केन्द्रीय कर, केन्द्रीय उत्पाद शुल्क एवं सेवा कर आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER OF CENTRAL TAX, CENTRAL EXCISE & SERVICE TAX

सिकंदराबाद जीएसटी आयुक्तालय, जीएसटी भवन ,एल बी स्टेडियम रोड,

SECUNDERABAD GST COMMISSIONERATE, GST BHAWAN, L.B. STADIUM ROAD

बशीरबाग, हैदराबाद BASHEERBAGH, HYDERABAD – 500 004.

Email. adjudication3@gmail.com

OR No.41/2021-22-Sec-Adjn-ADC (GST) Date:29.06.2024

DIN-20240656YO0000777EC4

मूल आदेश सं॰ / **ORDER-IN-ORIGINAL NO.78/2024-25-SEC-ADJN-JC(GST)**

(Passed by Shri Tarun Reddy Gangireddy, Joint Commissioner of Central Tax, Secunderabad GST Commissionerate)

	प्रस्तावना	PREAMBLE
1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए नि:शुल्क दी जाती है जिसे यह जारी किया गया है।	This copy is granted free of charge for the private use of the person to whom it is issued.
2	सीजीएसटी नियम, 2017 के नियम 108(1) के अनुसार, धारा 107 की उप-धारा (1) के तहत अपीलीय प्राधिकारी को संबंधित दस्तावेजों के साथ फॉर्म जीएसटी एपीएल-01 में इलेक्ट्रॉनिक रूप से या अन्यथा के रूप में एक अपील दायर की जाएगी। आयुक्त सीमा शुल्क और अप्रत्यक्ष कर हैदराबाद (अपील-द्वितीय) आयुक्तालय, सातवीं मंजिल, जीएसटी भवन, एलबी स्टेडियम रोड, बशीरबाग, हैदराबाद, टीएस-500004 द्वारा अधिसूचित किया जा सकता है, और एक अनंतिम पावती जारी की जाएगी (अपील प्राधिकारी द्वारा) अपीलकर्ता को तत्काल।	As per Rule 108 (1) of the CGST Rules, 2017 an appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in FORM GST APL-01, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner of Customs & Indirect Taxes Hyderabad (Appeals-II) Commissionerate, Seventh Floor, GST Bhavan, LB Stadium Road, Basheerbagh, Hyderabad, TS-500004, and a provisional acknowledgement shall be issued (by the Appellate Authority) to the appellant immediately.
3	सीजीएसटी नियम, 2017 के नियम 108 (2) के अनुसार फॉर्म जीएसटी एपीएल-01 में निहित अपील के आधार और सत्यापन के रूप में नियम 26 में निर्दिष्ट तरीके से हस्ताक्षर किए जाएंगे।	As per Rule 108 (2) of the CGST Rules, 2017 the grounds of appeal and the form of verification as contained in FORM GST APL-01 shall be signed in the manner specified in Rule 26 thereof.

4	सीजीएसटी नियम, 2017 के नियम 108(1) के अनुसार, उप-नियम (1) के तहत अपील दायर करने के सात दिनों के भीतर निर्णय या आदेश की एक प्रमाणित प्रति प्रस्तुत की जानी चाहिए और एक अंतिम पावती, जिसमें अपील संख्या होगी उसके बाद अपीलीय प्राधिकारी या इस संबंध में उसके द्वारा अधिकृत अधिकारी द्वारा फॉर्म जीएसटी एपीएल-02 में जारी की जानी चाहिए: बशर्ते कि जहां निर्णय या आदेश की प्रमाणित प्रति फॉर्म जीएसटी एपीएल-01 दाखिल करने की तारीख से सात दिनों के भीतर प्रस्तुत की जाती है, वहां अपील दायर करने की तारीख अनंतिम पावती जारी करने की तारीख होगी और जहां प्रति सात दिनों के बाद प्रस्तुत की जाती है, अपील दायर करने की तिथि ऐसी प्रति प्रस्तुत करने की तिथि होगी। स्पष्टीकरण - इस नियम के प्रावधानों के लिए, अपील को तभी दायर माना जाएगा जब अंतिम पावती, अपील संख्या को इंगित करते हुए, जारी की जाती है।	As per Rule 108 (3) of the CGST Rules, 2017 a certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in FORM GST APL-02 by the Appellate Authority or an officer authorized by him in this behalf: Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy. Explanation– For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.
5	सीजीएसटी अधिनियम, 2017 की धारा 107 (6) के अनुसार, सीजीएसटी अधिनियम, 2017 की धारा 107(1) के तहत कोई अपील तब तक दायर नहीं की जाएगी जब तक कि अपीलकर्ता ने भुगतान नहीं किया है- (k) पूर्ण रूप से, कर, ब्याज, जुर्माना, शुल्क और दंड की राशि का ऐसा हिस्सा, जो आक्षेपित आदेश से उत्पन्न होता है, जैसा कि उसके द्वारा स्वीकार किया जाता है; तथा (K) उक्त आदेश से उत्पन्न विवाद में कर की शेष राशि के दस प्रतिशत के बराबर राशि, अधिकतम पच्चीस करोड़ रुपये के अधीन, जिसके संबंध में अपील दायर की गई है।	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, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed.

Sub: -GST -Short/Nonpayment of GST and irregular Input Tax Credit (ITC) taken during the period from July, 2017 to March, 2019 in terms of the provisions of the CGST Act, 2017 by M/s. SILVER OAK VILLAS LLP, Secunderabad, GSTIN: 36ADBFS3288A2Z7-Issue of Order In Original - Reg.

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BRIEF FACTS OF THE CASE:

M/s. SILVER OAK VILLAS LLP, 2nd Floor, U-22, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad-500003, Telangana (hereinafter called "the

taxpayer") are engaged in the business of supply of Construction of Residential Complex Service falling under SAC 995411 of GST Tariff of India and holders of GISTIN: 36ADBFS3288A2Z7 with effect from 09.08.2017. The taxpayer has filed GST Returns including Annual returns for the year 2017-18 (August, 2017 to March, 2018) and 2018-19.

2. Audit on the GST accounts of the taxpayer has been conducted by Group-12, Circle-I of Audit-II Commissionerate for the year 2017-18 & 2018-19 and following objections were raised vide the Final Audit Report No.707/2020-21-GST dated 11.06.2021.

2.1. Short payment of GST on Construction Service during the period 2017-18 and 2018-19: During the course of Audit on verification of the GSTR-3B returns of the taxpayer, it was observed that the taxpayer has paid GST @ 12% on Construction of Residential Complex Service instead of @18% as detailed below:

2017-18										
Month	**Taxable Value (Rs.)**	**GST paid @ 12%**			**GST payable @ 18%**			**Differential GST payable**		
		CGST (Rs.)	**SGST (Rs.)**	**Total GST (Rs.)**	**CGST (Rs.)**	**SGST (Rs.)**	**Total GST (Rs.)**	**CGST (Rs.)**	**SGST(Rs.)**	**Total GST (Rs.)**
Dec-17	1322250	79335	79335	158670	119003	119003	238005	39668	39668	79335
Feb-18	4300000	258000	258000	516000	387000	387000	774000	129000	129000	258000
Mar-18	2522500	151350	151350	302700	227025	227025	454050	75675	75675	151350
Total	8144750	488685	488685	977370	733028	733028	1466055	**244343**	**244343**	**488685**

2018-19										
Month	**Taxable Value (Rs.)**	**GST paid @ 12%**			**GST payable @ 18%**			**Differential GST payable**		
		CGST (Rs.)	**SGST (Rs.)**	**Total GST (Rs.)**	**CGST (Rs.)**	**SGST (Rs.)**	**Total GST (Rs.)**	**CGST (Rs.)**	**SGST (Rs.)**	**Total GST (Rs.)**
Apr-18	2284000	137040	137040	274080	205560	205560	411120	68520	68520	137040
May-18	2040000	122400	122400	244800	183600	183600	367200	61200	61200	122400
Jun-18	1523000	91380	91380	182760	137070	137070	274140	45690	45690	91380
Aug-18	2113500	126810	126810	253620	190215	190215	380430	63405	63405	126810
Sep-18	10298438	617906	617906	1235813	926859	926859	1853719	308953	308953	617906
Oct-18	10448438	626906	626906	1253813	940359	940359	1880719	313453	313453	626906
Total	28707376	1722442	1722442	3444885	2583664	2583664	5167328	**861221**	**861221**	**1722443**

From the above table it was observed that the taxpayer short paid the GST of Rs.22,11,128/- (CGST:Rs.11,05,564 and SGST:Rs.11,05,564) by adopting wrong rate of GST @ 12% instead of 18% and thus contravening Section 39 of CGST Act, 2017 read with Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 as amended. As per the GST Tariff heading the construction of Residential Complex Services falls under Chapter Heading (SAC) 995411 and attracts 18% GST. Further as per Sl. No. 3(1) of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 as amended, the GST rate prescribed for Construction of Residential Complex Service is 18%. From the above, it appeared that the taxpayer is short paid GST to the tune

of Rs.22,11,128/- (CGST:Rs.11,05,564 and SGST:Rs.11,05,564) for the Financial Year 2017-18 (July, 2017 to March, 2018) and 2018-19 which is recoverable under Section 74(1) of CGST Act, along with applicable interest and penalty.

2.2. Non-payment of GST under RCM on Brokerage /Commission paid to unregistered persons under Section 9(4) of CGST Act, 2017: During the course of audit on scrutiny of GST Returns with Balance Sheet and Ledgers it was observed that the taxpayer has paid Brokerage /Commission to un registered persons to the tune of Rs. 12,37,734/-during the period from 01.07.2017 to 12.10.2017 as per Section 9(4) of CGST Act, 2017 read with Notification No.8/2017-Central Tax (Rate) dated 28.06.2017. Total GST of Rs. 2,22,792/-is payable unde RCM as detailed below:

Month	Value	CGST @ 9%	SGST @ 9%	Total GST payable (Rs.)
Jul-17	5500	495	495	990
Aug-17	30755	2768	2768	5536
Sep-17	1201479	108133	108133	216266
Total	1237734	111396	111396	222792

Tax liability vests on the taxpayer under RCM on purchases from un-registered dealers in terms of Section 9(4) of the CGST Act, 2017, which prescribes as follows:
"Section 9. Levy and collection:
(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both"

Therefore, the amount of GST of Rs.2,22,792/-, along with applicable interest and penalty is recoverable from the taxpayer under Section 74 (1) of the CGST Act, 2017.

