



**Hiregange
& Associates LLP**
Chartered Accountants

Date: 28.02.2023

To

**The Joint/Additional Commissioner of Central Tax,
Secunderabad GST Commissionerate,
7th Floor, GST Bhavan,
L.B Stadium Road,
Bashierbagh, Hyderabad,
Telangana - 500004.**

Dear Sir,

Sub: Filing of Reply to SCN in Form GST DRC - 06.

Ref: SCN vide Ref No. C.No. V/01/CST/81/2020-GR.12/CIR-I dated 12.01.2022
pertaining to M/s. Silver Oak Villas LLP.

1. We have been authorized by M/s. Silver Oak Villas LLP to submit a reply to the above referred SCN vide Ref No. C.No. V/01/GST/81/2020-GR.12/CIR-I dated 12.01.2022 and represent before your good office and to do necessary correspondence in the above referred matter. A copy of authorization is attached to the appeal.
2. In this regard, we are herewith submitting the SCN reply along with authorization letter and other annexure referred in the reply. We request your good office to kindly acknowledge the receipt of the reply, admit and post the hearing at the earliest.

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

Thanking You,

Yours faithfully,

**For M/s. Hiregange & Associates LLP
Chartered Accountants**

**CA Venkat Prasad P
Partner**



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FORM GST DRC - 06

[See rule 142(4)]

Reply to the Show Cause Notice

1.GSTIN	36ADBFS3288A2Z7	
2.Name	Silver Oak Villas LLP	
3.Details of Show Cause Notice	Ref. No. C.No.V/01/GST/81/2020-GR.12/CIR-I	Date of issue: 12.01.2022
4.Financial Year	August 2017 to March 2019	
5.Reply		
Given as Annexure A		
6.Documents uploaded		
7.Option for personal hearing	Yes- Required	☐ No

8.Verification –

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorised Signatory




ANNEXURE A:

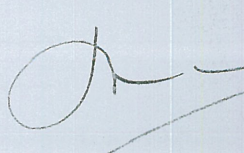
FACTS OF THE CASE:

- A. M/s. Silver Oak Villas LLP (hereinafter referred as "Noticee") located at 2nd Floor, U-22, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad, Hyderabad, Telangana – 500003 is inter alia engaged in the provision of taxable services viz. Works Contract services, construction services in respect of residential villas and are registered with Goods and Services Tax department vide GSTIN No: 36ADBFS3288A2Z7.
- B. Noticee is availing Input Tax Credit (ITC) of taxes paid on inputs and input services and discharging taxes on output liability on timely basis by filing the monthly returns. Noticee has also filed the GSTR-09 for the period 2017-18 (July 2017 to March 2018) and 2018-19.
- C. For the period July 2017 to March 2019, the officers of Circle-I Audit-II Commissionerate has conducted the GST audit and subsequently issued a letter dated 01.03.2021 pointing out certain discrepancies. In response to the said letter, the Noticee has submitted a detailed reply vide letter dated 21.03.2021. (Copy of letter dated 01.03.2021 & 21.03.2021 is enclosed as annexure V & IV).
- D. Subsequently, in continuation of the letter dated 01.03.2021, the department has issued one more letter dated 09.04.2021 asking for further clarification, and subsequently without considering the submissions made the proper officer have issued Final Audit Report vide No. 707/2020-21-GST dated 11.06.2021 (Copy of Final Audit Report is enclosed as Annexure III).
- i. Short payment of GST during the period 2017-18 and 2018-19 (Rs. 22,11,128/-)
 - ii. Non-payment of GST under RCM on Brokerage/Commission paid to unregistered persons (Rs. 2,22,792/-)
 - iii. Interest for Rs. 911/- on delayed filing of GSTR-3B returns for the month August 2017
 - iv. Short payment of GST in F.Y. 2017-18 and 2018-19
 - v. Irregular credit availed and reversed
 - vi. Irregular credit taken in the month of September, 2018
- E. In response to the above final audit report, Noticee has filed the detailed reply along with appropriate annexures stating the reasons as to why there is no short payment of GST on the part of the Noticee (Copy of reply is enclosed as Annexure II).



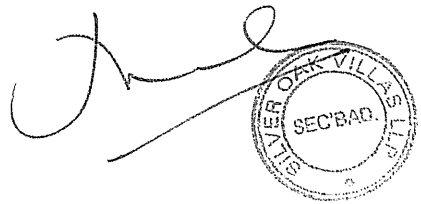
F. Subsequently, Noticee is in receipt of the present Show Cause Notice vide Ref No. C.No.V/01/GST/81/2020-GR.12/CIR-I dated 12.01.2022 to show cause as to why (Copy of SCN is enclosed as Annexure I):

