



OFFICE OF THE SUPERINTENDENT OF CENTRAL TAX
RAMGOPALPET-III RANGE
 “सलीक सीनेट”, गेट नः2-4-416& 417, रामगोपालपेट, एम. जी. रोड़
 सिकंदराबाद 500003
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C.No.-GEXCOM/SoR/1306/2024-CGST-RANGE-RGPET-III-DIV-SNBD-COMMRTE-SECUNDERABAD

दिनांक Date: 01.07.2024

DIN- 20240756Y0000000BC1F



ORDER-IN-ORIGINAL No.02/2024-25 (GST-Adjn)
 (Passed by Shri R. Sravan Kmar, Superintendent of Central Tax, Ramgopalpet-III
 Range, 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 के लिए बिना मूल्यके दीजाती है।

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 कर अधिनियम, 2017 की धारा 107 (1) के तहत, इस आदेश से दुखी होता हो तो वह ऐसे आदेश के विरुद्ध 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 होने के तीन माह के अंदर अपील दर्ज कर सकता है।

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 के नियम 108 के तहत निर्धारित फॉर्म GST APL-01 में अपील दायर की जाएगी।

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

अपील का आधार और फॉर्म के सत्यापन के रूप में फॉर्म जीएसटीएपीएल 01 में निहित है, केंद्रीय सामान और सेवा कर नियम, 2017 के नियम 26 में निर्दिष्ट तरीके से हस्ताक्षर किए जाएंगे।

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 सेवा कर नियम, 2017 के 108 के उपनियम 1 के तहत अपील भरने के सात दिनों के भीतर आदेश की प्रमाणित प्रति प्रस्तुत की जाएगी।

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—

(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, अपीलकतनेकेंद्रीयवस्तु एवम सेवाकरअधिनियम, 2017कीधारा 107 (1) केतहतकोईअपीलदायरनहींकीजाएगी, जबतककिअपीलकतनेभुगताननहींकियाहो-

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

(बी) दसप्रतिशतकेबराबरराशि।उक्तआदेशसेउत्पन्नविवादमेंकरकीशेषराशि, जिसकेसंबंधमेंअपीलदायरकीगईहै।

Sub: GST – Scrutiny of GST Returns for FY 2019-20 in respect of M/S. VISTA HOMES bearing GSTIN No. 36AAGFV2068P1ZJ - Issuance of Order-In-Original under section 73 of CGST Act, 2017- reg.

M/S. VISTA HOMES, 2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003 having GSTIN No. 36AAGFV2068P1ZJ (here-in-after referred as “Tax Payer” or “assessee”) are engaged in CONSTRUCTION OF RES. COMPLEX, WORKS CONTRACT SERVICES etc., having HSN 00440334, 00440410 falling under GST Tariff of India.

2. On scrutiny of the returns filed by M/S. VISTA HOMES for the FY 2019-20, certain discrepancies were noticed. The intimation of the same was given to the tax payer by issuance of FORM GST-ASMT-10 with Reference No ZM360523052062D dated 23.02.2024 and issuance of DRC-01A vide DIN. 20240356YO000000F6EB dated.25.03.2024. The details of the discrepancies are as follows: -

2.1: Excess availment of ITC in GSTR-3B on comparison with credit available in GSTR-2A for FY 2019-20.

2.1.1 On comparison of the Input Tax Credit availed in GSTR-3B and the ITC available in GSTR-2A for the period FY 2019-20, it was noticed that there was excess availment of ITC of Rs.2,35,488/- (IGST: Rs.17,008/- CGST: Rs. 1,09,240 /- & SGST: Rs. 1,09,240 /-). The said excess availment of ITC was irregular in terms of sub-section (2)(c) of Section 16 of the CGST Act, 2017, as the taxpayer has failed to ensure that the tax charged in respect of their input supplies has duly been credited to the Government by their suppliers. The details of excess availment of ITC are furnished hereunder: -

(Amount in Rs.)

