable. Furthermore, Section 50(2) though envisages the period from which the tax computation has to begin, it empowers the Central Government to prescribe the methodology of computation of interest. However, during the disputed period there is no such prescription in the Rules, thereby the interest computed in the impugned notice is not supported by any provisions of law since the time is not prescribed as permitted in the law and manner is not prescribed so far. Accordingly, the impugned order to that extent needs to be set aside.

122. Appellant submits that it is settled position of law that when the mechanism to measure fails, the levy also fails, as laid down by Hon'ble Supreme Court in the case of B.C. Srinivasa Setty 1981(2) SCC 460. Accordingly, since the mechanism to compute interest is not set out, the levy of interest also fails.

123. Without prejudice to above, Appellant further submits that the Section 50(3) of the CGST Act, 2017 cannot be made applicable for the recovery of the interest in the instant case as the said sub-section specifically included to recover the interest under section 42(10) and section 43(10) which were not in force yet. Therefore, it is clear that the sub-section (3) also fails to recover the interest in case of short payment of tax. Once the provision based on which the interest is confirmed is not correct then the impugned order fails and needs to be set aside.

124. Appellant submits that Sub-section (10) of Section 42 deals with the liability in case of matching and reversal of ITC and sub-section (10) of Section 43 deals with liability in case of matching, reversal and reclaim of reduction in output tax liability which were not yet enforced therefore the interest under Section 50(3) is not applicable for any instances. This shows that Section 50(3) is applicable only for specific case and is not applicable for non-payment of tax and for non-payment of GST.

125. Appellant submits that the impugned order has relied on Section 74 of the CGST Act, 2017 to demand the interest which is not correct. In this regard, Appellant submits that the Section 50 of the CGST Act, 2017 creates the interest liability similar to Section 9 of CGST Act, 2017 which creates the tax liability and Section 74 can be invoked only for recovery of such created liability.

126. Appellant also submits 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.

127. 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 inthe 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.;

Penalties under Section 73 are not imposable:

128. Appellant submits that the impugned order has demanded penalty of

- Rs. 2,71,655/- u/s 73(9) towards short payment of GST on comparison of tax liabilities declared in GSTR-1 and GSTR-3B,
- Rs. 10,000/- u/s 73 towards irregular availment of ITC on the credit notes received during the disputed period and
- Rs. 10,000/- u/s 73 towards the short payment under RCM

129. In this regard, Appellant submits that the penalty imposed is not sustainable and maintainable in law due to the fact that there is no short payment of tax and the differential amounts have been discharged through DRC-03 and has already brought to the notice of the department. Further, Penalty, as the word suggests, is punishment for an act of deliberate deception by the Appellant 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).

130. Appellant 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.

131. Appellant submits that from the above-referred decision of the Supreme Court, penalties cannot be imposed merely because the Appellant has availed excess ITC over and above GSTR-2A which was not accepted or was not acceptable to the revenue when the Appellant has acted on the bonafide belief that the ITC is not reversible. In the instant case also, Appellant 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 set aside.

132. Appellant 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.

133. In addition to above, Appellant 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."?

134. Appellant 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.

135. Appellant 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."

Appellant submits that from all the above submissions, it is clear that imposition of penalties is not warranted therefore the impugned order needs to be set aside.

Penalties under Section 74 are not imposable:

136. Without prejudice to the foregoing, Appellant submits that when the time limit for issuance of order under Section 73 is not expired, the invocation of Section 74 is not warranted. In this regard reliance is placed on Godavari Khore Cane Transport Company Pvt. Ltd. v. Commissioner 2012 (26) S.T.R. 310 (Tribunal) wherein it was held that 'It thus appears, the allegation of suppression of facts was raised in the show-cause notice for the sole purpose of invoking the proviso to Section 73(1) of the Finance Act, 1994 and not for any other purpose. As a matter of fact, it was not necessary for the department to invoke the proviso to Section 73(1) ibid for demanding service tax from the assessee for the aforesaid period, which is within the normal period of limitation prescribed under Section 73(1). In this scenario, the penalty imposed by the Commissioner under Section 78 of the Finance Act, 1994 on the assessee on the ground of suppression of taxable value of the service cannot be sustained. We, therefore, set aside the penalty imposed under Section 78 of the Finance Act, 1994 on the appellant in Appeal No. ST/68/2009."