2.3. Interest on delayed payment of GST (cash portion) due to delay in filing of GSTR-3B Return for the month of August, 2017: On verification of GSTR-3B Returns filed by the taxpayer, it was observed that there is a delay of 24 days in filing of GSTR-3B return for the month of August, 2017 in which GST of Rs. 77,000/-paid through cash. Thus there is a delay in cash payment of GST by 24 days on which interest @ 18% works out to Rs. 9,11/-, which is recoverable under Section 50 of the CGST Act, 2017.

Section 50. Interest on delayed payment of tax:-
(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:

Rate of interest prescribed @18% for Sub-section (1) of section 50 of the CGST Act. 2017 vide Notification No. 13/2017 -Central Tax, dated the 28th June, 2017. Therefore, the taxpayer is required to pay the interest of Rs.911/-under the provisions Section 50 of the CGST Act, 2017 and Penalty as applicable under the provisions of Section 125 (5) of the CGST Act, 2017.

2.4. Short payment of GST as per the turnover declared in GSTR9/9C for the F.Y. 2017-18 and 2018-19: During course of Audit on verification of Annual Returns i.e. G8TR-9/9C, it was observed that the turnover declared for the F.Y. 2017-18 is Rs.13,38,80,112/- as per GSTR-9C and for the F.Y. 2018-19 Rs.17,11,97,264/- as per GSTR9. Further on verification of GSTR-3B, it was noticed that there is a short of GST to the tune of Rs. 2,13,74,190/-. The details of short payment are shown as under:

Financial Year	Turnover as per GSTR-9/9C	Taxable Value i.e. 2/3 of turn over	GST payable @ 18%			GST paid as per GSTR-3B			GST short paid		
			CGST (Rs.)	SGST (Rs.)	Total GST (Rs.)	CGST (Rs.)	SGST (Rs.)	Total GST (Rs.)	CGST (Rs.)	SGST (Rs.)	Total GST (Rs.)
2017 - 18	133880112	89253408	8032807	8032807	16065613	488685	488685	977370	7544122	7544122	15088243
2018 - 19	171197264	114131509	10271836	10271836	20543672	7128858	7128858	14257716	3142978	3142978	6285956
Total		203384917			36609285			15235086			21374199

As per the Para-2 of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, the taxable value for the Construction of Residential Complex Service is (CRCS) 2/3rd of Gross value received. Para-2 of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 is re-produced hereunder:

2.In case of supply of service specified in column (3) of the entry at item (i) against serial no. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. -For the purposes of paragraph 2, "total amount" means the sum total of,

(a) Consideration charged for aforesaid service; and

(b) amount charged for transfer of land or undivided share of land, as the case may be.

In view of the above, it was appeared that the taxpayer is liable to pay total Rs. 2,13,74,200/-[CGST:Rs.75,44,122/-& SGST:Rs.75,44,122/- for the F.Y. 2017-18 and CGST:Rs.31,42,978/-& SGST:Rs.31,42,978/-for the F.Y. 2018-19) towards GST short paid as detailed in table above under Section 74 of CGST Act, 2017 along with applicable interest and penalty.

5. Non-payment of Interest on Irregular ITC of Rs. 45,73,392/-availed and reversed: During the audit, it was observed that excess ITC amount of Rs.45,73,392/- availed in the month of August, 2018 and reversed the same in September, 2018. The taxpayer has not paid the applicable interest on the same. The taxpayer is liable to pay interest @18% which works out Rs. 68,600/-on irregular ITC amount of Rs.45,73,392/- availed and reversed later as above. Therefore, the taxpayer is required to pay the same along with interest under Section 50 on irregular ITC availed along with penalty under section 125 (5) of the CGST Act, 2017.

6. Irregular ITC of Rs. 18,73,254/- availed for the F.Y. 2018-19 which is Difference between GSTR-3B vs GSTR-2A: During the course of audit, on comparison of ITC availed by the taxpayer in GSTR-3B with the ITC available in GSTR-2A it was observed that the taxpayer has availed excess ITC which is not reflected in GSTR-2A to the tune of Rs.18,73,254/ (CGST Rs.9,36,627/-+ SGST Rs.9,36,627/-) during the year 2018-19 which is recoverable u/s 74 (1) of CGST Act, 2017 along with interest and penalty. The details are as below:

Year	Description	IGST	CGST	SGST	Total
2018-19	GSTR-3B-Returns ITC claimed	27869	10503593	10503593	21035055
	Dynamic data as per GSTR-2A Returns as on 10-12-2021	1143796	6939027	6939027	15021850
	Difference (Between Dynamic GSTR-2A with GSTR-3B Returns ITC claimed)	1115927	-3564566	-3564566	-7129132
	Reversed in GSTR-3B Return against Table-4B(2) in the month of Sept-2017	0	2627939	2627939	5255878
	Excess Claim in FY-2018-19	0	936627	936627	1873254

In terms of Section 16(2) of the CGST Act, 2017 stipulates conditions for availing ITC by the Registered person. Section 16(2) as existing during the material period is reproduced below:

(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 where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(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.

As per Rule 36 which prescribes the documentary requirements and conditions for claiming input tax credit.-
(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.*

In view of the above provisions, it is seen that ITC can be availed by a registered taxpayer only if all applicable particulars specified in the Tax Invoice (under Chapter VI of the Rules, ibid) are furnished in the Form GSTR-2A of the taxpayer. When the supplier files GSTR -1 Return in any particular month disclosing his sales, the corresponding details are captured in the GSTR -2A of the recipient. Hence, the amount of ITC available as disclosed in Table 4A must match with tax details 3B and Form disclosed in Form GSTR -2A. It is important to reconcile Form GSTR GSTR - 2A. The excess Input Tax credit mentioned at para-(vi) (a) is not appearing in the GSTR 2 A of the Tax payer for the relevant period. Hence, it appeared that the supplier of the recipient has not paid the tax to the Government to that extent of the amount not appearing in the GSTR 2A. Hence, it appeared that the tax-payer is not

eligible for ITC of Rs.18,73,254/ (Rs.9,36,627/-of CGST, Rs.9,36,627/-of SGST) and same is recoverable under Section 74 (1) of CGST Act along with applicable interest and penalty.

7. Invocation of extended period alleging suppression of facts: The provisions for invoking extended period of limitation due to suppression etc., are prescribed under Section 74 (1), 74 (5) to 74 (7) of the CGST Act, 2017 as under:

74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any willful-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 utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(5) The person chargeable with tax may, before service of notice under sub section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

8. Factors for alleging the suppression etc., and consequential penalties: The above issues of non-payment Tax/non-reversal of ITC on the issues at Para-2(i) to 2(vi) came to light only during audit of the taxpayers' records by the Department. The subject issue was never intimated to Department nor sought for clarification from the Department. It is also observed that the taxpayer has not reflected such tax liability correctly in any of the statutory returns and further have filed the Annual Return GSTR-9 or GSTR-9C without taking cognizance of the RCM. While filing GSTR-9C for the year 2017-18 & 2018-19, the taxpayer has not discharged tax liability there being differences between actual turnover and the turnover reflected

in the GST returns. Hence the Department was not in the knowledge of the subject issue prior to the conduct of Audit. This non-payment therefore appeared to be a deliberate avoidance or evasion of tax on the part of the taxpayer.

Further, the taxpayer cannot claim ignorance in as much as they are operating under GST for nearly 4 years. Since the taxpayer has been registered with the department for many years, it can be reasonably assumed that they are well versed with the provisions of the law. In the regime of self-assessment under Section 59 of the CGST Act, 2017, greater responsibility and trust is placed on the taxpayer to correctly assess, pay and declare the tax liability. In doing so, it appears that they have suppressed these facts, which have seen the day of light only during verification of records by the Departmental officers. Whereas the taxpayer has agreed to the first three objections, but did not care to pay the amounts involved. Later, their letter dated 07.09.2021 wherein the taxpayer stated that they are not in agreement with the objections and invited a Show Cause Notice on the objections which they want to contend, is a clear mis-representation and mis- statement on the part of the taxpayer.

All these actions/inactions indicate that the taxpayer has suppressed the facts with intent to evade the interest penalty as applicable. Therefore, this is a fit case for demanding the duty from the taxpayer by invoking extended period in terms of Section 74(1) of the CGST Act, 2017 along with the applicable interest in terms of Section 50(1) of the CGST Act, 2017. Further, it appeared that the taxpayer is liable for a penalty in terms of Section 74 (1) of the CGST Act, 2017.

9. In view of the foregoing, a notice vide C. No.V/01/GST/81/2020-GR.12/CIR-I, dated 12.01.2022 was issued to M/s. SILVER OAK VILLAS LLP, to show cause to the Joint/ Additional Commissioner of Central Tax & GST, Secunderabad GST Commissionerate, GST Bhavan, L.B. Stadium Road. Basheerbagh, Hyderabad within thirty (30) days of receipt of the notice as to why:

(i) An amount of Rs.22,11,128/-(Rupees Twenty Two Lakh Eleven Thousand One Hundred 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/-totaling Rs. 17,22,443/-for the year 2018-19) towards GST short paid 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 Lakh 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 should not be demanded under Section 74 (1) of the CGST Act, 20 17;

(iii) An amount of Rs.911/-(Rupees Nine Hundred Eleven Only) towards interest on delayed payment of GST should not be demanded in terms of Section 50 of the COST Act, 2017;

(iv) An amount of Rs.2,13,74,199/-(Rupees Two Crore Thirteen Lakh Seventy Four Thousand One Hundred 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 should not be demanded from the taxpayer in terms of Section 74(1) the CGST Act, 2017;

(v) An amount of Rs. 68,600/-(Rupees Sixty Eight Thousand Six Hundred Only) towards the interest payable on irregularly availed ITC of Rs.45,73,392/- 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/-) 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 SI. No (iii) and (v) above;

10. Reply to the notice: The taxpayer through his authorised representative CA Venkat Prasad P, M/s Hiregange & Associates LLP submitted reply to the notice vide letter dated 28.02.2023. His submission is reproduced hereunder:

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; 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 statutarily 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 -____.