Excess availment of ITC as per the comparison between credit available in GTR-2A and credit availed in GSTR-3B for the FY 2019-20									
FY	ITC availed per GSTR-3B for FY 2019-20			ITC availed per GSTR-2A for FY 2019-20			Excess availed ITC		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
2019-20	38159	6913827	6913827	21151	6804587	6804587	17008	109240	109240

2.1.2 In view of the above, it is found that the taxpayer has availed excess ITC of Rs.2,35,488/- (IGST: Rs.17,008/- CGST: Rs. 1,09,240 /- & SGST: Rs. 1,09,240 /-) in the FY

2019-20 which is not available in GSTR-2A returns which is inadmissible as per Section 16 and 41 of CGST Act, 2017

2.1.3 LEGAL PROVISIONS:

i) Section 16 of CGST Act 2017: —

*“Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him **which are used or intended to be used** in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

[Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

*(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 utilisation of input tax credit admissible in respect of the said supply; and*

(d) he has furnished the return under section 39;”

ii) Section 41 of CGST Act, 2017: -

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 avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

iii) Rule-36 of CGST Rules,2017: -

“(1) the input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely, -

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

*(b) **an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;***

- (c) a debit note issued by a supplier in accordance with the provisions of section 34;
- (d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
- (e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person.”

Other Legal Provisions

i) Section 73(1) of CGST Act, 2017: -

In terms of sub-section (1) of Section 73, 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 for any reason, other than the 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 leviable under the provisions of this Act or the rules made thereunder.

ii). Section 50 of CGST Act 2017: -

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails 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.

[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.]

(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.

iii). Section 122(2)(a) of CGST Act 2017: -

(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 utilised, —

(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 per cent. of the tax due from such person, whichever is higher;

2.1.4. From the foregoing facts of the case and statutory provisions it appears that the taxpayer had failed to ensure that the tax charged in respect of their input supplies had duly been credited to the Government by their suppliers as envisaged in Section 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 GSTR-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. This had led to contravention of Section 41 of CGST Act, 2017 according to which the excess availed input tax credit on which tax has not been paid by the supplier shall be reversed along with applicable interest and the taxpayer in the instant case has miserably failed to do so.

2.1.5. As discussed above, in terms of the provisions of Section 16(2)(c) of CGST Act, 2017 and Rule 36(1)(b) of CGST Rules, 2017, to avail input tax credit against invoices being in possession of a recipient of supply, it is also mandatory that the tax mentioned in the said invoice therein is paid. Thus, the ITC availed by a recipient is subject to payment of tax by the supplier in terms of the provisions of Section 39 of CGST Act, 2017 read with Rule 61 of CGST Rules, 2017.

2.1.6. In view of above, it appears that the taxpayer had irregularly availed excess ITC (difference between GSTR-3B and 2A Auto populated statement) to the tune of Rs.2,35,488/- (IGST: Rs.17,008/- CGST: Rs. 1,09,240 /- & SGST: Rs. 1,09,240 /-) for the period FY 2019-20 contravening Section 16 and 41 of CGST Act, 2017 read with Rule 36 of CGST Rules, 2017.

2.1.7. Since the taxpayer has wrongly availed and utilized the excess ITC of Rs.2,35,488/- (IGST: Rs.17,008/- CGST: Rs. 1,09,240 /- & SGST: Rs. 1,09,240 /-) against the provisions of Section 16 & 41 of CGST Act, 2017 read with Rule 36 of CGST Rules, 2017, the same is required to be recovered from the taxpayer in terms of Section 73 of CGST Act, 2017, along with interest in terms of Section 50 of CGST Act, 2017. Further, it appears they are liable for penal action in terms of Section 73 of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and SGST Act, 2017 & Section 20 of IGST Act, 2017.

2.1.8. The said observation was communicated to the tax payer by issuance of FORM GST-ASMT-10 with Reference No. ZM360523052062D dated 23.02.2024 and issuance of DRC-01A vide DIN. 20240356YO000000F6EB dated.25.03.2024.

