

IN THE HIGH COURT FOR THE STATE OF TELANGANA

W.P. No.

of 2024

BETWEEN:

M/S. Silver OAK VILLAS LLP,
REPRESENTED BY ITS MANAGER,
JEEDIMETLA, TELANGANA- 500055

... PETITIONER

AND

THE ASSISTANT COMMISSIONER CENTRAL TAX
AND OTHERS

... RESPONDENTS

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Date: 22.07.2024

Place: Hyderabad


Counsel for the Petitioner

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MEMORANDUM OF WRIT PETITION
(Filed Under Article 226 of the Constitution of India)
IN THE HIGH COURT FOR THE STATE OF TELANGANA
(SPECIAL ORIGINAL JURISDICTION)

W.P. No. OF 2024

BETWEEN

M/s. Silver Oak Villas LLP,
5-4-187/3, 2nd Floor, Soham Mansion,
M.G Road, Secunderabad,
Telangana- 500003

Represented by the Manager

Shri. Mangilipelli Jayaprakash, S/o M Venkataiah,
Aged 49 years, R/o. 3-4-63/13/C/1, Aravinda Nagar,
Ramanthapur, Hyderabad, Telangana-500013

...Petitioner

-Vs-

1. The Assistant Commissioner of Central tax,
Secunderabad Division, Salike Senate,
D. No. 2-4-416 & 417, Ramgopal pet, M.G. Road,
Secunderabad – 500003
2. Assistant Commissioner of Central tax,
Audit-II Commissionerate, Sanvi Yamuna Pride,
Madhapur, Hi-Tech City, Hyderabad -500081
3. Additional Commissioner of Central tax,
Audit-II Commissionerate, Sanvi Yamuna Pride,
Madhapur, Hi-Tech City, Hyderabad -500081
4. Union of India,
Ministry of Finance,
Represented by its Secretary,
North Block, New Delhi-110 001

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5. State of Telangana
Through Principal Secretary to Government,
Revenue Department (Commercial Tax),
Hyderabad, Telangana
6. Central Board of Indirect Taxes and Customs,
GST Policy Wing, New Delhi
rep by its Commissioner

... Respondents

The address for service of all notices, summons, process, etc., to the above-named petitioner are that of his Counsel Mohammad Shabaz (22207), Venkata Prasad P, Ankita Mehta, Jaishankar D, Advocates, 4th Floor, Srida Anushka Pride, Road No.12, Banjara Hills, Hyderabad, Telangana -500034.

The address for the purpose of service of notices on the Respondents is the same as mentioned in the cause title.

For all the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble High Court may be pleased to issue

- i. a writ, order, or direction more particularly one in the nature of a Writ of Mandamus declaring impugned Order-In-Original vide No. 24/2024-25(GST-Adjn) dated 19.04.2024 along with DRC 07 having reference no. ZD3605240051401 dated 02.05.2024 passed by the Respondent No.1 under the provisions of CGST/TGST Act, 2017 as being void, arbitrary, illegal, without jurisdiction, violative of the principles of natural justice apart from being violative of Articles 14, 19(1)(g) and 265 of the Constitution of India, and to consequently set aside the same and pass such further or other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.
- ii. a writ, order, or direction more particularly one in the nature of a Writ of Mandamus declaring that the Notification No. 09/2023-C.T dated

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31.03.2023 issued by Respondent No. 4 through Respondent No. 6 and corresponding GO Ms. No. 118 dated 25.08.2023 issued by Respondent No. 5 and the Notification No. 56/2023- CT dated 28.12.2023 issued by Respondent No. 4 through Respondent No. 6 and corresponding GO. Ms. 170 dated 30.12.2023 issued by Respondent No. 5 which extended the time limit for passing the orders, are without authority of law and ultra vires to the section 73(10) of the GST Act 2017 and Section 168A of CGST Act, 2017 and violative of articles 14, 19(1)(g) 21 and 265 of the Constitution of India and/or pass such further or other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Place: Hyderabad

Date: 07-2024



Counsel for the Petitioner

DISTRICT: HYDERABAD
IN THE HIGH COURT FOR THE
STATE OF TELANGANA

W.P.No. of 2024

MEMORANDUM OF WRIT PETITION

FILED ON: 07 -2024

FILED BY:

MOHAMMAD SHABAZ (22207)
VENKATA PRASAD P
ANKITA MEHTA
JAISHANKAR D

ADVOCATES

COUNSEL FOR PETITIONER

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IN THE HIGH COURT FOR THE STATE OF TELANGANA

W.P. No. of 2024

LIST OF EVENTS
ANNEXURE-I

Sl. No.	Date	Description of Events	Page No. in Affidavit	Para No. in Affidavit
1		The Petitioner is inter alia engaged in the business of construction & sale of residential units and registered under the GST vide GSTIN 36ADBFS3288A2Z7 in the state of Telangana.	10	2
2	11.06.2021 & 12.01.2022 & 28.02.2023 & 08.09.2023	The records of the Petitioner are audited for the period of 2017-18 to 2018-19 and issued audit findings in Final Audit Report No. 707/2020-21-GST dated 11.06.2021 by Respondent No. 2. The FAR was followed by issuance of a SCN by Respondent no. 3 vide ref No. C.No.V/01/GST/81/2020-GR.12/CIR-I dated 12.01.2022. In response, the Petitioner furnished its reply dated 28.02.2023 and additional submissions dated 08.09.2023. The adjudication of the SCN is pending as on date.	10	3
3	20.12.2023 & 22.12.2023 & 28.12.2023 & 19.02.2024 & 12.01.2022	To the utter surprise of the Petitioner, the Respondent No.1 issued Pre-Show Cause Notice in GST DRC-01A dated 20.12.2023, and the same is received by hand on 22.12.2023. It was followed by impugned SCN bearing reference No.	11	4

		39/2023-24 dated 28.12.2023 for FY 2018-19. In response, the Petitioner filed its submissions online vide DRC-06 on 19.02.2024 inter alia highlighting that records are already audited, and issues were raised in SCN dated 12.01.2022.		
4	19.04.2024 & 02.05.2024	To the utter astonishment of the Petitioner, the Respondent No.1, without considering the facts mentioned in the reply that the issues raised were already addressed in the previous SCN and all required evidences have been provided, has passed the impugned Order-In-Original vide No. 24/2024-25 (GST-Adjn) dated 19.04.2024, along with DRC 07 having reference no. ZD3605240051401 dated 02.05.2024 confirming the tax demand as proposed in SCN along with interest and Penalty	11	5
5	19.04.2024	To the extent Aggrieved with the impugned order OIO No. 24/2024-25 (GST-Adjn) dated 19.04.2024 along with Form GST DRC-07 vide Reference No. ZD3605240051401 dated 02.05.2024, passed by the Respondent No. 1, which is without jurisdiction, passed in violation of principles of natural justice, contrary to facts, law, and evidence, apart from being contrary to a catena of judicial decisions and beset with grave and incurable legal infirmities, the Petitioner is filing this Writ	12	6

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		Petition before this Hon'ble High Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India on the following grounds which are without prejudice to one another.		
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ANNEXURE-II

1. Under Article 226 of the Constitution of India.

Place: Hyderabad
Date: 20-07-2024


Counsel for the Petitioner

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IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT HYDERABAD

(Special Original Jurisdiction)

WRIT PETITION No.

OF 2024

BETWEEN

M/s. Silver Oak Villas LLP,
5-4-187/3, 2nd Floor, Soham Mansion,
M.G Road, Secunderabad,
Telangana- 500003

Represented by the Manager

Shri. Mangilipelli Jayaprakash, S/o M Venkataiah,
Aged 49 years, R/o. 3-4-63/13/C/1, Aravinda Nagar,
Ramanthapur, Hyderabad, Telangana-500013

... Petitioner

-Vs-

1. The Assistant Commissioner of Central tax,
Secunderabad Division, Salike Senate,
D. No. 2-4-416 & 417, Ramgopal pet, M.G. Road,
Secunderabad – 500003
2. Assistant Commissioner of Central tax,
Audit-II Commissionerate, Sanvi Yamuna Pride,
Madhapur, Hi-Tech City, Hyderabad -500081
3. Additional Commissioner of Central tax,
Audit-II Commissionerate, Sanvi Yamuna Pride,
Madhapur, Hi-Tech City, Hyderabad -500081
4. Union of India,