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 leger.

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 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 deprival, 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 deprival 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 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.

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

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 ARNAD361220000585M 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.

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-VIII)

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

a. Disclosure of revenue in the Financial Statements is in accordance with Indian Accounting Standard i.e. based on percentage completion method

b. 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:

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 the irregular credit and have not gained anything from such availment. Therefore, there should not be any interest liability on mere availment of credit (Copy of electronic credit ledger is enclosed as Annexure-IX).

67. Without prejudice to above, Noticee submits that the Finance Act, 2022 vide Section 110 has proposed an amended to the section 50 which is in accordance with the GST Council in its 45th meeting GST Council Meeting has clearly stated that the interest in cases of ineligible ITC availed and utilized should be charged at 18% w.e.f. 01.07.2017. The press release evidencing the same is as under *"In the spirit of earlier Council decision that interest is to be charged only in respect of net cash liability, section 50 (3) of the CGST Act to be amended retrospectively, w.e.f. 01.07.2017, to provide that interest is to be paid by a taxpayer on "ineligible ITC availed and utilized" and not on "ineligible ITC availed". It has also been decided that interest in such cases should be charged on ineligible ITC availed and utilized at 18% w.e.f. 01.07.2017."*

68. It is further submitted that ITC was not utilized and have been maintained sufficient balance of ITC in the electronic credit ledger throughout the subject period. The copy of Electronic credit ledger is enclosed as annexure-IX.

69. Noticee submits that as the entire credit is reversed before the utilization, the interest liability does not arise. In this regard, reliance is further placed on:

a. Commissioner Cus., C.E. & S.T. v. Bharat Dynamics Ltd. 2016 (331) E.L.T. 182 (A.P.) wherein it was held that *"6. From the findings arrived at by the Tribunal as reproduced above, it is obvious that in March, 2010, the appellant in accordance with the relevant provision of law, did seek clarification from the department to know whether the goods on clearance to the respondent-assessee are exempted from payment of Excise duty in terms of the notification and only in the absence of such*

clarification from the department, they took CENVAT credit during the intervening period i.e. from September, 2010 to March, 2011. It is also clearly observed that after getting clarification from TRU in April, 2011, the appellant reversed the entire amount of Cenvat credit. In that view of the matter, the specific contention put forth by the learned standing counsel that the respondent-assessee, without any eligibility, has taken the Cenvat credit, as such, they are liable to pay interest, is not sustainable."

b. CCE & ST, LUT Bangalore Vs. Bill Forge Pvt. Ltd—2012 (26) S.T.R. 204 (Kar.) wherein it was held that *"21. Interest is compensatory in character, and is imposed on an assessee, who has withheld payment of any tax, as and when it is due and payable. The levy of interest is on the actual amount which is withheld and the extent of delay in paying tax on the due date. If there is no liability to pay tax, there is no liability to pay interest. Section 11AB of the Act is attracted only on delayed payment of duty i.e., where only duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person liable to pay duty, shall in addition to the duty is liable to pay interest. Section do not stipulate interest is payable from the date of book entry, showing entitlement of Cenvat credit. Interest cannot be claimed from the date of wrong availment of CENVAT credit and that the interest would be payable from the date CENVAT credit is taken or utilized wrongly."*

c. B. Girijapathi Reddy & Company v. Commissioner — 2016 (344) E.L.T. 923 (Tri-Hyd);

d. GantaRamanaiah Naidu v. Commissioner — 2010 (18) S.T.R. 10 (Tribunal)

e. J.K. Tyre & Industries Ltd. Vs. CCE x., Mysore—2016(340) E.L.T 193 (Tri.-LB);

f. Commissioner v. Strategic Engineering (P) Ltd. — 2014 (310) E.L.T. 509 (Mad.);

g. Commissioner v. Bombay Dyeing and Mfg. Co. Ltd. — 2007 (215) E.L.T. 3 (S.C.);

70. Noticee further wishes to rely on **Commercial Steel Engineering Corporation v. State of Bihar — 2019 (28) G.S.T.L. 579 (Pat.)** wherein it was held that *"The Assistant Commissioner of State Taxes has somewhere got confused to treat the transitional credit claimed by the dealer as an availment of the said credit when in fact an availment of a credit is a positive act and unless carried out for reducing any tax liability by its reflection in the return filed for any financial year, it cannot be a case of either availment or utilization. It is rightly argued by Mr. Kejriwal that even if the respondent no.3 was of the opinion that the petitioner was not entitled to such transitional credit at best, the claim could be rejected but such rejection of the claim for transitional credit does not bestow any statutory jurisdiction upon the assessing authority to correspondingly create a tax liability especially when neither any such outstanding liability exists nor such credit has been put to use."*

From the above referred submissions, it is clear that no interest is applicable when the credit is reversed before utilization. Further, the same was also clarified in the 45th GST Council Meeting wherein it was recommended to state that interest is applicable only on utilization and is not applicable on mere availment. Hence, Noticee request you to drop the further proceedings in this regard.

In Re: No irregular availment of ITC:

71. Noticee submits that the impugned notice has alleged that the Noticee has excess claimed ITC of Rs. 18,73,254/- (CGST Rs. 9,36,627/- SGST Rs. 9,36,627/-) in GSTR-3B as compared to the tax declared by the suppliers of Noticee in GSTR-01.

72. In this regard, Noticee submits that the annexure given to the impugned notice has not considered the correct figures of GSTR-2A and therefore, Noticee herewith extracted the ITC comparison sheet downloaded from the portal www.gstgov.in and shown as follows:

Month	**As per GSTR-2A**	**As per GSTR-3B**	**Shortfall (-)/ Excess (+) in liability**
Apr-18	6,00,454	4,37,896	- 1,62,558
May-18	5,14,035	5,61,670	47,636
Jun-18	6,70,830	4,70,881	- 1,99,949
Jul-18	3,97,231	6,93,107	2,95,877
Aug-18	2,36,039	50,99,712	48,63,673
Sep-18	17,29,922	- 21,40,415	- 38,70,337
Oct-18	10,19,208	15,21,728	5,02,520
Nov-18	8,60,712	9,95,080	1,34,368
Dec-18	20,21,874	16,41,727	- 3,80,147
Jan-19	10,62,926	15,33,878	4,70,952
Feb-19	17,13,174	19,38,196	2,25,021
Mar-19	42,22,662	30,25,158	- 11,97,504
Total	**1,50,49,067**	**1,57,78,618**	**7,29,551**

73. From the above referred table, it is clear that the difference is only Rs.7,29,551/- and not as alleged by the department. Hence, the demand to that extent needs to be dropped.

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

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

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

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

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

1. *Every registered person shall,* ***subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis*** *to his electronic credit ledger.*

2. *The credit referred to in sub-section (1) shall be utilized only for payment of self-assessed output tax as per the return referred to in the said sub-section"*

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

77. In this regard, it is submitted that Section 42, *ibid* specifies the mechanism for matching, reversal, and reclaim of ITC wherein it was clearly stated the details of every inward supply furnished by a registered person shall be matched with the corresponding details of outward supply furnished by the supplier in such manner and within such time as may be prescribed.

78. Further, Rule 69 of CGST Rules, 2017 specifies that the claim of ITC on inward supplies provisionally allowed under Section 41 shall be matched under Section 42 after the due date for furnishing the return in GSTR-03. Further, the first proviso to Rule 69 also states that if the time limit for furnishing Form GSTR-01 specified under

Section 37 and Form GSTR-2 specified under Section 38 has been extended then the date of matching relating to the claim of the input tax credit shall also be extended accordingly.

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

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

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

82. Noticee further submits that Finance Act, 2022 has omitted Section 42, 43 and 43A of the CGST Act, 2017 which deals ITC matching concept. Noticee submits that the substituted Section 38 of the CGST Act, 2017 now states that only the eligible ITC which is available in the GSTR-2B (Auto generated statement) can be availed by the recipient. Now, GSTR-2B has become the main document relied upon by the tax authorities for verification of the accurate ITC claims. Hence, omission of sections 42, 43 and 43A has eliminated the concept of the provisional ITC claim process, matching and reversals.

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

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

"SECTION 38. Furnishing details of inward supplies. — (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person

paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37."

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

85. The Section 38 read with Rule 60 had prescribed the FORM GSTR 2 which is not made available till 30.09.2022. Notification No. 20 Central Tax dated 10th Nov 2020 has substituted the existing rule to w.e.f. 1.1.2021 meaning thereby the requirement of Form GSTR 2 necessary in order to due compliance of Section 38. In the absence of the said form, it was not possible for the taxpayer to comply with the same. Further, Form GSTR 2 has been omitted vide Notification No. 19/2 Central Tax dated 28.09.2022 w.e.f. 01.10.2022.

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

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

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

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

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

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

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

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

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

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

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

94. Noticee submits that the fact of payment or otherwise of the tax by the supplier is neither known to us nor is verifiable by us. Thereby it can be said that such condition is impossible to perform and it is a known principle that the law does not compel a person to do something which he cannot possibly perform as the legal maxim goes: ***lex non-cogit ad impossibilia*, as was held in the case of:**

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

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

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

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

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

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

(Investigation Wing), Tirunelveli2021(3) TMI 1020-Madras High Court wherein it was held that

"12. Therefore, if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer. In the case on hand, the respondent does not appear to have taken any recovery action against the seller / Charles and his wife Shanthi, on the present transactions.
13. The learned counsel for the petitioners draws my attention to the SCN, dated 27.10.2020, finalising the assessment of the seller by excluding the subject transactions alone. I am unable to appreciate the approach of the authorities. When it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him.
14. That apart in the enquiry in question, the Charles and his Wife ought to have been examined. They should have been confronted."