137. Appellant submits that Section 74 can be invoked only when there is short or Non-payment by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax. The relevant portion is extracted for ready reference.

"74. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in

the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice."

138. In this regard, Appellant submits that while conducting the audit Appellant has submitted all the relevant information asked for without any hesitation as and when required. Appellant submits that no information is suppressed. The allegation of suppression is not correct.

139. Further, Appellant extracts the meaning of suppression explained in CGST Act, 2017

"Explanation 2.--For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."

140. Appellant further submits that suppression means not providing information which the person is legally required to state but is intentionally or deliberately not stated. Whereas in the instant case full facts of present SCN were well disclosed before authorities as and when requested by way of clear & specific letters & GST returns. Further, there is no wilful misstatement by Appellant in view of the fact that what is believed to be correct as backed by legal provisions were put forth before the authorities. That being a case, the allegation of impugned SCN that Appellant has misstated/suppressed the facts of the case is not valid and requires to be set aside.

141. In this regard, Appellant submits that to the best of their knowledge and belief they have correctly availed the input tax credit while filing the GSTR-3B returns. All the details of availing of ITC have been disclosed in the GSTR-3B returns which shows that the Appellant is of the bonafide belief that the ITC availed is eligible.

142. Appellant submits that all the entries are recorded in books of accounts and financial statements nothing is suppressed hence the issuance of order under Section 74 is not valid. Wishes to place reliance on LEDER FX Vs DCTO 2015-TIOL-2727-HC-MAD-CT; Jindal Vijayanagar Steel Ltd. v. Commissioner - 2005 (192) E.L.T. 415 (Tri-bang);

143. Further, the Appellant also submits that lapse would not have come to light but for the investigation of the department, stand-alone cannot be accepted as a ground for confirming suppression, Misstatement or mis-declaration of facts. More so because the very objective of conducting the audit was to check for the accuracy of credit availed. Therefore, any shortcomings noticed during verification, itself cannot be reasoned that the deficiency was due to mala fide intention on the part of the assessee. In this regard relied on LANDISGYR LTD Vs CCE 2013 (290) E.L.T. 447 (Tri. - Kolkata).

144. Appellant submits that GST being a new law, the imposition of heavy penalties during the initial years of implementation is not warranted. Further, Appellant submits that they are under bonafide belief that ITC was available, thus, penalties shall not be imposed. Further, the government has been extending the due dates & waiving the late fees for delayed filing etc., to encourage compliance.

145. Appellant submits that the GST is still under trial and error phase and the assessees are facing genuine difficulties and the same was also held by various courts by deciding in favour of assessee. Therefore, the imposition of the penalty during the initial trial and error phase is not warranted and this is a valid reason for setting aside the penalties. In this regard, reliance is placed on

a. Bhargava Motors Vs UOI 2019 (26) GSTL 164 (Del) wherein it was held that "The GST system is still in a 'trial and error phase' as far as its implementation is concerned. Ever since the date the GSTN became operational, this Court has been approached by dealers facing genuine difficulties in filing returns, claiming input tax credit through the GST portal. The Court's attention has been drawn to a decision of the Madurai Bench of the Madras High Court dated 10th September, 2018 in W.P. (MD) No. 18532/2018 (Tara Exports v. Union of India) [2019 (20) G.S.T.L. 321 (Mad.)] where after acknowledging the procedural difficulties in claiming input tax credit in the TRAN-1 form that Court directed the respondents "either to open the portal, so as to enable the petitioner to file the TRAN-1 electronically for claiming the transitional credit or accept the manually filed TRAN-1" and to allow the input credit claimed "after processing the same, if it is otherwise eligible in law
b. Bharti Airtel Ltd Vs. UOI 2020 (5) TMI 169 - DELHI HIGH COURT
c. The Tyre Plaza Vs UOI 2019 (30) GSTL 22 (Del)?
d. Kusum Enterprises Pvt Ltd Vs UOI 2019-TIOL-1509-HC-Del. GST

146. Appellant submits that it has never involved in misrepresentation of facts or suppression of facts and the same can be evidenced from the compliance made under Pre-GST regime. Therefore, the allegation of the impugned order needs to be dropped.