Ministry of Finance,
Represented by its Secretary,
North Block, New Delhi-110001

5. State of Telangana
Through Principal Secretary to Government
Revenue Department (Commercial Tax),
Hyderabad, Telangana
6. Central Board of Indirect Taxes and Customs,
GST Policy Wing, New Delhi
Rep by its Commissioner

... Respondents

AFFIDAVIT FILED ON BEHALF OF THE PETITIONER

I, Mangilipelli Jayaprakash, S/o M Venkataiah, aged about 49 years, residing at 3-4-63/13/C/1, Aravinda Nagar, Ramanthapur, Hyderabad, Telangana-500013, do hereby solemnly affirm and sincerely state as follows:

1. I am the Partner of the Petitioner's company herein and as such I am well acquainted with the facts of the case. I am authorized to file this affidavit on behalf of the Petitioner.

Factual background:

2. The Petitioner is *inter alia* engaged in the business of construction & sale of residential units and registered under the GST vide GSTIN 36ADBFS3288A2Z7 in the state of Telangana.
3. The records of the Petitioner are audited for the period of 2017-18 to 2018-19 and issued audit findings in Final Audit Report No. 707/2020-21-GST dated



11.06.2021 (Copy of FAR enclosed as **Annexure P-7**) by Respondent No. 2. The FAR was followed by issuance of a SCN by Respondent no. 3 vide ref No. C.No.V/01/GST/81/2020-GR.12/CIR-I dated 12.01.2022 (Copy of SCN dated 12.01.2022 is enclosed as **Annexure P-6**). In response, the Petitioner furnished its reply dated 28.02.2023 and additional submissions dated 08.09.2023 (copy of replies filed enclosed as **Annexure P-5**). The adjudication of the SCN is pending as on date.

4. To the utter surprise of the Petitioner, the Respondent No.1 issued Pre-Show Cause Notice in GST DRC-01A dated 20.12.2023, and the same is received by hand on 22.12.2023. It was followed by impugned SCN bearing reference No. 39/2023-24 dated 28.12.2023 for FY 2018-19 (Copy of DRC 01 is enclosed as **Annexure-P-3** and SCN is enclosed as **Annexure P4**). In response, the Petitioner filed its submissions online vide DRC-06 on 19.02.2024 (Copy enclosed as **Annexure-P-2**) *inter alia* highlighting that records are already audited, and issues were raised in SCN dated 12.01.2022.
5. To the utter astonishment of the Petitioner, the Respondent No.1, without considering the facts mentioned in the reply that the issues raised were already addressed in the previous SCN and all required evidences have been provided, has passed the impugned Order-In-Original vide No. 24/2024-25 (GST-Adjn) dated 19.04.2024, along with DRC 07 having reference no. ZD3605240051401 dated 02.05.2024 confirming the tax demand as proposed in SCN along with



interest and penalty (Copy of the Impugned Order-In-Original is enclosed as Annexure-P-1).

6. To the extent Aggrieved with the impugned order OIO No. 24/2024-25 (GST-Adjn) dated 19.04.2024 along with Form GST DRC -07 vide Reference No. ZD3605240051401 dated 02.05.2024, passed by the Respondent No. 1, which is without jurisdiction, passed in violation of principles of natural justice, contrary to facts, law, and evidence, apart from being contrary to a catena of judicial decisions and beset with grave and incurable legal infirmities, the Petitioner is filing this Writ Petition before this Hon'ble High Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India on the following grounds which are without prejudice to one another.

GROUND

Impugned order, has confirmed the demand on the issues which are already verified and concluded for the same period, is illegal, wholly without jurisdiction and bad in law:

7. Petitioner submits that as stated supra the Respondent No. 1 has raised the demands one issue pertaining to difference in GSTR-2A vs GSTR-3B vide SCN dated 12.01.2022 while for the SCN dated 28.12.2023 various issues has been observed and one among it being difference in GSTR-2A vs GSTR-3B. Further, Petitioner submits that in both the SCNs dated 12.01.2022 and 28.12.2023, though the issued involved is similar but the amount pertaining to difference is not similar. Thus, Petitioner submits that the Respondent Authorities has not verified the records and has just vaguely issued the show cause notice and proposed different demands for the same issue. Hence, all the



details that are relied on for SCN or impugned order are available with respondent well before issuance of earlier SCN. Based on the very same records, the Respondent No. 1, 2 & 3 in earlier proceedings has chosen not to raise impugned demands while raising the other demands and now raising it for first time in another round of proceedings based on the very same records is not permissible in law.