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

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

"54. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. ***In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the***

remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC."

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

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

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

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

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

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

103. Similarly, it is only Rule 36(4) of CGST Rules, 2017 as inserted w.e.f. 09.10.2019 has mandated the condition of reflection of vendor invoices in GSTR-2A with Adhoc addition of the 20% (which was later changed to 10% & further to 5%). At that time, the CBIC vide Circular 123/42/2019 dated 11.11.2019 categorically clarified that the matching u/r. 36(4) is required only for the ITC availed after 09.10.2019 and not prior to that. Hence, the denial of the ITC for non-reflection in GSTR-2A is incorrect during the subject period.

104. Noticee submits that Rule 36(4), ibid restricts the ITC on the invoices not uploaded by the suppliers. However, such restrictions were beyond the provisions

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

Once any rule is ultra vires, the same need not be followed. Hence, the proposition to deny the ITC stating that invoices not reflected in GSTR-2A require to be dropped.

105. Noticee submits that the aforesaid Rule can be considered to be valid only if the provisions of the Act envisage such restriction. Noticee submits that Section 16(2) of the CGST Act, 2017 as presently applicable provides that a registered person shall not be entitled to ITC unless he satisfies the given four conditions. A perusal of the said provisions shall reveal that none of the conditions provides for the furnishing of the details of the invoice in GSTR 1 by the vendors. It may be noted that the actual payment condition under clause (c) cannot be inferred to include the condition of the furnishing of the details in GSTR 1. It is for the simple reason that the furnishing of the details of outward supplies is u/s 37 of the CGST Act, 2017 which is distinct and at present legally not linked with the furnishing of the return and payment of tax u/s 39 of the said Act. In fact, an amendment made u/s 75 by virtue of Finance Act, 2021 to the effect that the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39 and shall permit the direct recovery of the said tax so declared also confirms that the declaration of the details u/s 37 in GSTR 1 do not confirm the payment of tax. Hence, it can be stated that in absence of any provisions in the Act enabling the formulation of Rule 36(4), the same has to be declared as invalid.

106. The aforesaid view has also been recognized as evident from the rationale for the amendment under discussion (i.e., clause (aa)) as expressly stated in the minutes of the GST Council meeting. The agenda note (supra) clearly has recognized the said gap between the Act and the Rule by stating that the proposed amendment is aimed to "to complete this linkage of outward supplies declared by the supplier with the tax liability, by also limiting the credit availed in FORM GSTR 3B to that reflected in the GSTR2A of the recipient, subject to the additional amount available under rule

36(4)". Hence the amendment by way of clause (aa) leads to a conclusion that the provisions of Rule 36(4) shall not be valid till the said clause is notified.

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

108. Noticee submits that based on the above submissions, it is clear that the ITC availed by the taxpayer is rightly eligible and there is no requirement to pay any interest on the same. Hence, the impugned notice to that extent needs to be dropped.

109. Noticee wishes to rely on recent decisions in case of:

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

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

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

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

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

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

112. Noticee submits that the denial of ITC to the buyer of goods or services for default of the supplier of goods or services, clearly frustrates the underlying objective of removal of cascading effect of tax as stated in the Statement of object and reasons of the Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014. it is an established principle of law that it is necessary to look into the mischief against

which the statute is directed, other statutes in pari materia and the state of the law at the time.

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

In Re: Benefit of cum-tax under Rule 35 shall be extended

114. Noticee submits that in case any part of the demand sustains then, the same shall be re-quantified after allowing the benefit of cum-tax u/r. 35 of CGST Rules, 2017 since Noticee has not collected any GST from the customers to the extent of alleged short/non-payment of GST.

In Re: Interest under Section 50 is not applicable

115. Noticee submits that when the principal amount is not payable there is no question of payment of interest. In this regard, reliance is placed on the Judgment of Hon'ble Supreme Court in the case of Pratibha Processors Pvt. Ltd Vs UOI0 1996 (88) E.L.T. 12 (S.C.).

In Re: Demand under Section 74 is not applicable:

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

117. With respect to non-payment of GST under reverse charge mechanism on unregistered procurements, Noticee would like to submit that there exists a confusion relating to payment of GST on unregistered procurements and the industry has not paid GST on the same as the same is very complex. Understanding the difficulties involved in implementation of RCM on unregistered procurements, the government has removed the same from reverse charge mechanism. This shows that

there was a genuine difficulty faced by the trade which was also understood by the Government and removed the same. In these circumstances. it cannot be said that there is a suppression and intention to evade payment of tax. Hence, the question of invocation of Section 74 does not arise.

118. With *respect* to difference between ITC availed in GSTR-3B and GSTR-2A, Noticee would like to submit that during the period 2017-18 and 2018-19, there is no condition of reflection of invoices in GSTR-2A for availing the ITC and it is only Rule 36(4) of CGST Rules, 2017 as inserted w.e.f. 09.10.2019 has mandated the condition of reflection of vendor invoices in GSTR-2A with adhoc addition of the 20% (which was later changed to 10% & further to 5%). At that time, the CBIC vide Circular 123/42/2019 dated 11.11.2019 categorically clarified that the matching u/r. 36(4) is required only for the ITC availed after 09.10.2019 and not prior to that. Hence, the denial of the ITC for non-reflection in GSTR-2A is incorrect during the subject period.

119. Noticee would like to submit that the Noticee has availed the ITC based on the invoices received from our suppliers and the same were verified by the audit party. After verification, no objection was raised with respect to ITC availed except stating that the ITC was not reflected in GSTR-2A. The ITC availed was disclosed in GSTR-3B and the department is aware of the same, hence, there is no question of suppression of the same. Further, the non-reflection of ITC in GSTR-2A is not in our hands and the same is completely dependent on the filing status of our suppliers. Therefore, the same cannot be considered as suppression as defined in Explanation to Section 74 of CGST Act, 2017.

120. The same view was taken by various High Courts under GST regime and stated that the ITC cannot be denied merely for non-reflection of invoices in GSTR-2A. In this regard, reliance is placed on

- M/s. D.Y. Beathel Enterprises Vs State Tax officer (Data Cell), (Investigation Wing), Tirunelveli 2021(3) TMI 1020-Madras High Court
- Jurisdictional High Court decision in case of Bhagyanagar Copper Pvt Ltd Vs CBIC and Others 2021-TIOL-2143-HC-Telangana-GST
- M/s. LGW Industries limited Vs UOI 2021 (12) TMI 834 -Calcutta High Court
- M/s. Bharat Aluminium Company Limited Vs UOI & Others 2021 (6) TMI 1052 – Chattishgarh High Court

Since the issue involves interpretation and exists confusion during the disputed period, the suppression of facts cannot be invoked.

121. Noticee submits that the suppression of facts cannot be invoked for mere difference between the GSTR-2A and GSTR-3B. In this regard, reliance is placed on NKAS Services Pvt Ltd Vs State of Jharkhand, 2022 (58) G.S.T.L.257 (Jhar) the

Hon'ble Jharkhand High Court held that wherein it was held that *"Court finds that upon perusal of GST DRC-01 issued to the petitioner, although it has been mentioned that there is mismatch between GSTR-3B and 2A, but that is not sufficient as the foundational allegation for issuance of notice under Section 74 is totally missing and the notice continues to be vague"*

122. Noticee would like to submit that the impugned order has confirmed the penalty under Section 74 merely on the ground that the Noticee had paid certain taxes on pointing out by the audit officers. In this regard, Noticee submits that the lapse would not have come to light but for the investigation of the department, standing alone cannot be accepted as a ground for confirming suppression, misstatement or misdeclaration of facts. Any shortcomings noticed during the course of verification of records, itself cannot be reasoned that the deficiency was due to *mala fide* intention on the part of Noticee. In this regard relied, on LANDIS + GYR LTD Vs CCE 2013 (290) E.L.T. 447 (Tri. - Kolkata).

123. Noticee wish to further rely on the Patna high Court decision in case of Shiv Kishore Constructions Pvt Ltd Vs UOI 2020 (10) TMI 45 – Patna High Court wherein it was held that mere difference between turnover in GSTR-3B and as per TDS return GSTR-2A cannot be considered as suppression of facts.

124. Noticee submits that Section 74 is applicable only when the non-payment or short payment is due to fraud or any willful misstatement or suppression of facts to evade tax.

"74. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any willful-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 utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice"

However, in the instant case, Noticee has not suppressed any details to the department. Therefore, the proposal of impugned notice to demand tax under Section 74 is not correct and the same needs to be dropped.

125. Noticee further submits that during the course of audit Noticee has submitted all the relevant information asked for without any hesitation as and when required. Further, respecting the judicial proceedings Noticee has given a proper response against the summons issued by appearing before the department authorities. Noticee

submits that no information is suppressed. The allegation of suppression of facts is not correct.

126. Further, Noticee extracts the meaning of suppression explained in CGST Act, 2017

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

127. Noticee submits that from the above-referred Explanation-2 to Section 74 of CGST Act, 2017, the expression 'suppression' means not declaring the information required to be declared in the return or failure to furnish any information on being asked for, in writing by the proper officer. In the present case, Noticee has submitted the required information as and when called for by the department authorities. Further, the audited financial statements were also submitted. Hence, the proposal of impugned notice to impose a penalty is not at all tenable.

128. Noticee further submits that suppression means not providing information that the person is legally required to state but is intentionally or deliberately not stated. Whereas in the instant case full facts of present SCN were well disclosed before authorities as and when requested by way of clear & specific letters. Further, there is no willful misstatement by Noticee in view of the fact that what is believed to be correct as backed by legal provisions was put forth before the authorities.