2.2. Non payment of Late Fee on delayed filing of GSTR-1, GSTR-3B and GSTR-9 for FY 2019-20:

2.2.1. During the course of scrutiny of returns, it was noticed that the taxpayer had not Paid late fee for delayed filing of GSTR-1, GSTR-3B and GSTR-9 retruns. The details of delayed filing of GSTR-1, GSTR-3B and GSTR-9 returns and non-payment of late fee are given below:

GSTR -1 late filing details

	Due date of filling	Actual date of filling	No of days delayed	Late fee liability
Aug-19	11-09-2019	17-09-2019	6	300
	Total			300

GSTR -3B late filing details

	Due date of filling	Actual date of filling	No of days delayed	Late fee liability
Sep-19	20-10-2019	21-10-2019	1	50
	Total			50

GSTR-9 late filing details

Type of returns	Due date of filling	Actual date of filling	No of days delayed	Late fee liability
Annual return	31-03-2021	25-05-2021	55	11000
Total				11000

	Total	CGST	SGST
Total late fee payable(GSTR-1, GSTR-3B and GSTR-9)	11350	5675	5675
Late fee paid	50	25	25
Balance Late fee Payable	11300	5650	5650

2.2.2. Legal provisions

37. Furnishing details of outward supplies.— (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month

succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

39. Furnishing of returns.— (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, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof

44. Annual return.— (1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year:

47. Levy of late fee.— (1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

(2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory

2.2.3. In view of the above, the taxpayer is liable to pay late fee in cash of Rs.11,300/- (CGST: Rs.5,650 /- & SGST: Rs.5,650/-) under section 47 as applicable under the provisions of CGST Act, 2017 read with Section 37, Section 39 and Section 44 of CGST Act, 2017 and SGST Act, 2017.

2.2.4. The said observation was communicated to the tax payer by issuance of FORM GST-ASMT-10 with Reference No. ZM360523052062D dated 23.02.2024 and issuance of DRC-01A vide DIN. 20240356YO000000F6EB dated.25.03.2024.

2.3: Ineligible ITC availed in respect of invoices issued by the suppliers who have not filed their GSTR-3B returns for the relevant tax period.

2.3.1 On comparison of the Input Tax Credit available in GSTR-2A for the period FY 2019-20, it was noticed that the taxpayer received ITC to the tune of Rs.8,640/- (CGST: Rs. 4,320/- & SGST: Rs. 4,320/-) from the below mentioned suppliers who have not filed their GSTR-3B returns for the relevant tax periods and the same ITC was availed by the taxpayer in their GSTR-3B returns. The said excess availment of ITC was irregular in terms of sub-section (2)(c) of Section 16 of the CGST Act, 2017, as the taxpayer has failed to ensure that the tax charged in respect of their input supplies has duly been credited to the Government by their suppliers. The details of such suppliers are furnished hereunder: -

(Amount in Rs.)

S.No.	GSTIN	Legal Name	Period	Irregular ITC value
1	36BDWPN0356G1Z7	SHARADA NARABOINA	2019-20	1440
2	36AOLPN4767L1Z6	LAXMINARAYANA NARABOYINA	2019-20	7200

2.3.2. In view of the above, it is found that the taxpayer has availed irregular ITC of Rs.8,640/- (CGST: Rs. 4,320/- & SGST: Rs. 4,320/-) in the FY 2019-20 which is inadmissible as per Section 16 and 41 of CGST Act, 2017

2.3.3. From the foregoing facts of the case and statutory provisions it appears that the taxpayer had failed to ensure that the tax charged in respect of their input supplies had duly been credited to the Government by their suppliers by way of filing GSTR-3B returns as envisaged in Section 16(2)(c) of CGST Act, 2017. This had led to contravention of Section 41 of CGST Act, 2017 according to which the irregularly availed input tax credit on which tax has not been paid by the supplier shall be reversed along with applicable interest and the taxpayer in the instant case has miserably failed to do so.

2.3.4. As discussed above, in terms of the provisions of Section 16(2)(c) of CGST Act, 2017 and Rule 36(1)(b) of CGST Rules, 2017, to avail input tax credit against invoices being in possession of a recipient of supply, it is also mandatory to be the tax i.e., GST invoiced therein is paid. Thus, the ITC availed by a recipient is subject to payment of tax by the supplier in terms of the provisions of Section 39 of CGST Act, 2017 read with Rule 61 of CGST Rules, 2017.

2.3.5. In view of above, it appears that the taxpayer had irregularly availed ineligible ITC received from the suppliers who have not filed their GSTR-3B returns for the relevant tax periods to the tune Rs.8,640/- (CGST: Rs. 4,320/- & SGST: Rs. 4,320/-) for the period from April, 2019 to March, 2020 contravening Section 16 and 41 of CGST Act, 2017

2.3.6 The said observation was communicated to the tax payer by issuance of FORM GST-ASMT-10 with Reference No. ZM360523052062D dated 23.02.2024 and issuance of DRC-01A vide DIN. 20240356YO000000F6EB dated.25.03.2024.