- i. An amount of Rs.22,11,128/- (Rupees Twenty-Two Lakhs Eleven Thousand One Hundred and Twenty Eight only) (CGST: Rs.2,44,343/- + SGST: Rs.2,44,342/- totaling Rs.4,88,685/- for the year 2017-18 and CGST Rs. 8,61,221 SGST Rs. 8,61,222/- Rs.17,22,443/- for the year 2018-19) towards GST short paid as explained in para 1 supra should not be demanded from the taxpayer under Section 74 (1) of the CGST Act, 2017.
- ii. An amount of Rs.2,22,792/- (Rupees Two Lakhs Twenty-Two Thousand Seven Hundred and Ninety-Two only) (CGST: Rs.1,11,396/- (+) SGST: Rs.1,11,396/- towards GST short paid under RCM during the F.Y. 2017-18 as explained in para 2 supra should not be demanded under Section 74 (1) of the CGST Act, 2017
- iii. An amount of Rs.911/- (Rupees Nine Hundred and Eleven Only) towards Interest on delayed payment of GST as explained at para 3 supra should not be demanded in terms of Section 50 of the CGST Act, 2017.
- iv. An amount of Rs.2,13,74,199/- (Rupees Two Crore Thirteen Lakhs Seventy-Four Thousand One Hundred and Ninety-Nine Only) (CGST: Rs. 1,06,87,100/- (+) SGST: Rs. 1,06,87,100/-) towards GST short paid during the F.Y. 2017-18 and F.Y. 2018-19 as explained at para 4 supra should not be demanded from the taxpayer in terms of Section 74 (1) of the CGST Act, 2017.
- v. An amount of Rs. 68,600/- (Rupees Sixty-Eight Thousand and Six Hundred Only) towards the interest payable on irregularly availed ITC of Rs.45,73,392/- as explained at para 5 supra should not be demanded from them under Section 50 of the CGST Act, 2017.
- vi. An amount of Rs. 18,73,254/-(CGST: Rs.9,36,627/- (+) SGST: Rs.9,36,627/-) as explained at para 6 supra, being the irregular ITC availed during the FY 2018-19 should not be demanded in terms of Section 74 (1) of the CGST Act, 2017.
- vii. Interest as applicable terms of Section 50 of the CGST Act, 2017 should not be demanded on the tax amounts proposed to demand at Sl.No.(i) (ii), (iv) and (vi) above.




- viii. Penalty equal to amount demanded at Sl. No. (i) (ii), (iv) and (vi) above should not be imposed on the taxpayer in terms of Section 74 (1) of the CGST Act, 2017; However, the taxpayer has the option to pay the reduced penalty of 25% in terms of Section 74 (8) of the CGST Act, 2017 subject to the condition that if the said tax along with interest payable under section 50 within thirty days of issue of this notice;
- ix. Penalty as applicable under Section 125 (5) of the CGST Act. 2017 should not be imposed on them on the proposed demands at Sl. No (iii) and (v) above.

G. In response to the above, Noticee herein makes the below submissions which are alternative pleas without prejudice to one another.



A handwritten signature in black ink is written over a circular official stamp. The stamp contains the text "SEALER OAKVILLE ONTARIO" around the perimeter and "SEC'Y" in the center.

Submissions

1. Noticee submits that they deny all the allegations made in Show Cause Notice (SCN) as they are not factually/legally correct.
2. Noticee submits that the provisions (including Rules, Notifications & Circulars issued thereunder) of both the CGST Act, 2017 and the Telangana GST Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act, 2017 would also mean a reference to the same provision under the TGST Act, 2017. Similarly, the provisions of CGST Act, 2017 are adopted by IGST Act, 2017 thereby the reference to CGST provisions be considered for IGST purpose also, wherever arises.

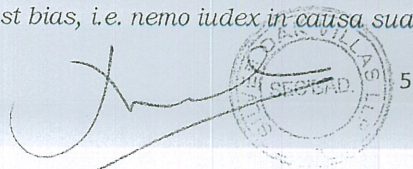
In Re: Impugned notice is not valid

Notice passed is in gross violation of the natural justice principles

3. Notice submits that the impugned Notice has been issued without considering the submissions made by the Noticee in the replies to the letters which shows that the same is in gross violation of the principle of natural justice. In this regard, Noticee submits that the Hon'ble Supreme Court in the 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 virtue and, therefore, a part of natural justice. It is also called the '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;

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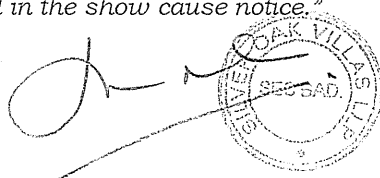
and (ii) opportunity of being heard to the concerned party, i.e. audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is duty to give reasons in support of decision, namely, passing of a 'reasoned order'