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

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

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

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

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

130. Noticee submits that mere non-payment/short payment of tax per se does not mean that Noticee has willfully contravened the provisions with the intent to

evade payment of tax. In this regard, reliance is placed on Uniworth Textiles Ltd. v. Commissioner 2013 (288) E.L.T. 161 (S.C.).

131. Noticee submits that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the bonafide belief that the offender is not liable to act in the manner prescribed by the statute. Relied on Hindustan Steel Ltd. v. State of Orissa —1978 (2) E.L.T. (J159) (S.C.).

132. Noticee further submits that it was held in the case of Collector of Customs v. Unitech Exports Ltd. 1999 (108) E.L.T. 462 (Tribunal) that- *"It is settled position that penalty should not be imposed for the sake of levy. Penalty is not a source of Revenue. The penalty can be imposed depending upon the facts and circumstances of the case that there is a clear finding by the authorities below that this case does not warrant the imposition of penalty. The respondent's Counsel has also relied upon the decision of the Supreme Court in the case of M/s. Pratibha Processors v. Union of India reported in 1996 (88) E.L.T. 12 (S.C.) that penalty ordinarily levied for some contumacious conduct or for a deliberate violation of the provisions of the particular statute."* Hence, a Penalty cannot be imposed in the absence of deliberate defiance of the law even if the statute provides for the penalty.

133. Noticee submits that from the above-referred case laws, it is clear that Noticee has not willfully misstated any facts, therefore, the imposition of penalties is not warranted.

134. Noticee submits that Penalty, as the word suggests, is punishment for an act of deliberate deception by the assessee with the intent to evade duty by adopting any of the means mentioned in the section. In this regard wishes to place reliance on Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C.) & Commissioner of Central Excise, Vapi Vs Kisan Mouldings Ltd 2010 (260) E.L.T 167 (S.C)

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

136. Noticee submits that GST being a new law, the imposition of heavy penalties during the initial years of implementation is not warranted. Further, the government has been extending the due dates & waiving the late fees for delayed filing etc., to encourage compliance.

137. Noticee submits that GST being a new law and trade is not much conversant with the procedures, the imposition of hefty penalty for mere delay in filing of returns will adversely impact the trade. Further, these hefty penalties may lead to the closure of business of the Noticee hence the same shall be avoided.

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

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

c. The Tyre Plaza Vs UOI 2019 (30) GSTL 22 (Del)

d. Kusum Enterprises Pvt Ltd Vs UOI 2019-TIOL-1509-HC-Del-GST

139. Noticee craves leave to alter, add to and/or amend the above reply.

140. Noticee would also like to be heard in personal, before any order is being passed in this regard.

10.1 The taxpayer vide their letter dated 08.09.2023 submitted additional submission. The same is reproduced hereunder:

"In continuation to the Show Cause Notice Reply filed on 01.03.2023 following are the additional submissions. Noticee herewith humbly requests the Ld. Adjudicating authority to consider the following submissions in addition to the submissions already made and the following submissions are only in addition to the same and not in substitution of the same (which are alternate pleas and without prejudice to one another).

Additional Submissions:

1. Noticee submitted that the impugned SCN has proposed the following demands on various issues

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**

Short payment of GST on construction service during the period 2017-18 & 2018-19

2. With respect to SI No A in above referred table, they have already submitted in our reply that there is no short payment of GST and it is only a disclosure error while filing the GSTR-3B returns with respect to 2017-18. The actual turnover has been properly disclosed in GSTR-09 i.e, Annual Return and request to drop further proceedings in this regard. To support our submissions, we are herewith enclosing the copics of Summary GSTR-3B for the period July 2017 to March 2018 as **Annexure I** wherein the turnover of Rs.81,44,750/- was disclosed inadvertently and paid GST at 12% instead of paying GST at 18% on Rs.54,29,832/-. Though there is a difference in turnover, there is no short payment of GST. This error has been corrected while filing GSTR-09 which is enclosed as **Annexure II.** The summary is as follows

SI	Particulars	Turnover	Rate	CGST	SGST

No					
A	Turnover and taxes disclosed in GSTR-3B	81,44,750	12%	488,685	488,685
B	Actual details rectified in GSTR-09	54,29,832	18%	488,685	488,685
C	**Difference in tax paid (A-B)**			**0**	**0**

3. Noticce submitted that they paid the correct tax liability at the correct tax rate as applicable of Rs. 4,88,685/- (CSGT and SGST each) and Noticee has rectified error in disclosing the turnover while filing the annual return GSTR-9 for the period 2017-18. Hence, Noticee requests to consider the above explanations and the drop the proceedings to this extent.

4. With respect to 2018-19, Noticce have already submitted that the differential taxes have been already paid while filing the GSTR-3B for the month of November 2018. To evidence the same, Noticee is herewith enclosing the copy of GSTR-3B for the months of April 2018 to November 2018 as **Annexure III** Noticee request you to consider the same and drop further proceedings in this regard.

Short payment of GST as per turnover declared in GSTR 9/9C for the period 2017-18 & 2018-19

5. With respect to this, the impugned notice has proposed to demand an amount of Rs. 2,13,74,199/- for the period July 2017 to March 2019. The impugned notice has arrived at the above referred amount as follows

Year	Turnover as per 09/09C	Taxable Value i.e, 2/3 of turnover	GST Payable at 18%	GST paid in GSTR-3B	Difference
2017-18	13,38,80,112	8,92,53,408	1,60,65,613	9,77,370	1,50,88,243
2018-19	17,11,97,264	11,41,31,509	2,05,43,672	1,42,57,716	62,85,956

Total	**30,50,77,376**	**20,33,84,917**	**3,66,09,285**	**1,52,35,086**	**2,13,74,199**

6. With respect to July 2017 to March 2018, the impugned notice has adopted the turnover as Rs. 13,38,80,112/- which was nothing but the turnover declared in GSTR-09C at Table 5A. The turnover declared at Table 5A is nothing but the turnover as per Income Tax return. To evidence the same, notice is enclosing the copy of GSTR-09C for July 2017 to March 2018 as **Annexure IV** and Income Tax Return for 2017-18 as **Annexure V.**

7. In this regard, Noticee wish to re-iterate the submissions made at Para 42 to 63 of SCN reply filed. To evidence that the basis of recognition of turnover in Income tax return is different, Noticee is herewith explaining the basis on which the turnover is recognized in income tax return as follows:

S. No.	**Particulars**	**FY 2017-18**	**FY 2018-19**
A	Total sales estimated	41,50,20,000	41,50,20,000
B	Total Cost of the project	34,59,77,215	36,67,28,215
C	Cost incurred till the end of the financial year	11,16,04,134	8,76,79,331
D	Percentage of completion of project (C/B)	32%	24%
E	**Sale to be recognized in the books of accounts and income tax returns for the period 2017-18 (Apr-Mar) (A*D)**	**133,875,717**	**99,225,188**
F	Sale recognised in the BOA	133,875,717	99,167,468
G	**Difference (E-F)**	**0**	**57,720**

(A copy of Income tax return for 2018-19 is enclosed as **Annexure VI)**

8. From the above referred table, it is clear that the turnover in income tax return is recognized based on the percentage of completion method as per Accounting Standard 7. Whereas the turnover declared in GSTR-3B returns are based on time of supply provision as per Section 13 of CGST Act, 2017. Since the basis is different, the same cannot be compared and propose the demand for short payment of GST. Hence, Noticee requests the adjudicating authority to drop the demand to that extent.

9. The summary of the demands proposed as per impugned notice and the actual turnover as per Noticee is as follows

July 2017 to March 2017			
Sl No	**Particulars**	**As per SCN**	**As per Noticee**
A	Gross Turnover	13,38,80,112	11,47,37,499
B	Less: Land deduction	4,46,26,704	10,93,07,666
C	**Taxable turnover**	**8,92,53,408**	**54,29,833**
D	GST payable @ 18%	1,60,65,613	9,77,370
E	Less: GST paid as per GSTR-09	9,77,370	9,77,370
F	**Difference**	**1,50,88,243**	**-0**

10. Noticee further submits that the impugned notice has considered the entire turnover declared in income tax return for the financial year 2017-18, however, the same shall be considered only for the period July 2017 to March 2018. Hence, the demand to that extent of turnover for the period April 2017 to June 2017 needs to be dropped.

11. With respect to 2018-19, Noticee submits that the impugned notice has considered the turnover of Rs. 17,11,97,264/- which was declared at Sl No.5N of GSTR-09 as the basis and proposed the demand. In this regard, Noticee submits the bifurcation of such turnover declared in GSTR-09 as follows

Sl No	**Particulars**	**Amount**

A	Taxable turnover declared at Table 4A	7,94,59,543
B	Exempted turnover declared at table 5D	13,81,637
C	Non-GST turnover declared at Table 5F	9,03,56,084
D	**Total (A+B+C)**	**17,11,97,264**

12. From the above referred table, it is clear that the impugned notice has also considered the turnover declared as exempted turnover and non-GST turnover for the purpose of arriving at the liability. In this regard, Noticee submits that the amounts disclosed as exempted turnover is related to interest on fixed deposits which is exempted from payment of GST vide SI No.27 of Notification No. 12/2017-CT® dated 28.06.2017. The fact that the above referred amount of Ra. 13,81,637/- is related to interest on fixed deposit is also evident from Profit & Loss Account enclosed along with Income tax return which was enclosed as **Annexure VI.** Hence, the proposal of impugned notice to demand GST on such amount is not correct and the same needs to be dropped.