2.3.7. Since the taxpayer has irregularly availed and utilized the ITC of Rs.8,640/- (CGST: Rs. 4,320/- & SGST: Rs. 4,320/-) against the provisions of Section 16 of CGST Act, 2017, the same is required to be recovered from the taxpayer in terms of Section 73 of CGST Act, 2017, along with interest in terms of Section 50 of CGST Act, 2017. Further, it appears they are liable for penal action in terms of Section 73 of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and SGST Act, 2017.

2.4. Non reversal of ITC in accordance with provisions of Rule 42 and Rule 43 of CGST Rules, 2017 for FY 2019-20.

2.4.1 On scrutiny of GSTR-1 and GSTR-3B returns filed by the taxpayer for FY 2019-20, it is observed that the taxpayer has declared Nil rated/exempted supplies but not reversed ITC proportionately as per Section 17(2) of CGST Act, 2017 read with Rule 42 of CGST Rules, 2017 as detailed below:

1. Taxable Value as per Table 3.1 (c) of GSTR-3B	5574251
2. Taxable Value as per Table 3.1(Total) of GSTR-3B	109198819
3. ITC as per Table 4A of GSTR-3B or 6A of GSTR-9	13952425
4. Amount to be reversed $\{(1/2)*3\}$	712226.7413
Liability	Rs.7,12,228/- (IGST: Rs.1,948/-, CGST: Rs.3,55,140 /- & SGST: Rs. 3,55,140/-)

2.4.2 In view of the above, it appears that the taxpayer is liable to reverse the ITC of Rs.7,12,228/- (IGST: Rs.1,948/-, CGST: Rs.3,55,140 /- & SGST: Rs. 3,55,140/-) for the FY 2019-20 as per Section 17(2) of CGST Act, 2017 read with Rule 42 and Rule 43 of CGST Rules, 2017 and SGST Act, 2017 read with Section 20 of IGST Act, 2017.

2.4.3. Legal provisions

i). Section 17 - Apportionment of credit and blocked credits: -

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

ii). Rule 42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof.-

(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the total input tax involved on inputs and input services in a tax period, be denoted as $\text{₹}T$;

(b) the amount of input tax, out of $\text{₹}T$, attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as $\text{₹}T1$;

(c) the amount of input tax, out of $\text{₹}T$, attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as $\text{₹}T2$;

(d) the amount of input tax, out of $\text{₹}T$, in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as $\text{₹}T3$;

(e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as $\text{₹}C1$ and calculated as

$$C1 = T - (T1 + T2 + T3);$$

(f) the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as $_T4'$;

[Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of $T4$ shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.]

(g) $_T1'$, $_T2'$, $_T3'$ and $_T4'$ shall be determined and declared by the registered person at the invoice level in FORM GSTR-2 [and at summary level in FORM GSTR-3B];

(h) input tax credit left after attribution of input tax credit under clause [(f)]75 shall be called common credit, be denoted as $_C2'$ and calculated as

$$C2 = C1 - T4;$$

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as $_D1'$ and calculated as

$$D1 = (E \div F) \times C2$$

where, $_$

E' is the aggregate value of exempt supplies during the tax period, and $_$

F' is the total turnover in the State of the registered person during the tax period:

[Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of $_E/F'$ for a tax period shall be calculated for each project separately, taking value of E and F as under:-

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F = aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier;

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of $_E'$ in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended.]

[Provided further]77 that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of $_E/F'$ shall be calculated by taking values of $_E'$ and $_F'$ of the last tax period for which the details

of such turnover are available, previous to the month during which the said value of $\frac{E}{F}$ is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A]78 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as $\frac{D2}{C2}$, and shall be equal to five per cent. of $\frac{C2}{C2}$; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as $\frac{C3}{C3}$, where,-

$$C3 = C2 - (D1 + D2);$$

(l) the amount $\frac{C3}{C3}$, $\frac{D1}{D1}$ and $\frac{D2}{D2}$ shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03;]

(m) the amount equal to aggregate of $\frac{D1}{D1}$ and $\frac{D2}{D2}$ shall be [reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03:]

Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in $\frac{T1}{T1}$ and $\frac{T2}{T2}$ respectively, and the remaining amount of credit on such inputs or input services shall be included in $\frac{T4}{T4}$.