Notice issued on assumptions and presumptions

4. Noticee submits that impugned SCN was issued with prejudged and premeditated conclusions on various issues raised in the notice. That being a case, issuance of SCN in that fashion is bad in law and requires to be dropped. In this regard, reliance is placed on **Oryx Fisheries Pvt. Ltd. v. Union of India — 2011 (266) E.L.T. 422 (S.C.)** wherein it was held that *"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."*
5. Noticee submits that the subject SCN is issued based on mere assumption and unwarranted inference, interpretation of the law without considering the intention of the law, documents on record, the scope of activities undertaken, and the nature of activity involved, the incorrect basis of computation, creating its own assumptions, presumptions. Further, they have arrived at the conclusion without actual examination of facts, provisions of the CGST Act, 2017. In this regard, Noticee relies on the decision of the Hon'ble Supreme Court in case **Oudh Sugar Mills Limited v. UOI, 1978 (2) ELT 172 (SC)**

Notice is vague and lack of details

6. Noticee submits that the impugned notice has not given clear reasons as to how the Noticee has availed the irregular credit and why there is short payment of tax, therefore, the same is lack of details and hence, becomes invalid. In this regard, reliance is placed on
 - a. CCE v. Brindavan Beverages (2007) 213 ELT 487(SC) the Hon'ble Supreme Court 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 noticee was not given proper opportunity to meet the allegations indicated in the show cause notice."*



- b. HCL Infostystems Ltd. Versus Union Of India And Ors. [2019 (9) TMI 1041 – Delhi High Court]
- c. Latika Ghosh Vs. The Commercial Tax Officer/Assistant Commissioner, West Bengal Goods & Service Tax, Raiganj Charge & Ors. [2022 (3) TMI 263 - Calcutta High Court]
- d. Dayamay Enterprise Vs State of Tripura and 3 OR's. 2021 (4) TMI 1203 - Tripura High Court
- e. Mahavir Traders Vs Union of India (2020 (10) TMI 257 - Gujarat High Court)
- f. Teneron Limited Versus Sale Tax Officer Class II/Avato Goods and Service Tax & Anr. (2020 (1) TMI 1165 - Delhi High Court)
- g. Nissan Motor India Private Limited, Vs the State of Andhra Pradesh, The Assistant Commissioner (CT) (2021 (6) TMI 592 - Andhra Pradesh High Court)

From the invariable decisions of various High Courts, it is clear that the notice without details is not valid and the same needs to be dropped.

Notice is not uploaded online

7. Noticee submits that Noticee has not received any summary of the proposed demand in Form DRC-01 electronically till date which is mandated as per Rule 142(1) of CGST Rules, 2020 when a demand notice is issued under Section 74 of CGST Act, 2017. In this regard, Noticee submits that Rule 142(1) of CGST Rules, 2017 reads as follows:

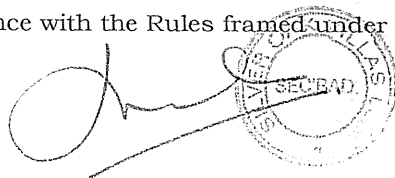
“Rule 142. Notice and order for demand of amounts payable under the Act

(1) The proper officer shall serve, along with the

(a) Notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01 ,

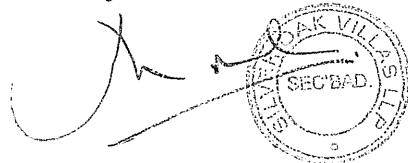
(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02 , specifying therein the details of the amount payable.”

8. Noticee submits that summary of notice in Form DRC – 01 was neither uploaded online nor served along with Show Cause Notice. Further, no statement containing details of amount payable was issued to the Noticee. Thus, the notice is not issued in consonance with the Rules framed under this



act and on this ground alone the entire notice is liable to be quashed and dropped.

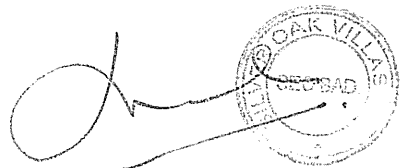
9. In this regard, Noticee wishes to rely on the Judgement of Hon'ble Madhya Pradesh High Court in the case of **Mr. Akash Garg vs. The State of MP** [2020-TIOL-2013-HC-MP-GST] wherein the Hon'ble High Court has held that
- "6.1 A bare perusal of the aforesaid provision reveals that the only mode prescribed for communicating the show-cause notice/order is by way of uploading the same on website of the revenue.*
- 7. 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 petitioner 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."*
10. Noticee submits that in the case of Pazhayidom Food Ventures (P) Ltd. Versus Superintendent Commercial Taxes, Addl. R2. Superintendent CGST, Pala., 2020-TIOL-1053-HC-Kerala-GST the Hon'ble Kerala High Court held that *"Learned counsel appearing on behalf of the petitioner submits that the show cause notice in Form GST REG-17 did not mention about the date, month and year as well as the time for appearance of the petitioner. The contents of the same are vague and do not commensurate with the format prescribed in Central Goods and Service Tax Rules, 2017 where a column of day, month and year has been prescribed. It is on that account this Court had issued notice and sought the comments thus impelling to invoke, the extraordinary jurisdiction of this Court as the order under challenge is without jurisdiction."*



