1 NATION TAX MARKET

केन्द्रीयकरसहायक आयुक्त कार्यालय,सिकंदराबादमालएवमसेवाकरमण्डल, सिकंदराबाद।

OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL TAX, SECUNDERABAD GST DIVISION, SECUNDERABAD

SALIKE SENATE, D.No: 2-4-416 & 417, RAMGOPALPET,M.G. ROAD, SECUNDERABAD- 500 003

Phone 7901243130 **E-mail- cgst.secdiv@gov.in**

MODI PROPERTIES PVT. LTD. SEC'BAD INWARD No. 23 Date 22/4/24

C.No.GEXCOM/ADJN/GST/2889/2023-CGST-DIV-SNBD-COMMRTE-SECUNDERABAD दिनांक/Date: 19.04.2024

DIN: 20240456YO000000BE0F

ORDER-IN-ORIGINAL No. 24/2024-25 (GST-Adjn)
(Passed by Shri R.Satyanarayana, I.R.S., Assistant Commissioner of Central Tax, Secunderabad GST Division)

PREAMBLE

1. This copy is granted free of charge for the private use of persons to whom it is issued.

इसे जिस व्यक्तिको जारी किया गया है यह प्रतिनिजी प्रयोग केलिए बिना मूल्यके दीजातीहै.

2. Under Section 107(1) of the Central Goods and Service Act, 2017 any person aggrieved by this order can prefer appeal within three months from the date of communication of such order to the Joint Commissioner (Appeals), Hqrs Office, 7th floor, L.B. Stadium Road, Basheerbagh, Hyderabad-4.

कोईभी व्यक्ति जो केंद्रीयवस्तु एवम सेवा करअधिनियम, 2017 की धारा107 (1) केतहत, इस आदेश से दुखी होताहोतो वह ऐसे आदेश के विरूद्ध संयुक्त आयुक्त (अपील), मुख्यालय कार्यालय, सातवीं मंजिल, जी.एस.टी भवन, एल .बी स्टेडियम रोड, बशीरबाग, हैदराबाद -500 004 के समक्ष इस आदेश के सूचित होनेके तीन माह के अंदर अपील दर्ज कर सकताहै.

3. Appeals shall be filed in **FORM GST APL-01** prescribed under Rule 108 of Central Goods and Service Tax Rules, 2017.

केंद्रीयवस्तु एवम सेवा कर नियम, 2017 केनियम108 केतहतनिर्धारितफॉर्मGST APL-01 मेंअपीलदायरकीजाएगी।

4. The grounds of appeal and form of verification as contained in Form GST APL 01 shall be signed in the manner specified in rule 26 of Central Goods and Service Tax Rules, 2017

अपीलकाआधारऔरफॉर्मकिसत्यापनकेरूपमेंफॉर्मजीएसटीएपीएल01 मेंनिहितहै, केंद्रीयसामानऔरसेवाकर नियम, 2017 केनियम26 मेंनिर्दिष्टतरीकेसेहस्ताक्षरकिएजाएंगे।

5. A certified copy of the decision or order appealed against shall be submitted within seven days of filing appeal under sub rule 1 of 108 of Central Goods and Service Tax Rules, 2017.
केंद्रीयवस्तु एवम सेवाकर नियम, 2017 के108 केउपनियम1 केतहतअपीलभरनेकेसातदिनोंकेभीतरआदेशकीप्रमाणितप्रतिप्रस्तुतकीजाएगी।

6. As per Section 107(6) of CGST Act, 2017, no appeal shall be filed under Section 107(1) of CGST Act, 2017 unless the appellant has paid—

3CNO 269/24-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.

केंद्रीयवस्तु एवम सेवाकरअधिनियम, 2017कीधारा 107 (6) केअनुसार, अपीलकर्तानिकेंद्रीयवस्तु एवम सेवाकरअधिनियम, 2017कीधारा 107 (1) केतहतकोईअपीलदायरनहींकीजाएगी, जबतककिअपीलकर्तानिभुगताननहींकियाहो-

(ए) पूर्णरूपसे, लगाएगएआदेशसेउत्पन्नकर, ब्याज, जुर्माना, शुल्कऔरजुर्मानाकीराशिकाऐसाहिस्सा, जैसाकिउसकेद्वारास्वीकारकियागयाहै; तथा

(बी) दसप्रतिशतकेबराबरराशि।उक्तआदेशसेउत्पन्नविवादमेंकरकीशेषराशि, जिसकेसंबंधमेंअपीलदायरकीगईहै।

Sub: -GST-On account of discrepancies observed during verification of Returns filed by **M/s. SILVER OAK VILLAS LLP** (GSTIN: **36ADBFS3288A2Z7**) for the FY 2018-19- Issue of Show Cause Notice under Section 73 of the CGST Act, 2017 – Regarding.