2.4.4. In view of the above, it appears that the taxpayer did not follow the procedure prescribed in Section 17(2) of CGST Act, 2017 read with Rule 42 of CGST Rules, 2017. Therefore, it appears that the taxpayer is liable to reverse the ITC of Rs.7,12,228/- (IGST: Rs.1,948/-, CGST: Rs.3,55,140 /- & SGST: Rs. 3,55,140/-) along with applicable interest under Section 50 of CGST Act, 2017 and penalty under Section 122(2)(a) read with Section 73 of CGST Act, 2017 & SGST Act, 2017 read with Section 20 of IGST Act, 2017.

2.4.5. The said observation was communicated to the tax payer by issuance of FORM GST-ASMT-10 with Reference No. ZM360523052062D dated 23.02.2024 and issuance of DRC-01A vide DIN. 20240356YO000000F6EB dated.25.03.2024.

3. For the administration and collection of State Goods and Services tax in respect of Telangana State, an Act was in operation in respect of Jurisdiction of Telangana state. This Act is titled as "The Telangana Goods and Services Act, 2017" (for short here in after referred to as "the TGSST Act, 2017") and it contains the provisions exactly similar to the CGST Act, 2017 as referred above. Since, it is only repetition; the provisions of the TGSST Act, 2017 are not reproduced in this notice.

3.1. Further, as per Section 6(1) of the TGSST Act, 2017, the Officers appointed under CGST Act, 2017 are authorized to be proper officers for the purposes of the said Act.

3.2. For the administration and collection of the Integrated Goods and Services Tax (IGST), an Act was in operation which is titled as "The Integrated Goods and Services Tax Act, 2017" (for short here in after referred to as "the IGST Act, 2017"). As per the provisions

of Section 20 of the IGST Act, 2017, the provisions of CGST Act, 2017 relating to interalia Input tax credit, Registration, tax invoice, account and records, payment of tax, inspection, search, seizure and arrest, Demands and recovery, offences and penalties etc shall, mutatis mutandis, apply, so far as may be, in relation to Integrated tax as they apply in relation to Central tax as if they are enacted under the IGST Act, 2017. Accordingly, in respect of any recovery, penalty and other demands related to IGST, the provisions of CGST Act, 2017 will be applicable.

4. In view of the foregoing, Show Cause Notice No.07/2024-25, dated 04.04.2024 has been issued to M/S. VISTA HOMES, 2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003 having GSTIN No. 36AAGFV2068P1ZJ by the Superintendent of Central Tax, Ramgopalpet-III Range, Secunderabad GST Division, Secunderabad GST Commissionerate, Salike Senate, D.No.2-4-416&417, Ramgopalpet, MG Road, Secunderbad – 500003 (hereinafter referred as the Adjudicating Authority), as to why:

(i) an amount Rs.2,35,488/- (IGST: Rs.17,008/- CGST: Rs. 1,09,240 /- & SGST: Rs. 1,09,240 /-) for irregular availment of input tax credit in GSTR-3B on comparison with ITC available in GSTR-2A for the FY 2019-20 as discussed in Para 2.1, should not be demanded from them under the provisions of sub section (1) of Section 73 of the CGST Act, 2017 and SGST Act, 2017 read with Section 20 of IGST Act, 2017;

(ii) an amount of Rs.11,300/- (CGST: Rs.5,650 /- & SGST: Rs.5,650/-) for late fee on delayed filing of GSTR-1, GSTR-3B and GSTR-9 returns during FY 2019-20 as discussed in para 2.2, should not be demanded from them under the Section of 47 of CGST Act, 2017/SGST Act, 2017;

(iii) an amount Rs.8,640/- (CGST: Rs. 4,320/- & SGST: Rs. 4,320/-) for irregular availment of input tax credit in GSTR-3B on comparison with ITC available in GSTR-2A for the FY 2019-20 as discussed in Para 2.3, should not be demanded from them under the provisions of Section 73 of the CGST Act, 2017 and SGST Act, 2017;