11. Noticee submits that in the above-referred decision, the Hon'ble High Court has set aside the order because the contents in the form prescribed in rules are not filled properly. In the instant case, the Form DRC-01 which was prescribed in rules itself has not been given to Noticee thereby there is no question of validating the present notice which was issued without issuing the summary of demand in Form DRC-01. Hence, the impugned notice needs to be dropped.
12. Noticee further submits that in the case of NKAS Services Pvt Ltd Vs State of Jharkhand, 2022 (58) G.S.T.L.257 (Jhar) the Hon'ble Jharkhand High Court held that *"SCN issued in a format without even striking out any irrelevant portions and without stating contraventions committed by petitioner - Summary of SCN as issued in Form GST DRC-01 in terms of Rule 142(1) of Jharkhand Goods and Services Tax Rules, 2017 cannot substitute requirement of proper show cause notice - Summary of SCN not discloses information as received from headquarter/Government treasury as to against which works contract service completed or partly completed, petitioner had not disclosed its liability in returns filed under GSTR-3B - Impugned show cause notice did not fulfil ingredients of proper show cause notice and there was violation of principles of natural justice - Accordingly, impugned notice and summary of show cause notice in Form GST DRC-01 quashed."*

Separate SCN to be issued for CGST & SGST

13. Noticee 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. The section 6(2) of CGST Act, 2017 also specifies that separate notice and orders are required to be issued. That being a 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 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.

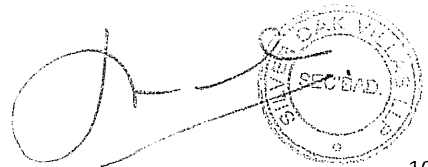


14. Without prejudice to above, and assuming but not admitting that the Notice is valid. Noticee submits that the impugned notice has proposed to demand the following amounts

SI No	Particulars	Amount
A	Short payment of GST on construction service during the period 2017-18 & 2018-19	22,11,128
B	Non-payment of GST under reverse charge mechanism on brokerage/commission paid to unregistered persons	2,22,792
C	Interest on delayed payment of GST due to delay in filing of GSTR 3B returns for the month of August 2017	911
D	Short payment of GST as per turnover declared in GSTR 9/9C for the period 2017-18 & 2018-19	2,13,74,199
E	Non-payment of interest on irregular availment of ITC of Rs. 45,73,392 availed and reversed	68,600
F	Irregular availment of ITC which due to the difference between GSTR 3B vs 2A	18,73,254
	Total	2,57,50,884

In Re: No short payment of GST on construction services provided during the financial year 2017-18 and 2018-19

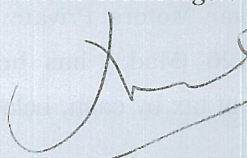
15. Noticee submits that the impugned notice has alleged that the Noticee has paid GST at 12% instead of 18% during the period 2017-18 and 2018-19 and proposed to demand an amount of Rs. 22,11,128/- towards CGST and SGST.
16. In this regard, Noticee submits that there is no short payment of GST as alleged by the department. Noticee submits that for the period 2017-18 Noticee have inadvertently disclosed excess turnover in GSTR-3B returns i.e., Rs. 81,44,750/- but, however, the actual turnover is amounting to Rs. 54,29,832/-. Noticee submits that this error was rectified at the time of filing GSTR-09 for the period 2017-18 and only the actual turnover of Rs. 54,29,832/- was disclosed and accordingly the taxes were remitted.
17. Therefore, Noticee submits that the relevant taxes @18% i.e., CGST Rs. 4,88,685/- and SGST Rs. 4,88,685/- have been properly disclosed and also been paid while filing the monthly returns.



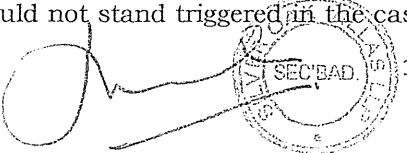
18. Noticee further submits that the audit under Section 35 has also been completed and Form GSTR-9C which is a reconciliation statement between books of accounts and GSTR-3B returns has also been filed wherein the Chartered Accountant has not pointed out any discrepancy in payment of taxes. A copy of the same is enclosed as Annexure - VI.
19. Further, for the period 2018-19. Noticee submits that Noticee have disclosed correct turnover of Rs. 2,28,60,376/- in the monthly returns for the period April 2018 to October 2018 but however have short paid certain taxes. In this regard, Noticee submits that the differential taxes have been observed by the Noticee and paid while filing the returns for the period November 2018. The detailed calculation is given as under:

S.No.	Particulars	Turnover	CGST	SGST
A	Taxable Turnover for the period April 2018 to October 2018	2,87,07,376	25,83,664	25,83,664
B	Taxes paid by the Noticee for the period April 2018 to October 2018		17,22,443	17,22,443
C	Differential Taxes not paid [A-B]		8,61,221	8,61,221
D	Taxable Turnover for the period November 2018	2,00,76,784	18,06,910	18,06,910
E	Taxes paid by the Noticee for the period November 2018		26,68,140	26,68,140
F	Excess Taxes paid for the period November 2018 [D-E]		8,61,230	8,61,230
G	Difference [C-F]		(9)	(9)

20. Therefore, Noticee submits that from the above table it is clear that the differential taxes for the period April 2018 to October 2018 have been paid at the time of filing returns for the month of November 2018. Hence, there is no short payment of taxes to the extent above. Hence, the demand proposed by the impugned notice is liable to be dropped.
21. Further, Noticee submits that Noticee have discharged GST on the same only by utilizing the balance available in the electronic credit ledger.