****

M/s. SILVER OAK VILLAS LLP (here-in-after referred to as "Taxpayer"), situated at 2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, M.G ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003, are engaged in WORKS CONTRACT SERVICES falling under the HSN 00440334 & 00440410. The taxpayer is registered with the Central GST department with GSTIN: **36ADBFS3288A2Z7** for the purpose of payment of GST and falls under the jurisdiction of Ramgopalpet-III CGST Range, Secunderabad Division, Secunderabad Commissionerate.

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

2.1. ISSUE -1: Excess claim of ITC:

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

2.1.1. Under Section16(2)(c) of CGST Act, 2017, every registered person shall be entitled to take credit of ITC on supply of goods or services to him subject to the condition that the tax charged in respect of such supply has been actually paid to the Government either in cash or through utilization of ITC admissible in respect of such supply.

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

Scrutiny of ITC availed:

	Description	SGST	CGST	Total
1	2	3	4	5
1	ITC in the year as per Table 8A of GSTR-09	5582555.00	5582555.00	11165110.00
2	ITC from ISD table 4A (4)	0.00	0.00	0.00

3	ITC from imports table 4A (1) +4A (2)	0.00	0.00	0.00
4	Inward Supplies liability to reverse charge 4A (3) (other than 4A(1) & 4A(2))	0.00	0.00	0.00
5	ITC brought forward from previous FY to current FY, Table 8C of previous FY GSTR-09	0.00	0.00	0.00
6	ITC carried forward from present FY to subsequent FY, Table 8C of GSTR-09	0.00	0.00	0.00
7	Reversals in Table 4B of GSTR-3B	2627940.00	2627940.00	5255880.00
8	ITC Available for use in the same year (S.No 1+2+3+4+5-6-7)	2954615.00	2954615.00	5909230.00
9	ITC used in same year as per 4C of GSTR-3B	7875660.00	7875660.00	15751320.00
10	Net excess used (S.No 9-8)	4921045.00	4921045.00	9842090.00

3. ISSUE-2: Under declaration of Ineligible ITC:

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

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

S.No	Commodity/Service	HSN/SAC code	SGST	CGST	Total
1	2	3	4	5	6
1	Motor Vehicles	8702; 8703; 8711	83260.00	83260.00	166520.00

S.No	Issue	Table no. inGSTR-09	SGST	CGST	Total
1	2	3	4	5	6
A	Total ineligible ITC u/s 17(5)		83260.00	83260.00	166520.00
B	Ineligible ITC declared	7E or {Sum of 4D(1) of GSTR 3B of all months inFY} whichever is higher	0.00	0.00	0.00
C	Difference/excess ITC claimed	"If (SL.No A – Sl.NO B >0) then Lower of {SL.No A –Sl.NO B} or {(Sum of 4C of GSTR 3B of all monthsin current FY) – (13-12 ofPrevious FY GSTR-09) + (13-12 of current FY GSTR-09)}"	83260.00	83260.00	166520.00

4. From the above, the taxpayer is required to reverse the excess ITC claimed under Section 73 of the CGST Act, 2017 along with applicable interest under section 50 of the CGST Act, 2017 and penalty under section 73 of the CGST Act,2017 read with Section 122(2)(a) of the CGST Act, 2017.

TOTAL TAX PAYABLE SUMMARY				
Sl. No.	Issue	SGST	CGST	Total
1	2	3	4	5
1	Total Tax due	5004305.00	5004305.00	10008610.00
2	Interest	In terms of Section 50 of the CGST Act, 2017		
3	Penalty	In terms of Section 73 of the CGST Act, 2017		

5. The DRC 01A issued to the taxpayer requesting to pay tax along with interest and applicable penalty. However the taxpayer neither paid dues nor submitted any reply.

6. In view of the above, **M/s. SILVER OAK VILLAS LLP** (here-in-after referred to as "Taxpayer"), situated at 2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, M.G ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003, has been issued a Show Cause Notice answerable to the Assistant Commissioner of Central Tax (Adjudicating Authority), Secunderabad GST Division, Secunderabad GST Commissionerate, Salike Senate, D.No.2-4-416&417, Ramgopalpet, MG Road, Secunderbad – 500003 within thirty days from the date of issue of this notice as to why: -

(i) an amount of **Rs.1,00,08,610/- (CGST: Rs.50,04,305/- & SGST: Rs.50,04,305/- (Rupees One Crore Eight Thousand Six Hundred and Ten only)**, as discussed supra in Para 2.1 should not be demanded from them under section 73(1) of the CGST Act, 2017/TSGST Act, 2017.