(iv) an amount Rs.7,12,228/- (IGST: Rs.1,948/-, CGST: Rs.3,55,140 /- & SGST: Rs. 3,55,140/-) for non-reversal of ITC for the FY 2019-20 as discussed in Para 2.4, should not be demanded from them under the provisions of Section 73 of the CGST Act, 2017 & SGST Act, 2017 read with Section 20 of IGST Act, 2017;

(v) Interest should not be demanded on the demand amount mentioned at Sl.No.(i), (iii) & (iv) under Section 50 of the CGST Act, 2017 / SGST Act, 2017 read with Section 20 of IGST Act, 2017;

(vi) Penalty should not be imposed on the demand amount mentioned at Sl.No.(i), (iii) & (iv) in terms of provisions of Section 73 of CGST Act, 2017 and SGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and Section 20 of IGST Act, 2017.

5. Reply to Show Cause Notice and Personal Hearings:

The Taxpayer was given opportunity for Personal Hearings on 05.06.2024, 12.06.2024 and 18.06.2024. However, the taxpayer neither attended the personal hearing nor replied to the Show Cause Notice till date. The taxpayer vide letter dated 19.06.2024 asked for more time for reply submission, but the reply has not been submitted yet.

6. Discussions and Findings:

6.1 I have gone through the Show Cause Notice dated 04.04.2024, facts & records of the case. In the absence of any reply to the Show Cause Notice by the Tax Payer and as they have not responded to the personal hearing intimations/letters, the case is taken up for ex-parte decision on the basis of facts/information available on record and on its merits.

7. Now the issues are discussed in detail as hereunder:

7.1. Issue 1: Excess availment of ITC in GSTR-3B on comparison with credit available in GSTR-2A for FY 2019-20.

7.1.1 On comparison of the Input Tax Credit availed in GSTR-3B and the ITC available in GSTR-2A for the period FY 2019-20, it was noticed that there was excess availment of ITC of Rs.2,35,488/- (IGST: Rs.17,008/- CGST: Rs. 1,09,240 /- & SGST: Rs. 1,09,240 /-). The details of excess availment of ITC are furnished hereunder: -

(Amount in Rs.)

Excess availment of ITC as per the comparison between credit available in GTR-2A and credit availed in GSTR-3B for the FY 2019-20									
FY	ITC availed per GSTR-3B for FY 2019-20			ITC availed per GSTR-2A for FY 2019-20			Excess availed ITC		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
2019-20	38159	6913827	6913827	21151	6804587	6804587	17008	109240	109240

7.1.2 In view of the above, it is found that the taxpayer has availed excess ITC of Rs.2,35,488/- (IGST: Rs.17,008/- CGST: Rs. 1,09,240 /- & SGST: Rs. 1,09,240 /-) in the FY 2019-20 which is not available in GSTR-2A returns which is inadmissible as per Section 16 and 41 of CGST Act, 2017.

7.1.3. Since the taxpayer has wrongly availed and utilized the excess ITC of Rs.2,35,488/- (IGST: Rs.17,008/- CGST: Rs. 1,09,240 /- & SGST: Rs. 1,09,240 /-) against the provisions of Section 16 & 41 of CGST Act, 2017 read with Rule 36 of CGST Rules, 2017, the same is required to be recovered from the taxpayer in terms of Section 73 of CGST Act, 2017, along with interest in terms of Section 50 of CGST Act, 2017. Further, it appears

they are liable for penal action in terms of Section 73 of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and SGST Act, 2017 & Section 20 of IGST Act, 2017.

7.2. **Issue 2: Non payment of Late Fee on delayed filing of GSTR-1, GSTR-3B and GSTR-9 for FY 2019-20:**

7.2.1. On verification of returns, it was observed that the taxpayer had not Paid late fee for delayed filing of GSTR-1, GSTR-3B and GSTR-9 retruns. The details of delayed filing of GSTR-1, GSTR-3B and GSTR-9 returns and non-payment of late fee are given below:

GSTR -1 late filing details

	Due date of filling	Actual date of filling	No of days delayed	Late fee liability
Aug-19	11-09-2019	17-09-2019	6	300
	Total			300

GSTR -3B late filing details

	Due date of filling	Actual date of filling	No of days delayed	Late fee liability
Sep-19	20-10-2019	21-10-2019	1	50
	Total			50