147. Appellant submits that the impugned order confirmed demand under Section 74 of the CGST Act, 2017 only on the ground that the Appellant has suppressed the details to the department. In this regard, it is submitted that order under Section 74 can be issued only when something positive other than mere inaction or failure on the part of manufacturer/service provider is proved - Conscious or deliberate withholding of information by manufacturer/service provider necessary to invoke suppression of facts and intention to evade payment of tax. In this regard, wishes to rely on CCE, Chemphar Drugs &Liniments 1989 (40) E.L.T 276 (S.C). Therefore, the finding of SCN is not legal and proper.

148. Appellant submits that the intention to evade payment of tax is not a mere failure to pay tax. It must be something more i.e., that Appellant must be aware that tax was leviable/credit was inadmissible and he must act deliberately to avoid such payment of tax. Evade means defeating the provision of the law of paying tax and it is made more stringent by the use of the word 'intent'. Where there was scope for doubt whether tax is payable at what rate, it is not 'intention to evade payment of tax'. Reliance is placed on Tamil Nadu Housing Board v. CCE, 1994 (74) ELT 9 (SC).

149. Appellant submits that 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. In this regard wishes to place 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)

150. Appellant 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. The 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 the 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, a Penalty cannot be imposed in the absence of deliberate defiance of law even if the statute provides for a penalty.

151. Further, the Appellant submits that impugned notice has proposed penalty of Rs.1,21,41,750/-, Rs. 19,82,815/- & Rs. 88,320/- towards tax been short paid under section 74(1) read with section 122(2)(b) of the IGST, CGST Act and TSGST Act, 2017 for willful misstatement or suppression of facts to evade tax is incorrect.

152. The relevant extract of section 122(2)(b) is reproduced hereunder for better appreciation:

> ***122 (2)*** *Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized,-*
>
> *(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.*

153. In this regard, it is submitted that the penalty u/s 122(2)(b) which is proposed by the department is not attracted to the instant case. To cover under this section, the Appellant should fulfil the following conditions:

(i) The person must be registered with the GST Portal.

(ii) The person must supply goods or services or both.

(iii) The tax is not paid or short paid or erroneously refunded or ITC has been wrongly availed/utilised.

(iv) Intention of fraud, wilful misstatement or suppression of facts to evade tax should be there.

154. In this regard, it is submitted that all the details were furnished at the time of audit conducted by the department. No information has been concealed by the Appellant. Moreover, all the disclosures has been put forth before the department already and the amounts where information was called for has been paid vide DRC-03's. Thus, the imposition of penalty is bad in law and is requested to be dropped.

155. Appellant submits that suppression or concealing of information should be in conjunction with an intent to evade the payment of tax is a requirement for imposing the penalty. It is a settled proposition of law that when the assessee acts with a bonafide belief especially when there is doubt as to statute also the law being new and not yet understood by the common public, there cannot be an intention of evasion and penalty cannot be levied. In this regard, Appellant wish to rely upon the following decisions of the Supreme Court.

i. Commissioner of C.Ex., Aurangabad Vs. Pendhakar Constructions 2011(23) S.T.R. 75(Tri.-Mum)

ii. Hindustan Steel Ltd. V. State of Orissa – 1978 (2) ELT (J159) (SC)

iii. Akbar BadruddinJaiwani V. Collector – 1990 (47) ELT 161(SC)

iv. Tamil Nadu Housing Board V Collector – 1990 (74) ELT 9 (SC)

156. Appellant submits that mere non-payment/short payment of tax per se does not mean that Appellant has wilfully contravened the provisions with the intent to evade payment of tax. In this regard, reliance is placed on Uniworth Textiles Ltd. v. Commissioner 2013 (288) E.L.T. 161 (S.C.).