22. In this regard, Noticee submits that as per the proviso to Section 50 of CGST Act, 2017, interest liability shall be computed in respect of supplies made during a tax period on that portion of the tax which is paid by the electronic cash ledger. The proviso evidencing the same is as under, *"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger."*
23. Therefore, Noticee submits that the question of payment of interest does not arise to the extent of the liability discharged through electronic credit ledger only.
24. Noticee submits that to the extent of credit balance available in the electronic credit ledger, the question of interest does not arise. Noticee submits that in cases where the credit lying in the balance of the Noticee's account, merely because the Noticee has not made a debit entry so as to manifest the payment, it cannot be said that the Noticee has paid the GST belatedly. Therefore, the Noticee is not liable to pay any interest when there is sufficient balance in the electronic credit ledger.
25. Noticee further submits that with respect to the amount paid by utilizing the balance available in the electronic credit ledger there is no requirement of discharging any interest on the same. In this regard, reliance is placed on
- a. Oil & Natural Gas Corporation Ltd. v. Commissioner — 2015 (38) S.T.R. 867 (Tribunal)
 - b. AD Vision v. CST, Ahmedabad [2011 (21) S.T.R. 455 (Tri. - Ahmd.)]
 - c. CCE, Tirunelveli v. Sterlite Industries Limited [2011 (21) S.T.R. 534 (Tri. - Chennai)]
 - d. Sairadha Developers Vs Commissioner of C. Ex. & C.T., Mangalore Commissionerate - 2021 (55) G.S.T.L. 352 (Tri. - Bang.)
26. Noticee further submits that Hon'ble Madras High Court in the case of Maansarovar Motors Private Limited v. Asstt. Commissioner — 2021 (44) G.S.T.L. 126 (Mad.), has held that levy of interest would apply only to payments of tax by cash, belatedly, and would not stand triggered in the case

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of available ITC, since such ITC represents credit due to an assessee by the Department held as such. The relevant para no. 12, 14,15 and 16 are extracted below –

“12. The specific question for resolution before me is as to whether in a case such as the present, where credit is due to an assessee, payment by way of adjustment can still be termed ‘belated’ or ‘delayed’. The use of the word ‘delayed’ connotes a situation of deprivation, where the State has been deprived of the funds representing tax component till such time the Return is filed accompanied by the remittance of tax. The availability of ITC runs counter to this, as it connotes the enrichment of the State, to this extent. Thus, Section 50 which is specifically intended to apply to a state of deprivation cannot apply in a situation where the State is possessed of sufficient funds to the credit of the assessee. In my considered view, the proper application of Section 50 is one where interest is levied on a belated cash payment but not on ITC available all the while with the Department to the credit of the assessee. The latter being available with the Department is, in my view, neither belated nor delayed.

14. I am supported in my view by a recently inserted proviso to Section 50(1) reading as below:

Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.

15. The above proviso, as per which interest shall be levied only on that part of the tax, which is paid in cash, has been inserted with effect from 1-8-2019, but clearly seeks to correct an anomaly in the provision as it existed prior to such insertion. It should thus, in my view, be read as clarificatory and operative retrospectively.

16. Learned Counsel for the petitioners also draw my attention to the decision of the Telengana High Court in the case of Megha Engineering and Infrastructures Ltd. v. The Commissioner of Central Tax and Others (2019-TIOL 893), where the Division Bench interprets Section 50 as canvassed by the Revenue. The amendment brought to Section 50(1), was only at the stage of press release by the Ministry of Finance at the time when the Division



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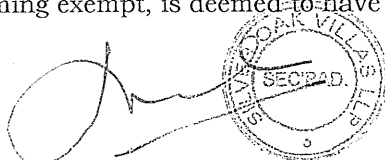
Bench passed its order and the Division Bench thus states that 'unfortunately, the recommendations of the GST Council are still on paper.

Therefore, we cannot interpret Section 50 in the light of the proposed amendment'. Today, however, the amendment stands incorporated into the Statute and comes to the aid of the assessee.

Therefore, Noticee submits that the levy of interest would not arise as tax has been paid by utilizing the balance available in their electronic credit ledger. Hence, the impugned notice is not valid to that extent and needs to be dropped.