13. The summary of the demands proposed as per impugned notice and the actual turnover as per Noticee is as follows

2018-19			
SI No	**Particulars**	**As per SCN**	**As per Noticee**
A	Gross Turnover	17,11,97,264	16,98,15,627
B	Less: Land deduction	5,70,65,755	9,03,56,084
C	**Taxable turnover (A-B)**	**11,41,31,509**	**7,94,59,543**
D	GST payable @18% (C*18%)	2,05,43,672	1,43,02,718
E	Less: GST paid as per GSTR-09	1,42,57,716	1,42,57,716
F	**Difference (D-E)**	**62,85,956**	**45,002**

14. From the above referred table, it is clear that the short payment is only Rs.45,002/- and the same was already paid using DRC-03 dated 05.12.2020,

15. With respect to land deduction of Rs.10,93,07,666/ claimed by the Noticee during the period July 2017 to March 2018 and Non-GST turnover of Rs.9,03,56,084/ claimed during the period 2018-19, Noticee submitted that Noticee is engaged in construction of villas.

16. Noticee submitted that whenever the customers come to purchase Villa's in Phase-II, Noticee has been entering the following agreements:

a. Agreement of Sale (AOS) for sale of Villas which clearly specifies the value agreed towards sale of land and value agreed towards construction services (Copy of Agreement enclosed as **Annexure VII).**
b. Sale deed towards sale of land which was registered in Sub-registrar office (Copy of sale deed enclosed as **Annexure VIII).**
c. Agreement of Construction for provision of construction services which was also registered in sub-registrar office (Copy of agreement of construction is enclosed as **Annexure IX).**

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

18. In this regard, Noticec submits that the impugned notice has given only 1/3rd of the value as deduction towards land whereas the land value is factually more. Hence, the valuation adopted by the department as per the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 is not sustainable in law. In this regard, Noticee submits that under GST, the valuation mechanism has been prescribed in Section 15 of CGST Act, 2017. Section 15(1) states that the **value of supply of goods or services** or both shall be the ***transaction value*** which is the price actually paid or payable for the said supply of goods or services subject to the following conditions:

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

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

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

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

19. Sub-section (4) states that where the value of supply cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed

i.e., the valuation mechanism as prescribed (in the Rules). On perusal of rules 27 to 35 of CGST Rules 2017, it is quite clear that none of the prescribed rules provides for valuation mechanism for transactions involving the supply of goods, service and immovable property. Therefore, even the valuation rules are not applicable in the instant case.

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

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

22. To support the argument that the word 'prescribe' should be given limited meaning, reliance is placed on the Andhra Pradesh High Court decision in case of **GMR Aerospace Engineering [2019 (31) G.S.T.L. 596 -A.P.]** held that *"The word "prescribe" is verb. Generally, no enactment defines the word "prescribe". But the SEZ Act 2005 defines the word "prescribe" under Section 2(w) to mean the rules framed by the Central Government under the SEZ Act, 2005. The space is also not left unoccupied, as the Central Government has issued a set of Rules known as "the Special Economic Zones Rules, 2006", wherein the Central Government has prescribed the terms and conditions for grant of exemptions under Rule 22. Therefore, there is no question of comparing the terms and conditions prescribed in Rule 22 with the terms and conditions prescribed in the notifications issued under any one of five enactments listed in Section 26(1) to find out whether there was any inconsistency."*

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

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

section or any section of the Act workable must be prescribed under the Rules...

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

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

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

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

a) **CIT Vs B.C. Srinivasa Shetty 1981 (2) SCC 460 - SC:** The Supreme Court examined the levy of capital gains tax on sale of goodwill and had noted that the machinery provisions did not provide for calculation of capital gains, which is the measure of tax for imposition of tax on gains from sale of capital assets where the cost of acquisition was not ascertainable. The Court held that the charging sections and the computation provisions together constitute an integrated code and the transaction to which the computation provisions

cannot be applied must be regarded as never intended to be subjected to charge of tax.

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

c) **Suresh Kumar Bansal Vs UOI - 2016 (43) S.T.R - Del HC** wherein the Hon'ble Delhi High Court in Para 53 held that *"As noticed earlier, in the present case, neither the Act nor the Rules framed therein provide for a machinery provision for excluding all components other than service components for ascertaining the measure of service tax. The abatement to the extent of 75% by a notification or a circular cannot substitute the lack of statutory machinery provisions to ascertain the value of services involved in a composite contract".*

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

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

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

29. Further, even assuming the deemed valuation adopted by the department as per Notification No. 11/2017-CT(Rate) is correct, the Noticee submits that the same is not justified and is unsustainable in law. It is a known fact that the land value may not be the same across the country as the same depends on the location of the land. In metros, the cost of land would be high and in towns and rural areas, it would be low. The cost of construction may not vary much when compared to the land value, whether in metros or in rural areas. Deeming 1/3rd of the total amount charged as land value would lead to levy of GST on the land value in metros, whereas in the non-metros the construction service would not get completely taxed. Thus, levy of GST on land value, indirectly not allowed under Article 246A of the Constitution of India is being levied due to the deeming fiction. We should also understand there would be cases where the land value is less than 1/3rd value and in such cases the Government is collecting less taxes.

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

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

a. **Supreme Court in case of Wipro Limited Vs UOI 2015 (319) ELT 177 (SC)** while examining the validity of deemed value of loading and unloading as 1% of the FOB value for the purpose of determining the assessable value for calculating the customs duty it was held that *"31. In contrast, however, the impugned amendment dated 5-7-1990 has changed the entire basis of inclusion of loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation. Whereas fundamental principle or basis remains unaltered insofar as other two costs, viz., the cost of transportation and the cost of insurance stipulated in clauses (a) and (c) of sub-rule (2) are concerned. In respect of these two costs, provision is retained by specifying that they would be applicable only if the actual cost is not ascertainable. In contrast, there is a complete deviation and departure insofar as loading, unloading and handling charges are concerned.* ***The proviso now stipulates 1% of the free on-board value of the goods irrespective of the fact whether actual cost is ascertainable or not. Having referred to the scheme of Section 14 of the Rules in detail above, this cannot be countenanced. This proviso, introduces fiction as far as addition of cost of loading, unloading and handling charges is concerned even in those cases where actual cost paid on such an account is available and ascertainable. Obviously, it is contrary to the provisions of Section 14 and would clearly be ultra vires this provision. We are also of the opinion that when the actual charges paid are available and ascertainable, introducing a fiction for arriving at the purported cost of loading, unloading and handling charges is clearly arbitrary with no nexus with the objectives sought to be achieved. On the contrary, it goes against the objective behind Section 14 namely to accept the actual cost paid or payable and even in the absence thereof to arrive at the cost which is most proximate to the actual cost. Addition of 1% of free on-board value is thus, in the circumstance, clearly arbitrary and irrational and would be violative of Article 14 of the Constitution.***
This decision clearly states that when the actual value is available, the prescription of deemed value is not valid as the same is arbitrary and irrational. Since the background of the present issue and the issue involved in these decisions are one and the same, it can be concluded that the taxpayer can claim the actual value of land as deduction wherever available and the deeming of 1/3rd value as land value is arbitrary and irrational and will not hold good.

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

rate, as we have pointed out, was Rs. 25.95, the rate fixed by the notification dated 27th March 1992 was Rs. 31.44, so that there was difference of as much as Rs. 5.51. ***In the absence of any material placed on record by the respondents and in the absence of so much as a reason stated on affidavit in this behalf, the rate fixed by the notification dated 27th March, 1992 must be held to be arbitrary.***

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

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

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

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

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

33. Noticee would like to submit that from the above referred decision, it is clear that wherever the actual land value is available, the same can be taken as deduction for the purpose of payment of GST and the deeming fiction of 1/3rd land value as deduction is ultra-vires the statutory provisions.

34. Hence, Noticce would like to submit that the compliance made by the Noticee is in accordance with the law and there is no short payment of GST, therefore, the demand needs to be dropped.

35. Noticee humbly request to consider the above submissions and drop the demands proposed in SCN."

11. Personal Hearing: As requested by the taxpayer, personal hearing was fixed on 11.08.2023, and 14.08.2023. Authorised representative CA Lakshman Kumar K appeared for personal hearing on 14.08.2023. Further, due to change of adjudicating authority another personal hearing was fixed on 11.06.2024, 13.06.2024, 19.06.2024 and 20.06.2024. The taxpayer did not appear for personal hearing.

DISCUSSION AND FINDINGS:

12. I have gone through the impugned Show Cause Notice, reply & documents submitted by the taxpayer, oral/written submissions made during the personal hearing held and information/documents available on records. I would like to examine the case para wise as mentioned in the notice.

13. Short payment of GST on Construction Services during the period 2017-18 and 2018-19:

13.1 It is alleged in the notice that the taxpayer has paid GST @ 12% on Construction of Residential Complex Service instead of @18% for the Financial Year 2017-18 (July to March) and 2018-19 which resulted short payment of GST amounting to Rs.22,11,128/- (CGST:Rs.11,05,564/- and SGST: Rs.11,05,564/-) by contravening Section 39 of CGST Act, 2017 read with Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 as amended.

13.2. In this regard the taxpayer submitted that the period 2017-18 they have inadvertently disclosed excess turnover in GSTR-3B returns i.e., Rs.81,44,750/- but, the actual turnover is amounting to Rs.54,29,832/-. 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. Therefore, 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. Further, for the period 2018-19 they submitted that they have disclosed correct turnover of Rs.2,28,60,376/- in the monthly returns for the period April 2018 to October 2018, but they have short paid certain taxes. In this regard, they submitted that the

differential taxes have been observed by them and paid while filing the returns for the period November 2018. Hence, they submitted that there is no short payment of taxes to the extent above. Hence, the demand proposed by the impugned notice is liable to be dropped.

13.3. From their reply it is found that the taxpayer agree with the applicable tax rate i.e. 18% for 'Construction of Residential Complex Services' falls under Chapter Heading (SAC) 995411 as alleged in the notice. However, they are trying to justify their stand by declaring less supply for the period 2017-18. But, in support of their claim they did not produce convincing documentary evidences. Further, for the period 04/2018 to 10/2018 also they did not submit relevant documentary evidences in support of their claim. Therefore, I deny their claim and hold the demand proposed in the notice. Hence, the taxpayer is liable for payment of GST amounting to Rs.22,11,128/- (CGST:Rs.11,05,564 and TGST:Rs.11,05,564) for the Financial Year 2017-18 (July, 2017 to March, 2018) and 2018-19 in terms of Section 74(9) of CGST Act, 2017 read with TGST Act, 2017.