157. Appellant submits that that notice under Section 74 can be issued only when something positive other than mere inaction or failure on the part of manufacturer/service provider is proved - Conscious or deliberate withholding of information by manufacturer/service provider necessary to invoke suppression of facts and intention to evade payment of tax. In this regard wishes to rely on CCE, Chemphar Drugs &Liniments 1989 (40) E.L.T 276 (S.C).

158. Appellant submits that the intention to evade payment of tax is not a mere failure to pay tax. It must be something more i.e., that Appellant must be aware that tax was leviable/credit was inadmissible and he must act deliberately to avoid such payment of tax. Evade means defeating the provision of the law of paying tax and it is made more stringent by the use of word 'intent'. Where there was scope for doubt whether tax is payable or not, it is not 'intention to evade payment of tax'. reliance is placed on Tamil Nadu Housing Board v. CCE, 1994 (74) ELT 9 (SC).

159. Therefore, on this ground alone the penalty proceedings under the provisions of Section 122 (2) (b) of the CGST Act, 2017 needs to be set aside.

160. Further, the Appellant submits that impugned notice has proposed penalty of Rs.27,16,554/-, Rs. 38,58,144/-, Rs. 1,69,160/- & Rs. 6,412/- towards non-payment of GST under section 73(1) read with section 122(2)(a) of the IGST, CGST Act and TSGST Act, 2017.

161. The relevant extract of section 122(2)(a) is reproduced hereunder for better appreciation:

> ***122 (2)*** *Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized,-*
>
> *(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten percent of the tax due from such person, whichever is higher.*

162. In this regard, it is submitted that all the details were furnished at the time of audit conducted by the department. No information has been concealed by the Appellant. Moreover, all the disclosures has been put forth before the department already and the amounts where information was called for has been paid vide DRC-03's. Thus, the imposition of penalty under section 122(2)(a) is bad in law and is requested to be set aside.

163. Notice submits that from all the above submissions, it is clear that imposition of penalties is not warranted therefore the impugned order needs to be set aside.

164. Appellant craves leave to alter, add to and/or amend the above reply.

165. Appellant would also like to be heard in personal, before any order being passed in this regard.

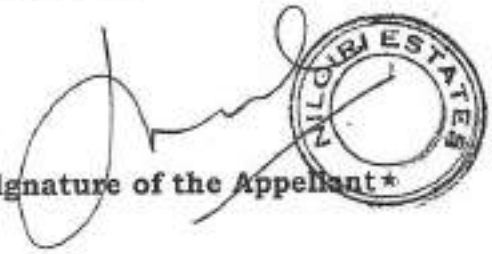
For M/s. Nilgiri Estates

Authorized Signatory

PRAYER

Therefore, it is prayed that

a. To set aside the impugned order to the extent aggrieved;
b. To set aside the impugned order as it has violated the principles of natural justice;
c. To set aside the impugned order as the same is not uploaded online;
d. To set aside the impugned order as separate SCN had to issued for CGST & SGST;
e. To set aside the demand imposed on the land value;
f. To set aside the Impugned order has it has violated the principle of Judicial Discipline;
g. To set aside the demand as there is no short payment of tax due to difference in tax rate
h. To set aside the demand as there is no Short payment of GST on comparison of Tax Liability declared in GSTR-1 and GSTR-3B
i. To set aside the demand as there is no excess availment of ITC in GSTR-3B on comparison with GSTR-2A
j. To set aside the demand as there is no irregular availment of Input Tax Credit (Section 17(5)):
k. To set aside the demand as there is no proper verification of documents was done by the Impugned order or the show cause notice therefore, violation of principles of natural justice
l. To set aside the demand under Section 73 and Section 74 cannot be invoked in the same order;
m. To set aside the demand under Section 74 is not applicable;
n. To hold that penalties and interest are not payable/imposable;
o. Any other consequential relief be granted.