(ii) interest at the applicable rate should not be demanded from them on tax demanded at (i) above under section 50 of CGST Act, 2017/TSGST Act, 2017.

(iii) Penalty should not be imposed on them demands at (i) above under Section 73 of CGST Act, 2017 read with Section 122 of CGST Act, 2017/TSGST Act, 2017.

7.Reply to Show Cause Notice

The TP has submitted their reply to the SCN on 29.01.2024. The tax payer in his reply stated that in respect of

7.1 ISSUE-1: <u>The excess input tax credit (ITC) claimed on account of non-reconciliation of information:</u>

The taxpayer submitted that the demand was raised in the previous SCN in any case, such alleged differences between ITC in GSTR3B Vs GSTR2A is factually wrong as impugned SCN was based on the old GSTR2A as on the date of filing of annual returns. Once, the updated GSTR2A was considered, the actual difference was quite less than the amount arrived in the SCN. Further, submitted that ITC cannot be denied merely due non-reflection of invoices in GSTR2A as all the conditions specified under Section 16 have been satisfied. The taxpayer submitted that GSTR2A cannot be taken as a basis to deny the ITC in accordance with Section 41, Section 42 of CGST Act, 2017, Rule 69 of CGST Rules, 2017. Finally, requested to drop further proceedings initiated in the show cause notice.

7.2. ISSUE-2: <u>Under declaration of In-eligible ITC</u>

The tax payer submitted that they have not availed ITC of Rs. 1,66,520/- on motor vehicles as alleged in the show cause notice and requested to the drop the proceedings initiated in the show cause notice.

<u>8. Personal Hearing:</u>

8.1 A Personal Hearing was fixed on **28.02.2024** and intimated to the tax payer. Shri Srimannarayana, authorized representative of the company has attended the PH reiterated the submissions made in their reply dated 29.01.2024 and requested to drop further proceedings.

<u>9.Discussions & Findings :</u>

I have carefully gone through the records of the case, Show Cause Notice, tax payer's reply dated 19.02.2024, submissions made during the course of personal hearing and other material available on record. I now propose to adjudicate the case under the provisions of Section 73 of CGST Act, 2017. There are two issues before me to decide. I shall take up the aforesaid issues one by one for discussion.

10.ISSUE-1: **<u>The excess input tax credit (ITC) claimed on account of non-reconciliation of information.</u>**

10.1. In terms of Section 16(2)(c) of the CGST Act 2017, one of the conditions for availing ITC by the recipient customer was that the tax charged in respect of the supply has been paid to the Government by the supplier. However, the tax payer has not produced any evidence including GSTR-2A in support of payment of tax (CGST and SGST) to the Government by the supplier to the extent of the said excess credit of **Rs. 98,42,090/-(CGST: Rs.49,21,045/- and SGST: Rs.49,21,045/-)** as envisaged in Rule 16(2)(c) of CGST Act, 2017 either by way of getting the details of outward supplies uploaded by their suppliers in their GSTR-1 Returns which in turn would appear in the taxpayer's auto-populated 2A statement for the relevant period or by furnishing irrefutable evidence to the effect that the supplier had in fact paid the applicable taxes to the Government on the said input supplies by furnishing the suppliers' GSTR-3B Returns for the relevant period. Hence the tax payer is not eligible for the above input tax credit as the same was availed in contravention of provisions of the CGST Act 2017. Therefore, the taxpayer had contravened Section 16(2)(c) of CGST Act 2017 read with Section 20 of IGST Act, 2017, inasmuch as the taxpayer did not produce any evidence including GSTR-2A in support of payment of GST to the Government by the supplier to the extent of the excess credit availed by them. They have also contravened Section 50(3) of the CGST Act 2017, inasmuch as they did not pay interest on the excess input tax credit availed. Further, as the taxpayer had irregularly availed said excess ITC in contravention of the provisions of 16 (2)(c) of CGST Act, 2017. Therefore, the said credit is recoverable under Section 73(1) along with interest under Section 50(3) and is also liable for penalty under Section 73 (1) read with Section 122(2)(a) of CGST Act, 2017 .

10.2. In the instant case, the tax payer have not produced any evidence with regard to reversal of irregular ITC therefore, it is construed that the tax payer availed the said ITC irregularly and liable for recovery.