8. Petitioner submits that Respondent No. 1 passed the Impugned Order dated 19.04.2024 *inter alia* confirmed the demands that has already been verified & adjudicated by the Audit officers. Mere perusal of the SCN dated 12.01.2022 *inter alia* Para 6 raised the demand for ITC reversals on comparison of ITC as per GSTR-2A & GSTR-3B. Similarly, other issue raised in impugned order were also verified by the Audit officers. That being the case, the issuance of the SCN dated 28.12.2023 for issues covering the same period as well as passing of the impugned order dated 19.04.2024 is patently illegal and without authority of law and is clearly not permitted to reagitate the very same issues that are already adjudicated.
9. Further, the term Audit as defined in Section 2(13) of GST Act, means examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to *verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder.*



10. Further, as per Audit Guidelines, it is imperative for the audit conducting officer to verify returns with respect to availment of ITC viz., Section 17(5) compliance; compliance to Section 16 and reconciliation of GSTR 1, GSTR 3B and GSTR 9 which should have been complied by earlier audit conducting officers who after proper verification has raised certain demands which were agreed by the Petitioner. The GST Audit Manual, 2019 (hereinafter referred to as GSTAM 2019) clearly explains the Objectives and Principles of audit under Chapter 2 which says "*Basic principles of audit are- Conducting audit in a systematic and comprehensive manner*"
11. Petitioner submits that reopening of the already adjudicated assessment amounts to abuse of the process of law. In this regard, relied on **Union of India v. Vicco Laboratories 2007 (218) E.L.T. 647 (SC)**.
12. It is further submitted that two assessments are not permissible in law for the same period. In this regard, rely on **Duncans Industries Ltd. v. CCE 2006 (201) E.L.T. 517 (SC)**.
13. In similar facts & circumstances, the Hon'ble HC of Jharkhand in case of **Ambey Mining Pvt. Ltd. vs. Commissioner of State Tax, Dhurwa 2023 (76) G.S.T.L. 191 (Jhar.)** quashed the two show cause notices by two different authorities for the same period on the same issue.
14. Petitioner submits that the Hon'ble Allahabad High Court in the case of **V.S. Enterprises vs. State of UP 2022 (56) G.S.T.L. 287 (All.)** held that multiple



adjudication orders passed for overlapping tax periods involving same dispute by different adjudicating authorities would not be sustainable.

15. Petitioner submits that this Hon'ble HC in case of **Rays Power Infra Private Limited vs. Superintendent of Central Tax 2024 (84) G.S.T.L. 146 (Telangana) (Para 17)** held that once the entire tax is paid in accordance with final audit report the provisions of Section 73(4) & 73(6) prevent any further proceedings from being initiated. There is no whisper or allegation of any fraud or wilful suppression or wilful misstatement by the Petitioner in the audit findings or show cause notice or impugned order therefore impugned proceedings cannot be initiated. (Copy of this Hon'ble HC order enclosed as **Annexure P-8**)
16. Petitioner submits that this Hon'ble HC in **WP No. 11449 of 2024 and WP No. 17990 of 2024**, dealing with the similar case of making fresh demands for the already audited period, stayed the demands. (Copy of the interim orders enclosed as **Annexure P-9**)
17. Petitioner vehemently made above contentions before first respondent but Respondent No. 1 has ignored such crucial submissions and completely silent which is blatant violative of principles of natural justice.

Impugned order is time barred and Notification No. 09/2023-C.T dated 31.03.2023 and corresponding GO Ms. No. 118 dated 25.08.2023 is bad in law:

18. Petitioner submits that the impugned SCN was issued under section 73 of CGST Act, 2017 which provides for adjudication of demand within 3 years from the due date of annual return of corresponding FY. For FY 2018-19, the



annual return due date falls on 31.12.2020 and the 3 years time limits expires by 31.12.2023 however citing the difficulties caused due to Covid-19, the Government has extended the time limit from 31.12.2023 to 31.03.2024 exercising the powers u/s. 168A of CGST Act, 2017 as amended vide Notification No. 09/2023-C.T dated 31.03.2023 issued by Respondent No. 4 through Respondent No. 6 and corresponding GO Ms. No. 118 dated 25.08.2023 issued by Respondent No. 5 and the date was further extended to 30.04.2024 vide Notification No. 56/2023- CT dated 28.12.2023 issued by Respondent No. 4 through Respondent No. 6 and corresponding GO. Ms. 170 dated 30.12.2023 issued by Respondent No. 5.