GSTR-9 late filing details

Type of returns	Due date of filling	Actual date of filling	No of days delayed	Late fee liability
Annual return	31-03-2021	25-05-2021	55	11000
Total				11000

	Total	CGST	SGST
Total late fee payable(GSTR-1, GSTR-3B and GSTR-9)	11350	5675	5675
Late fee paid	50	25	25
Balance Late fee Payable	11300	5650	5650

7.2.2. In view of the above, the taxpayer is liable to pay latefee in cash of Rs.11,300/- (CGST: Rs.5,650 /- & SGST: Rs.5,650/-) under section 47 as applicable under the provisions of CGST Act, 2017 read with Section 37, Section 39 and Section 44 of CGST Act, 2017 and SGST Act, 2017.

7.3. Issue 3: Ineligible ITC availed in respect of invoices issued by the suppliers who have not filed their GSTR-3B returns for the relevant tax period.

7.3.1 On comparison of the Input Tax Credit available in GSTR-2A for the period FY 2019-20, it was noticed that the taxpayer received ITC to the tune of Rs.8,640/- (CGST: Rs. 4,320/- & SGST: Rs. 4,320/-) from the below mentioned suppliers who have not filed their GSTR-3B returns for the relevant tax periods and the same ITC was availed by the taxpayer in their GSTR-3B returns. The details of such suppliers are furnished hereunder: -

(Amount in Rs.)

S.No.	GSTIN	Legal Name	Period	Irregular ITC value
1	36BDWPN0356G1Z7	SHARADA NARABOINA	2019-20	1440
2	36AOLPN4767L1Z6	LAXMINARAYANA NARABOYINA	2019-20	7200

7.3.2. Since the taxpayer has irregularly availed and utilized the ITC of Rs.8,640/- (CGST: Rs. 4,320/- & SGST: Rs. 4,320/-) against the provisions of Section 16 & 41 of CGST Act, 2017 and Rule 36(1)(b) of CGST Rules, 2017, the same is required to be recovered from the taxpayer in terms of Section 73 of CGST Act, 2017, along with interest in terms of Section 50 of CGST Act, 2017. Further, it appears they are liable for penal action in terms of Section 73 of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and SGST Act, 2017.

7.4. Issue 4: Non reversal of ITC in accordance with provisions of Rule 42 and Rule 43 of CGST Rules, 2017 for FY 2019-20.

7.4.1 On verification of GSTR-1 and GSTR-3B returns filed by the taxpayer for FY 2019-20, it is observed that the taxpayer has declared Nil rated/exempted supplies but not reversed ITC proportionately as per Section 17(2) of CGST Act, 2017 read with Rule 42 of CGST Rules, 2017 as detailed below:

1. Taxable Value as per Table 3.1 (c) of GSTR-3B	5574251
2.Taxable Value as per Table 3.1(Total) of GSTR-3B	109198819
3.ITC as per Table 4A of GSTR-3B or 6A of GSTR-9	13952425
4.Amount to be reversed $\{(1/2)*3\}$	712226.7413
Liability	Rs.7,12,228/- (IGST: Rs.1,948/-, CGST: Rs.3,55,140 /- & SGST: Rs. 3,55,140/-)

7.4.2 In view of the above, it appears that the taxpayer did not follow the procedure prescribed in Section 17(2) of CGST Act, 2017 read with Rule 42 of CGST Rules, 2017. Therefore, it appears that the taxpayer is liable to reverse the ITC of Rs.7,12,228/- (IGST:

Rs.1,948/-, CGST: Rs.3,55,140 /- & SGST: Rs. 3,55,140/-) along with applicable interest under Section 50 of CGST Act, 2017 and penalty under Section 122(2)(a) read with Section 73 of CGST Act, 2017 & SGST Act, 2017 read with Section 20 of IGST Act, 2017.