In Re: No GST under RCM on Brokerage/Commission paid to an un-registered person:

27. Noticee submits that the impugned notice vide Para 2 have stated that the Noticee is liable to pay an amount of Rs. 2,22,792/- on payment to un-registered persons under RCM for the period July, 2017 to September, 2017.
28. In this regard, Noticee submits that the reverse charge liability under section 9(4) of CGST Act, 2017 was exempted vide Notification No. 8/2017 – Central Tax (Rate) dated 28.06.2017 with a condition that the payments to unregistered persons shall not exceed Rs.5,000/- in a day.
29. However, the Notification No. 38/2017 – Central Tax (Rate) dated 13.10.2017 was issued removing the condition of Rs.5,000/- per day with retrospective effect in absence of any savings clause therein and the objective of the amendment. Hence, there is no liability to be paid against the demand proposed in the Show Cause Notice.
30. Noticee submit that the omission of the proviso vide notification No. 38/2017-CT(R) dated 13.10.2017 *ibid* would mean deletion of such provision completely from the statute book as if it had never been passed, and the statute must be considered as a law that never existed. Further, if there is no saving clause in favor of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision. Therefore, Noticee submit that the proviso which was omitted by the Notification No. 38/2017-CT(R) dated 13.10.2017 *ibid*, which resulted in all the URPs becoming exempt, is deemed to have effect



from 01.07.2017, Therefore, Noticee is of the belief that the GST is not required to be discharged on the supplies received from URP's.

31. Further, Noticee submits that 'omission' would be covered under the expression 'repeal' as was held in the case of M/s. Bhagwati Steel Rolling Mills v. Commissioner of Central Excise and Ors. - 2015 (326) E.L.T. 209 (S.C.), *"Shri Radhakrishnan, learned senior advocate appearing on behalf of the revenue found it extremely difficult to argue that the aforesaid judgment was wrong. He therefore, asked us to limit the effect of the judgment when it further held that after omission of the aforesaid Rules with effect from 1-3-2001 no proceedings could have been initiated thereunder. In this submission he is correct for the simple reason that the Gujarat High Court followed Rayala Corporation in holding that "omissions" would not amount to "repeals", which this Court has now clarified is not the correct legal position "*
32. Therefore the Noticee submits that, the proviso which was omitted by the notification No. 38/2017 *ibid*, which resulted in all the URPs becoming exempt, is deemed to have an effect right from 01.07.2017, Therefore Noticee is on the firm belief that the GST is not required to be discharged on the supplies received from URP's but have discharged the same to avoid litigation before issuance of the Notice.

Supplies received from the suppliers having TO <20Lakhs are not liable u/s. 9(4), *ibid*:

33. Without prejudice to the above, Noticee submits that Section 9(4) clearly uses the phraseology "supply of taxable goods or services or both by a supplier" and therefore, the point of view is that of a supplier. Noticee submits that the levy remains on the supplier but the liability is shifted to the recipient. Noticee submits that the recipient is only made liable for the tax while the levy is the subject matter of the tax, liability is a function of assessment. Noticee wishes to place reliance on the Judgement of Hon'ble Supreme Court in the case of Wallace Flour Mills Company Ltd vs CCE 1989 (44) ELT 598, wherein it is held that,

"We are of the opinion that Section 3 cannot be read as shifting the levy from the stage of manufacture or production of goods to the stage of removal. The levy is and remains upon the manufacture or production alone. Only the collection part of it is shifted to the stage of removal. Once this is so, the fact



that the provisions of the Central Excise Act are applied in the matter of levy and collection of special excise duty cannot and does not mean that wherever the Central Excise duty is payable, the special excise duty is also payable automatically. That is so as an ordinary rule. But insofar as the goods manufactured or produced prior to March 1, 1978 are concerned, the said rule cannot apply for the reason that there was no levy of special excise duty on such goods at the stage and at the time of their manufacture/production. The removal of goods is not the taxable event. Taxable event is the manufacture or production of goods”.

34. In this regard, Noticee submits that when the charge itself is not there, the question of liability does not arise. Further Noticee submits that If the person who supplies is not chargeable at all, the question of collecting the liability under reverse charge simply cannot arise under Section 9(4).
35. Noticee further submits that those whose supplies are below 20 lakhs are no doubt suppliers of goods/services, but they are not taxable persons as they are not required to be registered. If they are not taxable persons, they cannot pay tax as Section 9(1) only requires the taxable persons to pay taxes. Since they are not taxable persons, they do not become liable to tax and therefore need not be registered under Sec.23 which uses the terminology “shall”. It is a case where those below threshold limits of Rs.20 lakhs are neither taxable persons nor are they liable to tax.
36. Therefore, Noticee submits that the Act itself states that those below threshold limits are not taxable persons and not liable to tax, the question of shifting the liability does not arise as such persons are neither chargeable nor liable. Levy in the case of GST is inextricably linked with the concept of a taxable person where the requirement of the law is registration.
37. Noticee submits that if these persons were chargeable, then liability could be shifted but, when the person is not a taxable person, levy and payment are not there. The scheme of the GST Act is such that a taxable person is defined as one requiring registration even if he supplies goods or services in the course or furtherance of business and once he does not cross Rs.20 lakhs threshold limits, the question of the levy applying does not arise due to the phraseology of Section 9(1) which says that the tax shall be paid by the taxable person.