11. ISSUE-2: Under declaration of Ineligible ITC:

Section 17. Apportionment of credit and blocked credits.-

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

[2][(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:-

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used-

(i) for making the following taxable supplies, namely:-

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided *that the input tax credit in respect of such services shall be available-*

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged-

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;]

(b) [3][the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

***Provided** that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;*

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

***Provided** that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.]*

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

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

***Explanation**.-For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;*

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

[5][(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013;]

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation.- *For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes-*

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

11.1. In the instant case, the tax payer registered with the Department as a service provider i.e Construction of Residential Complex and Works Contract Services. In view of the said situation, the ITC availed on the said goods as mentioned in the Table-I squarely falls under the ambit of Section 17(5) of CGST Act, 2017. The tax payer submitted that they have not availed ITC on motor vehicles. But the tax payer have not produced any concrete evidence to that effect. On verification it is noticed that the tax payer availed ITC on motor vehicles which is evident from the records.

11.2. In view of the above, the tax payer contravened Section 17 of CGST Act, 2017 and the said credit of Rs. **1,66,520/- (CGST: Rs. 83,260/- SGST: Rs. 83,260/-)** is recoverable under Section 73 of CGST Act, 2017 along with interest under Section 50 of CGST Act, 2017 and penalty under Section 73 of CGST Act, 2017.

12. Therefore, the allegation made in the Show Cause Notice under **Issue-I**, **Issue-II,** that the taxpayer has contravened the provisions of CGST Act is acceptable on the above terms discussed supra. Thus, the contravention with an intent to evade payment of tax is proved beyond doubt and provisions of Section 73 of the CGST Act, 2017 read with the corresponding TGGST Act, 2017 have rightly been applied in the instant case. It can be seen that when the demand for the tax under Section 73 is confirmed, the provisions of interest under Section 50 and penalty under Section 73 of the CGST Act, 2017 shall follow automatically and accordingly I hold that interest and penalty is payable on the tax amount.

13. Therefore, it is proposed to confirm the proceedings initiated in the Show Cause Notice.

14. Further, Section 6 of the Telangana State Goods & Services tax Act, 2017 authorizes the officers appointed under the Central Goods and Services Tax Act as proper officers for the purposes of the said Act, subject to such conditions as the Government shall, on the recommendations of the Council, by Notification, specify. Accordingly, the demand of levy of SGST is authorized under the provisions of Section 6 of the TGST Act, 2017.

15. In view of the foregoing discussions and findings, in terms of provisions of Section 73 of CGST Act 2017, having regard to the facts and circumstances of the case, I pass the following order:

ORDER

(i) I confirm the demand of **Rs.98,42,090/- (CGST: Rs.49,21,045/- & SGST: Rs. 49,21,045/- /- (Rupees Ninety Eight Lakh Forty Two Thousand and Ninety only)**, as discussed supra under Section 73(9) of the CGST Act, 2017 and similar provisions as laid in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.

(ii) I confirm the demand of **Rs.1,66,520/- (CGST: Rs.83,260/- & SGST: Rs.83,260/- (Rupees One Lakh Sixty Six Thousand Five Hundred and Twenty only)**, as discussed supra under Section 73(9) of the CGST Act, 2017 and similar provisions as laid in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.

(iii) I confirm the demand of interest at the applicable rate from them on tax demanded at (i) & (ii) above under Section 50 of CGST Act, 2017 read with Section 20 of IGST Act and similar provisions under TGST Act, 2017.

(iv) I confirm the demand penalty from them on the demands at (i) & (ii) above under Section 73(9) of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and Section 20 of IGST Act, 2017 and similar provisions under TGST Act, 2017

आर. सत्यनारायण
19/04/2024

(आर.सत्यनारायण)/(R.SATYANARAYANA)
सहायकआयुक्त/Assistant Commissioner
सिकंदराबाद मण्डल/ Secunderabad GST Division

To,

M/s. SILVER OAK VILLAS LLP
2ND FLOOR, 5-4-187/3 AND 4,
SOHAM MANSION, M.G ROAD,
SECUNDERABAD, Rangareddy, Telangana, 500003,

Copy submitted to the Commissioner of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, Opp. L.B.Stadium, Hyderabad (Attention: Superintendent, (Review))

Copy to
The Superintendent of GST, Ramgopalpet-III Range, Secunderabad GST Division – for information.

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Secunderabad GST Division
सिकन्दराबाद जी एस टी आयुक्तालय
Secunderabad GST Commissionerate
"सलीक सीनेट"/# 2-4-416 & 417
"SALIKE SENATE" # 2-4-416 & 417
रामगोपालपेट, एम.जी. रोड
Ramgopalpet, M.G. Road
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PIN- 500003

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