8. In view of the foregoing discussion, I pass the following order

ORDER

(i) I hereby confirm the demand of Rs.2,35,488/- (IGST: Rs.17,008/- CGST: Rs. 1,09,240 /- & SGST: Rs. 1,09,240 /-) for irregular availment of input tax credit in GSTR-3B on comparison with ITC available in GSTR-2A for the FY 2019-20 as discussed in Para 7.1, under the provisions of sub section (1) of Section 73 of the CGST Act, 2017 and SGST Act,2017 read with Section 20 of IGST Act, 2017;

(ii) I hereby confirm the Interest demand on the demand amount confirmed at Sl.No.(i), as discussed in Para 7.1 under Section 50 of the CGST Act, 2017 / TSGST Act, 2017 read with Section 20 of IGST Act, 2017;

(iii) I hereby impose penalty of Rs.41,848/- (IGST: Rs.20,000/-, CGST: Rs. 10,924 /- & SGST: Rs. 10,924 /-) on the demand amount confirmed at Sl.No.(i), as discussed in Para 7.1 in terms of provisions of Section 73(1) of CGST Act, 2017 / TSGST Act, 2017 read with Section 122(2)(a) of CGST Act,2017 and also read with Section 20 of IGST Act, 2017;

(iv) I hereby confirm the demand of Rs.11,300/- (CGST: Rs.5,650 /- & SGST: Rs.5,650/-) for late fee on delayed filing of GSTR-1, GSTR-3B and GSTR-9 returns during FY 2019-20 as discussed in para 7.2, under the Section of 47 of CGST Act, 2017/SGST Act, 2017;

(v) I hereby confirm the demand of Rs.8,640/- (CGST: Rs. 4,320/- & SGST: Rs. 4,320/-) for irregular availment of input tax credit in GSTR-3B on comparison with ITC available in GSTR-2A for the FY 2019-20 as discussed in Para 7.3, under the provisions of Section 73 of the CGST Act, 2017 and SGST Act, 2017;

(vi) I hereby confirm the Interest demand on the demand amount confirmed at Sl.No.(v), as discussed in Para 7.3 under Section 50 of the CGST Act, 2017 / TSGST Act, 2017 read with Section 20 of IGST Act, 2017;

(vii) I hereby impose penalty of Rs.20,000/- (CGST: Rs. 10,000 /- & SGST: Rs. 10,000/-) on the demand amount confirmed at Sl.No.(v), as discussed in Para 7.3 in terms of provisions of Section 73(1) of CGST Act, 2017 / TSGST Act, 2017 read with Section 122(2)(a) of CGST Act,2017 and also read with Section 20 of IGST Act, 2017;

(viii) I hereby confirm the demand of Rs.7,12,228/- (IGST: Rs.1,948/-, CGST:

Rs.3,55,140 /- & SGST: Rs. 3,55,140/-) for non-reversal of ITC for the FY 2019-20 as discussed in Para 7.4, under the provisions of Section 73 of the CGST Act, 2017 & SGST Act, 2017 read with Section 20 of IGST Act, 2017;

(ix) I hereby confirm the Interest demand on the demand amount confirmed at Sl.No.(viii), as discussed in Para 7.4 under Section 50 of the CGST Act, 2017 / TSGST Act, 2017 read with Section 20 of IGST Act, 2017;

(x) I hereby impose penalty of Rs.91,028/- (IGST: Rs.20,000/-, CGST: Rs. 35,514 /- & SGST: Rs.35,514/-) on the demand amount confirmed at Sl.No.(viii), as discussed in Para 7.4 in terms of provisions of Section 73(1) of CGST Act, 2017 / TSGST Act, 2017 read with Section 122(2)(a) of CGST Act,2017 and also read with Section 20 of IGST Act, 2017;

QEN - 283/2024

 01.7.2024

Ramineni Sravan Kumar
अधीक्षक/ SUPERINTENDENT

रामगोपालपेट-III रेंज/RAMGOPALPET-III RANGE

To

✓ GSTIN: 36AAGFV2068P1ZJ

Legal Name: VISTA HOMES

(Trade Name: M/S. VISTA HOMES)

2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION,

MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003

PIN- 500003

Copy submitted to: -

(1) The Commissioner of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, Hyderabad. (By name to The Superintendent (Review))

(2) The Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad GST Commissionerate.

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रामगोपालपेट-III जी एस टी रेंज
Ramgopalpet-III GST Range
सिकन्दराबाद जी एस टी आयुक्तालय
Secunderabad GST Commissionerate
"सलीक सीनेट"/# 2-4-416 & 417
"SALIK SEINATE" # 2-4-416 & 417
रामगोपालपेट, एम.जी. रोड
Ramgopalpet, M.G. Road,
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