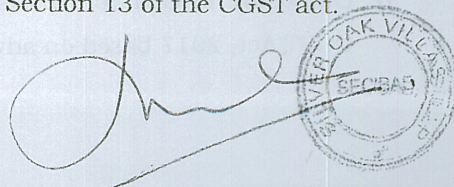
38. Noticee submits that the tax cannot be paid by the taxable person because he is not in the threshold and does not require registration, then the question of its collection from noticee would amount to doing something indirectly which cannot be done directly, which would go against the dictates of the law itself.
39. Hence, it is submitted that the supplies received from the suppliers having a turnover of less than 20Lakhs in a year shall not be included while creating the liability u/s. 9(4), *ibid*.

In Re: Interest already discharged on delayed filing of GSTR-3B Returns

40. With respect to the above, the show cause notice has proposed to demand an amount of Rs. 911/- towards interest liability for delayed filing of GSTR-3B return for the month of August, 2017
41. In this regard, we would like to submit that we have paid an amount of Rs. of Rs. 911/- towards interest vide DRC – 03 ARN AD36122000058 dated 05.12.2020 (Copy of DRC-03 are enclosed as Annexure-VII).

In Re: No short payment of GST

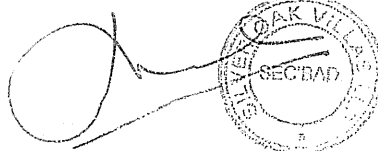
42. Noticee submits that the impugned notice vide Para 4 alleged that Noticee is liable to pay an amount of Rs. 2,13,74,200/- for the period 2017-18 and an amount of Rs. 62,85,956/- for the period 2018-19 towards short payment of taxes in GSTR-3B when compared to the turnover declared in GSTR-09/9C.
43. In this regard, Noticee submits that during the initial stages of implementation of GST, Noticee is completely unaware of the procedure to be followed for making payment of GST. Further, all the accountants in the entity are new to the real estate industry, therefore, the monthly returns were not filed properly.
44. Further, Noticee submits that we are in the business of real estate, Our nature of accounting followed under the Income Tax Act, 1961 and the GST act is different. Under the Income Tax Act we account the income on percentage of completion method whereas under the GST act the time of supply of service is recorded as per Section 13 of the CGST act.

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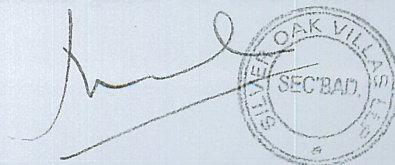
45. Noticee submits that the difference of turnover under both GST and the income tax act is due to the timing difference of recording the transaction and apart from that there is no difference.
46. Noticee is herewith enclosing the table which clearly shows that there is not difference in the taxes discharged by the Noticee.

Particulars		FY 2017-18	FY 2018-19	Total
Turnover as per Income Tax Act, 1962	A	13,38,80,112	10,07,99,105	23,46,79,217
Difference due to timing difference	B	1,91,38,218	-7,03,98,159	5,12,59,941
Turnover needs to be reported in GST	C = A-B	11,47,41,894	17,11,97,264	28,59,39,158
Exempted Supplies - It is related to sale of land	D	10,93,12,061	9,17,37,721	20,10,49,782
Taxable Turnover - It is related to construction service	E = C-D	54,29,833	7,94,59,543	8,48,89,376
Rate of Tax to be charged	F	18%	18%	
Actual tax which needs to be discharged	G = E*F	9,77,370	1,43,02,718	1,52,80,088
Amount discharged in GSTR-9C	H	9,77,370	1,42,57,718	1,52,35,088
Difference	I = G-H		45,000	45,000

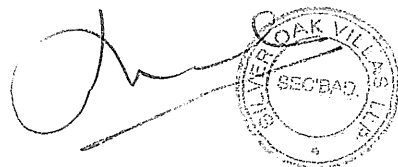
47. Noticee submits that the differential amount i.e. Rs.45,000/- has been identified during the preparation of GSTR-9C and the same has been paid along with the interest vide form DRC-03 dated 05.12.2020. (Copy of DRC-03 is enclosed as Annexure viij)
48. Noticee submits that the difference between the turnover disclosed in GSTR-09/9C returns and Financial Statements is due to the reason that accounting in the Financial Statements was done according to Accounting Standards whereas the GST returns were filed in accordance with provisions under CGST Act, 2017 and the rules made thereunder. In short, the difference is due to the following reasons
- Disclosure of revenue in the Financial Statements is in accordance with Indian Accounting Standard i.e. based on percentage completion method
 - Disclosure in GST returns is in accordance with section 12(2) of the CGST Act, 2017 based on advances received from customer