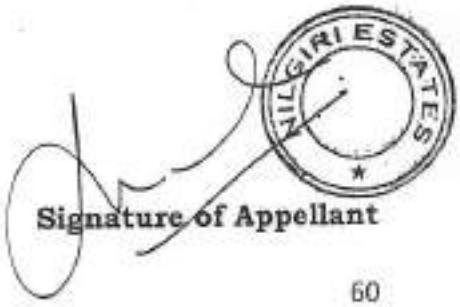
Signature of the Appellant

VERIFICATION

I, SOHAM MODI, PARTNER hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Place: Hyderabad

Date: 16.01.2024



Signature of Appellant

BEFORE THE COMMISSIONER OF CUSTOMS & INDIRECT TAXES HYDERABAD (APPEALS-II), 07TH FLOOR, GST BHAVAN, L.B. STADIUM ROAD, BASHEER BAGH, HYDERABAD – 500 004

Sub: Proceedings under Order-In-Original No. 28/2023-24-SEC-ADJN-ADC(GST) dated 12.10.2023 issued to M/s. Nilgiri Estates

I, SOHAM MOD. PARTNER of M/s. Nilgiri Estates, hereby authorizes and appoint H N A & Co. 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/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 16 January 2024 at Hyderabad

NILGIRI ESTATES

Signature

I the undersigned partner of M/s H N A & Co. 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 CGST 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: 16.01.2024

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

For H N A & Co. LLP
Chartered Accountants

HNA & CO LLP Hyderabad Chartered Accountants

Lakshman Kumar K
Partner (M.No. 241726)

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.

Sl No.	Name	Qualification	Mem. /Roll No.	Signature
1	Sudhir V S	CA	219109	
2	Venkata Prasad P	CA, LLB	236558	
3	Srimannarayana S	CA	261612	
4	Revanth Krishna K	CA	262586	
5	Akash Heda	CA	269711	
6	Mohammad Shabaz	BA LLB	TS/2223/2016	

HNA & CO LLP Hyderabad Chartered Accountants

5रु Rs.5 भारत INDIA पाँच रुपये FIVE RUPEES

FORM GST DRC - 03

[See rule 142(2)&142(3)]

Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement

ARN :AD3601240106 31Q

Date :16/01/2024

1.	GSTIN						36AAHFN0766F1ZA					
2.	Name						NILGIRI ESTATES					
3.	Cause of Payment						Others					
4.	Section under which voluntary payment is made						Others					
5.	Details of show cause notice, if payment is made within 30 days of its issue						Reference No:NA		Date Of issue:NA			
6.	Financial Year						2019-2020					
7.	Details of payment made including interest and penalty, if applicable (Amount in Rs.)											
Sr. No.	Tax Period	Act	Place of supply	Tax/Cess	Interest	Penalty,if applicable	Fee	Others	Total	Ledger utilised (Cash/credit)	Debit entry no.	Date of debit entry
1.	APR 2019-MAR 2020	CGST	Telangana	1,020,491.00	0.00	0.00	0.00	0.00	1,020,491.00	Credit	DI360124002 7485	16/01/2024
2.	APR 2019-MAR 2020	SGST	Telangana	1,020,491.00	0.00	0.00	0.00	0.00	1,020,491.00	Credit	DI360124002 7485	16/01/2024
3.	APR 2019-MAR 2020	IGST	Gujarat	37,777.00	0.00	0.00	0.00	0.00	37,777.00	Credit	DI360124002 7485	16/01/2024

8. Reasons, if any -

10% Pre-deposit payment against OIO No. 28/2023-24-SEC-ADJN-ADC(GST) dated 12.10.2023 for the disputed period FY 2017-18 to 2019-20.

NILGIRI ESTATES

9. 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 Authorized Signatory
Name: SOHAM MODI
Designation: Managing Partner
Date: 16/01/2024