14. Non-payment of GST under RCM on Brokerage /Commission paid to unregistered persons under Section 9(4) of CGST Act, 2017:

14.1 During the course of audit on scrutiny of GST Returns with Balance Sheet and Ledgers it was observed that the taxpayer has paid Brokerage /Commission to unregistered persons to the tune of Rs.12,37,734/-during the period from 01.07.2017 to 12.10.2017 as per Section 9(4) of CGST Act, 2017 read with Notification No.8/2017-Central Tax (Rate) dated 28.06.2017. The GST of Rs.2,22,792/- (CGST:Rs.1,11,396/- and TGST:Rs.1,11,396/-) is payable under RCM.

14.2 In this regard, the taxpayer submitted 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. 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, they submitted that there is no liability to be paid against the demand proposed in the Show Cause Notice.

14.3. On examination of the taxpayer's submission, grounds of the notice and provisions, I find that the taxpayer's submission in this regard is not acceptable. Therefore, I hold the demand proposed in the notice. Hence, the taxpayer is liable for payment of Rs.2,22,792/- (CGST:Rs.1,11,396/- and TGST:Rs.1,11,396/-) in terms of Section 74(9) of the CGST Act, 2017 read with TGST Act, 2017.

15. Interest on delayed payment of GST (cash portion) due to delay in filing of GSTR-3B Return for the month of August, 2017:

15.1. On verification of GSTR-3B Returns filed by the taxpayer, it was observed that there is a delay of 24 days in filing of GSTR-3B return for the month of August, 2017 in which GST of Rs.77,000/-paid through cash. Thus there is a delay in cash payment of GST by 24 days on which interest @ 18% worked out to Rs.9,11/-. Therefore it was appeared that they are liable to pay interest of Rs.911/-under the provisions Section 50 of the CGST Act, 2017 and penalty as applicable under the provisions of Section 125 (5) of the CGST Act, 2017.

15.2. In this regard the taxpaye submitted that they have paid the amount of Rs.911/- vide DRC-03 ARN:AD361220000585 dated 05.12.2020. Evidencing their claim they submitted a copy of DRC-03. Further, with regard to penalty proposed under Section 125(5) of the CGST Act, 2017, the taxpayer did not submit any submission.

15.3. On verification of DRC-03 submitted by the taxpayer I find that the payment made by the taxpayer is for the month of March, 2019 as mentioned in Tax Period column of the DRC-03 dated 05.12.2020, whereas the demand proposed in the notice belongs to the month of August, 2017. Further, from the challan it could not be established that whether this interest amount is included or not. Hence, I deny the taxpayer's claim and hold that the taxpayer is liable for payment of interest amount of Rs.911/- in terms of Section 50(1) of the CGST Act, 2017. Further, from the provisions I also find that the taxpayer is liable for payment of penalty under Section 125 of the CGST Act, 2017 amounting to Rs.25,000/-.

16. Short payment of GST as per the turnover declared in GSTR9/9C for the F.Y. 2017-18 and 2018-19:

16.1. It is mentioned in the notice that during course of Audit on verification of Annual Returns i.e. G8TR-9/9C, it was observed that the turnover declared for the F.Y. 2017-18 is Rs.13,38,80,112/- as per GSTR-9C and for the F.Y. 2018-19 Rs.17,11,97,264/-as per GSTR9. Further on verification of GSTR-3B, it was noticed that there is a short of GST to the tune of Rs.2,13,74,190/-.

16.2. In this regard the taxpayer submitted that during the initial stages of implementation of GST, they are 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. Further, they submitted that they are in the business of real estate, their nature of accounting

followed under the Income Tax Act, 1961, and the GST act is different. Under the Income Tax Act they 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. They further submitted 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. According to their reconciliation, there is difference of Rs.45000/- only and they have paid the same vide DRC-03 dated 05.12.2020.

16.3. On examination of the taxpayer's submission, facts of the case and provisions, I find that the taxpayer's submission is not acceptable. Further, I find from the DRC-03 submitted by them that it is not clear that whether this payment was made towards this payment or any other dues pertaining to March, 2019. Therefore, I deny the taxpayer's claim and I hold that the taxpayer is liable to pay an amount of Rs.2,13,74,200/- (CGST:Rs.75,44,122/-& SGST:Rs.75,44,122/-) for the F.Y. 2017-18 and (CGST:Rs.31,42,978/-& SGST:Rs.31,42,978/-) for the F.Y. 2018-19 in terms of Section 74(9) of CGST Act, 2017 read with TGST Act, 2017.

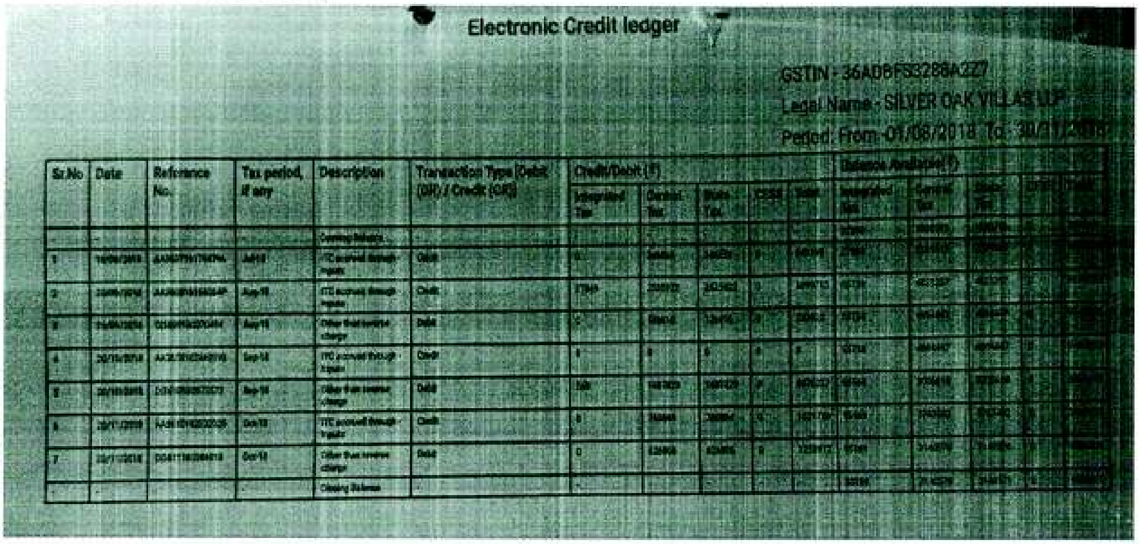
17. Non-payment of Interest on Irregular ITC of Rs.45,73,392/-availed and reversed:

17.1. In the notice it is alleged that the excess ITC amount of Rs.45,73,392/- availed in the month of August, 2018 and reversed the same in September, 2018; that the taxpayer has not paid the applicable interest on the same; that the taxpayer is liable to pay interest @18% which worked out Rs.68,600/-on irregular ITC amount of Rs.45,73,392/- availed and reversed later as above; that therefore, the taxpayer is required to pay the same along with interest under Section 50 on irregular ITC availed along with penalty under section 125 (5) of the CGST Act, 2017.

17.2. In this regard the taxpayer submitted that the irregular credit which was availed has been reversed before utilization. Therefore they submitted that there is no liability to pay any interest as interest is not applicable on mere availment. Further they submitted that they 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; that, thus they have not utilised the irregular credit and have not gained anything from such availment. Therefore, there should not be any interest liability on mere availment of credit. Evidencing their claim they have submitted a ledger copy for the period 01.08.2018 to 30.11/2018.

17.3. On examination of the taxpayer's submission and ledger copy submitted by the taxpayer with their reply as an annexure-IX, facts of the case and provisions, I

find that the taxpayer has maintained credit balance more than the irregularly availed credit in their Electronic Credit Ledger during the disputed period. Thus, they had not utilised the irregularly availed credit. The copy of the ledger is affixed hereunder for reference;


Electronic Credit ledger

GSTIN - 36ADBFS3288A2Z7

Legal Name - SILVER OAK VILLAS LLP

Period: From 01/08/2018 To: [illegible]

Sr.No	Date	Reference No.	Tax period, if any	Description	Transaction Type [Debit (DR) / Credit (CR)]	Credit/Debit (₹)	Balance Available (₹)
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

More so, the Finance Act, 2022 vide Section 110 has proposed an amendment to the Section 50 of the CGST Act, 2022 and it was come in to force on 5th July, 2022 vide Notification No.09/2022-Centra Tax, dated 05.07.2022, with effect from 1st July, 2017. The amended provision of Section 50(3) of the CGST Act, 2017 is reproduced hereunder for ready reference:

Section 50: Interest on delayed payment of tax;

(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.

In view of the above I hold that the taxpayer's submission in this regard is acceptable and hence the demand proposed in the notice is not sustainable. Accordingly, the penalty under Section 125 of the CGST Act, 2017 as proposed in the notice does not attract.

18. Irregular ITC of Rs.18,73,254/- availed for the F.Y. 2018-19 which is Difference between GSTR-3B vs GSTR-2A:

18.1. In the notice, it is alleged that during the course of audit, on comparison of ITC availed by the taxpayer in GSTR-3B with the ITC available in GSTR-2A it was observed that the taxpayer has availed excess ITC which is not reflected in GSTR-2A to the tune of Rs.18,73,254/ (CGST Rs.9,36,627/-+ SGST Rs.9,36,627/-) during the

year 2018-19 which is recoverable u/s 74 (1) of CGST Act, 2017 along with interest and penalty.