49. In this regard, Noticee submits that the basic objective of Indian Accounting Standard – 11 (Ind AS-7) Construction Contracts is to prescribe accounting treatment of revenue and costs associated with construction contracts. Therefore, the primary issue in accounting for construction contracts is the allocation of contract revenue and contract costs to the accounting periods in which construction work is performed.
50. As per Ind AS-11, **Contract Revenue** is measured as consideration received or **receivable**. Therefore, the financial statements are the combination of the amounts received and receivable with respect to contract revenue.
51. The contract revenue and expense can be recognized only “*When the outcome of a construction contract can be estimated reliably, contract revenue and contract costs associated with the construction contract should be recognized as revenue and expenses respectively by reference to the **stage of completion** of the contract activity at the reporting date*”
52. Under this method, contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses, and profit which can be attributed to the proportion of work completed.
53. Under the percentage of completion method, contract revenue is recognized as revenue in the **statement of profit and loss** in the accounting periods in which the **work is performed**. Contract costs are usually recognized as an expense in the statement of profit and loss in the accounting periods in which the work to which they relate is performed.
54. Since the financial statements have to be prepared in accordance with the applicable standards, the same has been prepared in accordance with Indian Accounting Standard-11. Based on the above, it is pertinent to note that the revenue has to be recognized in the books of accounts irrespective of the fact that whether such amounts have been received or not.
55. Whereas section 12(2) determines the time of payment of tax for the services provided. As per said section the point of taxation shall be the date which occurs earlier in the following:

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- a. Date of issuance of invoice or the last date on which invoice should have been issued; and
 - b. Date of receipt of payment.
56. In the present case, Noticee has been receiving advances from the customers before completion of the project, therefore, Noticee has discharged GST on the advances received and disclosed the same in GST returns.
57. Noticee submits that time of payment of tax as per CGST Act, 2017 is receipt of advance and the said compliance has been rightly by the Noticee, therefore, there is no short payment of GST as per CGST Act, 2017 and the allegation of impugned Notice are not valid.
58. Noticee submits that as explained in the previous Paras the basis on which the amounts disclosed in GST returns and Financials are different therefore the same cannot be compared, therefore the allegation of the impugned notice demanding tax on differences between the disclosures made in the Financial Statements and GST returns which are lead by two different statues is not tenable and the same needs to be set aside. In this regard, Noticee wishes to rely on
- a. Indian Oil Sky Tanking Ltd Vs. Commr. of Service Tax, Banglore—2015(38) S.T.R 221 (Tri.-Bang)
 - b. P. Govindaraj Vs. CCE, Madurai—2014(36) S.T.R.400 (Tri.-Chennai)
 - c. Commissioner of Service Tax, Ahmedabad Vs. Purani Ads. Pvt. Ltd.—2010(19) S.T.R.242 (Tri.-Ahmd)
59. Without prejudice to the above, Noticee submits that as explained in the preceding paragraphs, the sale of land is not liable to GST as the same is covered under Entry 5 to Schedule -III of CGST Act, 2017. Therefore, the same need to be excluded while arriving the GST liability. Further, the deemed deduction of 1/3rd land value is not correct when the actual land value is available. Noticee submits that it is a settled law that the Government cannot re-write the terms of contract entered into between people. Reliance is placed on the Supreme Court judgement in the case of **Mangalore Ganesh Beedi Works Vs CIT [(2015) 378 ITR 640 (SC)]** wherein it was held that the Act does not clothe the taxing authorities with any power or jurisdiction to re-



write the terms of the agreement arrived at between the parties with each other at arm's length and with no allegation of any collusion between them.

60. Therefore, Noticee submits that a view is possible that deeming 1/3rd of contract value as land value for the purpose of taxation could amount to re-writing of the agreement which is not consistent with the facts involved and what the commercials agreed between the parties.
61. Hence, the Gujarat High Court's judgement in the case of Munjaal Manishbhai Bhatt Vs UOI [2022 (62) G.S.T.L. 262 (Guj.)] was the breath of relief to taxpayers wherein the Court read down the deeming fiction of 1/3rd land deduction provided in Notification No. 11/2017 as ultra vires to Schedule III (sale of land).
62. Therefore, Noticee submits that it was held that mandatory application of deeming fiction of 1/3rd 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.
63. Noticee submits that from the above referred decision, it is clear that the 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.

In Re: No interest is applicable on credit availed and reversed before utilization

64. With respect to the above, Noticee submits that the impugned notice has proposed to charge interest on the excess availment of ITC for a period of one month i.e. excess ITC availed in the month of August 2018 and the same was reversed in the month of September 2018.
65. In this regard, Noticee submits that the irregular credit which was availed is reversed before utilization. Noticee have not utilized the irregular credit availed, therefore there is no liability to pay any interest as interest is not applicable on mere availment.
66. Noticee submits that Noticee have maintained sufficient balance of CGST and SGST in the electronic credit ledger from the date of availment of ITC to the date of making the reversal. This clearly shows that, Noticee have not utilised