19. In this regard, it is submitted that extension of the time period prescribed for issuance of show cause notice under Section 73 (10) of the Goods and Service Tax Act, 2017 is not sustainable in law, in as much as COVID restrictions were uplifted long back in the year 2022 and the revenue had sufficient time to complete the scrutiny and audit process. Further, the 'force majeure' as defined u/s. 168A, ibid was never occurred from 2022 till 31.12.2023 which runs beyond the mandate of Section 168A and is not sustained in the law. The Notification No. 09/2023-C.T dated 31.03.2023 issued by Respondent No. 4 through Respondent No. 6 and corresponding GO Ms. No. 118 dated 25.08.2023 issued by Respondent No. 5 and the Notification No. 56/2023- CT dated 28.12.2023 issued by Respondent No. 4 through Respondent No. 6 and corresponding GO. Ms. 170 dated 30.12.2023 issued by Respondent No. 5 is



illegal, arbitrary, unjust, improper, unfair and contrary to section 73(10) of the CGST Act, 2017

20. It is settled law that any delegated legislation travelling beyond the Statutory provisions be 'ultra vires' and do not sustain in law.
21. Hence, the impugned demand raised for FY 2018-19 deserves to be set aside as the proceedings are deemed to be concluded in terms of Section 75(10) of CGST Act, 2017 in absence of passing the order before 31.12.2023.
22. Petitioner further submits that the GST Council while recommending or Government while issuing impugned notifications has not taken the basis or data for not completing the due date except claiming that representations were received. It failed to provide how many returns are selected for scrutiny or audits etc., and pending completion while seeking extension. In the absence of reasonable materials to show the effect of force majeure on completion of actions, the extension is arbitrary. This is crucial due to fact that GST department across India issued several notices well within the original due date which cannot happen if the reasons stated for extensions are true. In the present case also, there was already audit was conducted in the year 2021 for the very same issue of impugned order which vindicates that basis for time extension is arbitrary.
23. In any case, once the power is exercised with Covid-19 reason, it cannot be ground for further extensions in absence of any continuation of Covid-19 effect after first extension in 2022. The Hon'ble SC vide suo moto order dated



10.01.2022 in Suo Motu Writ Petition [C] no. 3 of 2020 had extended the period of limitation only up to 28.02.2022. Thus, there was no occasion for the GST Council to take resort to the factor of the COVID-19 pandemic in order to extend the time limit under Section 73(10) of the CGST Act, 2017.

24. Petitioner further submits that mere difficulties are insufficient to invoke the 'force majeure' as there was difference between difficulties and impossibility to complete certain actions.
25. Petitioner submits that Section 168A of CGST Act, 2017 requires to be interpreted strictly as general power to modify the timelines is already available to Government u/s. 172 of CGST Act, 2017 which was exercised for certain occasions. In the present case, the proceedings are already initiated before the extended time hence the extension can't be applied to proceedings already initiated.

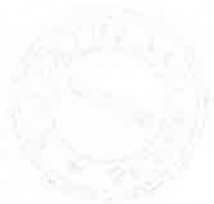
Notice was issued in violation of provisions of section 61 read with Rule 99 of the CGST Rules, 2017:

26. Petitioner submits that as per the scheme of the Act, self-assessment is the rule and tax assessed by the registered person in the self-assessed return can be interfered only in the manner provided under Section 61 which contemplates scrutiny of the returns. It further contemplates service of notice in Form GST ASMT-10 so that discrepancy, if any, pointed out in the return can be rectified by the assessee. Only if he fails to do so and the ingredients of either Section 73 or Section 74 are made out, the proceeding under either of the



Sections can be initiated as the foundational facts do suggest. In the instant case, no GST ASMT-10 Form was ever served on the Petitioner.