18.2. In this regard the taxpayer submitted that the annexure given to the impugned notice has not considered the correct figures of GSTR-2A and as per the portal, it is clear that the difference is only Rs.7,29,551/- and not as alleged by the department. Hence, the demand to that extent needs to be dropped. Further, they submitted that ITC cannot be denied merely due to non-reflection of invoices in GSTR-2A as all the conditions specified under Section 16 of CGST Act, 2017 has been satisfied. Further, Noticee submits that GSTR-2A cannot be taken as a basis to deny the ITC in accordance with Section 41, Section 42, Rule 69 of CGST Rules, 2017 prevailing during the disputed period.

18.3. On examination of the taxpayer's submission, facts mentioned in the notice and provisions, basing of following provisions, I find that the taxpayer's claim is not acceptable;

In terms of Section 16(2) of the CGST Act, 2017 stipulates conditions for availing ITC by the registered person. Section 16(2) as existing during the material period is reproduced below:

(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 where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(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.

As per Rule 36 which prescribes the documentary requirements and conditions for claiming input tax credit.-

(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.*

From the above, it can be seen that ITC can be availed by a registered taxpayer only if all applicable particulars specified in the Tax Invoice (under Chapter VI of the Rules, ibid) are furnished in the Form GSTR-2A of the taxpayer. When the supplier files GSTR -1 Return in any particular month disclosing his sales, the corresponding details are captured in the GSTR -2A of the recipient. Hence, the amount of ITC available as disclosed in Table 4A must match with tax details 3B and Form disclosed in Form GSTR -2A. It is important to reconcile Form GSTR -2A. The excess Input Tax credit is not appearing in the GSTR 2 A of the Tax payer for the relevant period. Hence, it is evident that the supplier of the recipient has not paid the tax to the Government to that extent of the amount not appearing in the GSTR 2A. Hence, I hold that the taxpayer is not eligible for ITC of Rs.18,73,254/ (Rs.9,36,627/-of CGST, Rs.9,36,627/-of SGST) and the same is recoverable under Section 74 (9) of CGST Act, 2017 read with TGST Act, 2017.

19. Coming to the demand of interest, as per Section 50(1) of the CGST Act, 2017, 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 from the day succeeding the day on which such tax was due to be paid. In the instant case the taxpayer has short paid the tax. Hence, I hold that the taxpayer is liable for payment of interest at applicable rate where they have made short payment of tax in the above paras. Further, as per Section 50(3) of the CGST Act, 2017, where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such

input tax credit wrongly availed and utilised. In the instant case, the taxpayer has availed and utilised input tax credit wrongly and fraudulently. Hence, I hold that the taxpayer is liable for payment of interest at applicable rate where the taxpayer has irregularly/excess availed and utilised input tax credit in the above paras.

20. The above issues of non-payment Tax/non-reversal of ITC came to light only during audit of the taxpayer's records by the Department. The subject issue was never intimated to Department nor sought for clarification from the Department. It is also observed that the taxpayer has not reflected such tax liability correctly in any of the statutory returns and further have filed the Annual Return GSTR-9 or GSTR-9C without taking cognizance of the RCM. While filing GSTR-9C for the year 2017-18 & 2018-19, the taxpayer has not discharged tax liability there being differences between actual turnover and the turnover reflected in the GST returns. Hence the Department was not in the knowledge of the subject issue prior to the conduct of Audit. Thus, this non-payment is a deliberate avoidance or evasion of tax on the part of the taxpayer. Further, the taxpayer cannot claim ignorance in as much as they are operating under GST for nearly 4 years. Since the taxpayer has been registered with the department for many years, it can be reasonably assumed that they are well versed with the provisions of the law. In the regime of self-assessment under Section 59 of the CGST Act, 2017, greater responsibility and trust is placed on the taxpayer to correctly assess, pay and declare the tax liability. In doing so, they have suppressed these facts, which have seen the day of light only during verification of records by the Departmental officers. All these actions/inactions indicate that the taxpayer has suppressed the facts with intent to evade the tax, interest and penalty as applicable. Therefore, I find that this is a fit case to demand the duty from the taxpayer by invoking extended period in terms of Section 74(9) of the CGST Act, 2017 along with the applicable interest in terms of Section 50(1) of the CGST Act, 2017 and to impose penalty in terms of Section 74 (9) of the CGST Act, 2017 on the taxpayer.

21. In view of the foregoing discussion and findings, I pass following order;

ORDER

(i) I determine and order for recovery of **Rs.22,11,128/-(Rupees Twenty Two Lakh Eleven Thousand One Hundred Twenty Eight Only) (CGST:Rs.2,44,343/-+ TGST:Rs.2,44,342/-totaling Rs.4,88,685/-for the year 2017-18 and CGST: Rs.8,61,221 + TGST:Rs.8,61,222/- totaling Rs.17,22,443/-for the year 2018-19)** being short paid of GST in terms of Section 74 (9) of the CGST Act, 2017 read with TGST Act, 2017 from the taxpayer;

(ii) I determine and order for recovery of **Rs.2,22,792/-(Rupees Two Lakh Twenty Two Thousand Seven Hundred Ninety Two Only) (CGST:Rs.1,11,396/-(+) TGST:Rs.1,11,396/-)** being GST short paid under RCM during the F.Y. 2017-18 in terms of Section 74(9) of the CGST Act, 2017 read with TGST Act, 2017 from the taxpayer;

(iii) I confirm and order for recovery of **Rs.911/-(Rupees Nine Hundred Eleven Only)** being interest payable on delayed payment of GST in terms of Section 50 of the CGST Act, 2017 from the taxpayer;

(iv) I determine and order for recovery of **Rs.2,13,74,199/-(Rupees Two Crore Thirteen Lakh Seventy Four Thousand One Hundred Ninety Nine Only) (CGST:Rs. 1,06,87,100/- (+) TGST: Rs.1,06,87,099/-)** being GST short paid during the F.Y 2017-18 and F.Y. 2018-19 from the taxpayer in terms of Section 74(9) the CGST Act, 2017 read with TGST Act, 2017;

(v) I drop the interest amount of **Rs.68,600/-(Rupees Sixty Eight Thousand Six Hundred Only)** which was proposed in the notice as an interest payable on irregularly availed ITC of Rs.45,73,392/-;

(vi) I determine and order for recovery of **Rs.18,73,254/- (Rupees Eighteen Lakh Seventy Three Thousand Two Hundred Fifty Four Only) (CGST: Rs.9,36,627|-(+) TGST: Rs.9,36,627/-)** being the irregular ITC availed during the FY 2018-19 from the taxpayer in terms of Section 74 (9) of the CGST Act, 2017 read with TGST Act, 2017;

(vii) I confirm and order for recovery of interest as applicable in terms of Section 50 of the CGST Act, 2017 read with TGST Act, 2017 on the tax amounts demanded at Sl.No.(i) (ii), (iv) and (vi) above from the taxpayer;

(viii) I impose a penalty of **Rs.22,11,128/-(Rupees Twenty Two Lakh Eleven Thousand One Hundred Twenty Eight Only)** equal to the amount demanded at Sl. No.(i) above on the taxpayer in terms of Section 74 (9) of the CGST Act, 2017 read with TGST Act, 2017;

(ix) I impose a penalty of **Rs.2,22,792/-(Rupees Two Lakh Twenty Two Thousand Seven Hundred Ninety Two Only) (CGST:Rs.1,11,396/-(+) TGST:Rs.1,11,396/-)** equal to the amount demanded at Sl. No.(ii) above on the taxpayer in terms of Section 74 (9) of the CGST Act, 2017 read with TGST Act, 2017;

(x) I impose a penalty of **Rs.2,13,74,199/-(Rupees Two Crore Thirteen Lakh Seventy Four Thousand One Hundred Ninety Nine Only) (CGST:Rs. 1,06,87,100/- (+) TGST: Rs.1,06,87,099/-)** equal to the amount demanded at Sl. No.(iv) above on the taxpayer in terms of Section 74 (9) of the CGST Act, 2017 read with TGST Act, 2017;

(xi) I impose a penalty of **Rs.18,73,254/- (Rupees Eighteen Lakh Seventy Three Thousand Two Hundred Fifty Four Only) (CGST: Rs.9,36,627|-(+) TGST: Rs.9,36,627/-)** equal to the amount demanded at Sl. No.(vi) above on the taxpayer in terms of Section 74 (9) of the CGST Act, 2017 read with TGST Act, 2017;

(xii) I impose a penalty of **Rs.25,000/- (Rupees Twenty Five Thousand Only)** on the taxpayer for their contravention related to the amount demanded at Sl. No. (iii) above in terms of Section 125 of the CGST Act, 2017;

(xiii) I drop the penalty proposed under Section 125 of the CGST Act, 2017 for the amount dropped at Sl. No. (v) above.

(Tarun Reddy Gangireddy)
Joint Commissioner
Secunderabad CGST Commissionerate

To,
M/s. Silver Oak Villa LLP,
2nd Floor, U-22, 5-4-187/3 and 4,
Sohan Mansion, M. G. Road,
Secunderabad-500003, Telangana.

(By Speed Post and through Registered email ID)

Copy submitted to:
1. The Commissioner of Central Tax, Secunderabad Commissionerate, Hyderabad.
(By Name to Superintendent, Review)

Copy to:
1) The Deputy/Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad Commissionerate **with a direction to ensure that DRC 07 is created for this OIO and send compliance to this office.**

2) The Superintendent of Central Tax, Ramgopalpet-III GST Range **with a direction to create DRC 07 for this OIO and send compliance through Division.**

3) Master file / Spare copy.

OA No. 41/2021-22- Sec-Adjn-Adjc (GST)

भा.स.से.
ON I.G.S.

SPEED-POST
A/c. No: 671 200 000 1644

To.
M/s. Silver Oak Villa LLP,
2nd Floor, U-22, 5-9-187/3 and 4,
Sohan Mansion, M.G. Road,
Secunderabad - 500003

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DESPATCH
Office of the Commissioner
Central Tax & Customs
Secunderabad GST Commissionerate
L.B. Stadium Road, Basheer Bagh