27. Petitioner submits that Section 61 read with Rule 99 specifies that scrutiny of the returns shall be done based on the information available with the proper officer and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, under Rule 99(1), informing him of such discrepancy and seeking his explanation thereto. In case if the explanation provided by the Petitioner is satisfactory, then no further action shall be taken in that regard. If the explanation provided is not satisfactory, then the proper officer can initiate appropriate action under Section 73 or Section 74.
28. However, in the instant case Petitioner has not received any notice in FORM ASMT-10 requiring the Petitioner to provide explanation for the discrepancy noticed in the returns. Instead, the proper officer has directly issued Form GST DRC-01A and SCN under Section 73 which shows that the notice has been issued without following the procedure prescribed under Section 61 of CGST Act, 2017 and Rule 99 of CGST Rules, 2017.
29. Petitioner further submits that if the proceedings are allowed to continue on the basis of such an infirm show cause notice, it would lead to an anomalous result as the adjudication order passed finally would be without any authority of law and lacking in jurisdiction. It would also be in violation of principles of natural justice. Therefore, the show cause notice dated 28.12.2023 is not valid. It is submitted that the respondents may be directed to first serve the notice in



GST ASMT-10 before proceeding against the petitioner in accordance with law.

No proper verification of documents was done by the Respondent No.1, therefore, violation of principles of natural justice:

30. The Petitioner respectfully submits that demands raised in impugned order by the Respondent No.1 are as under:

- (i) Demand of Rs. 98,42,090/- towards excess ITC availed in GSTR-3B on comparison to GSTR-2A on reconciliation of GSTR 9.
- (ii) Demand of Rs. 1,66,520/- towards under declaration of ITC on reconciliation of GSTR 9

31. The Petitioner respectfully submits that with respect to the above-referred demands, the petitioner has in detail submitted and enclosed supporting evidences along with their submissions which were not verified and considered by the Respondent No. 1.

32. The Petitioner respectfully submits that with respect to the demand of Rs.98,42,090/- towards excess ITC availed in GSTR-3B on comparison to GSTR-2A. In this regard, Petitioner submits that the Petitioner has explained the ITC availed in its reply where the SCN has considered the old GSTR 2A and did not consider the updated GSTR 2A, nevertheless further stated that the Petitioner cannot be deprived of the eligible ITC and explained why Petitioner is rightly eligible for ITC as:



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- a. 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 have been satisfied.
- b. 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.
- c. Finance Act, 2022 has omitted Section 42, 43 and 43A of the CGST Act, 2017 which deals ITC matching concept. Petitioner 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.
- d. 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 statute.
- e. Section 38 read with Rule 60 had prescribed the FORM GSTR 2 which is not made available till 30.09.2022. Notification No. 82 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.

- f. 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.
- g. 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.
- h. It is submitted that neither the form has been prescribed by the law nor the same has been communicated to the Petitioner, 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 Order is not correct.
- i. Fact that there is no requirement to reconcile the invoices reflected in GSTR-2A vs GSTR-3B is also evident from the amendment in Section 16 of CGST Act, 2017 vide Section 100 of Finance Act, 2021. Hence, there is no requirement to reverse any credit in the absence of the legal requirement during the subject period.



- j. 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.
- k. The fact of payment or otherwise of the tax by the supplier is neither known to Petitioner nor is verifiable by Petitioner. 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 '*lex non-cogit ad impossibilia*'. 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.
- l. In the same context, Petitioner also wish to place reliance on the decision in case of *Arise India Limited vs. Commissioner of Trade and Taxes, Delhi - 2018-TIOL-11-SC-VAT* and *M/s Tarapore and Company Jamshedpur v. State of Jharkhand - 2020-TIOL-93-HC-JHARKHAND-VAT*.
- m. Section 41 allows the provisional availment and utilization of ITC, there is no violation of section 16(2)(c) of CGST Act 2017
- n. The above view is also fortified from press release dated 18.10.2018



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- o. Even if there is differential ITC availed, if the same is accompanied by a valid tax invoice containing all the particulars specified in Rule 36 of CGST Rules and the payment was also made to the suppliers, the Petitioner is rightly eligible for ITC.
- p. Under the earlier VAT laws there were provisions similar to Section 16(2) ibid which have been held by the Courts as unconstitutional.
33. In this regard, Petitioner relies on following decisions:
- **Suncraft Energy Pvt. Ltd. vs. Assistant Commissioner 2023 (77) G.S.T.L. 55 (Cal.) affirmed by Supreme Court as reported in 2024 (80) G.S.T.L. 225 (S.C.)**
 - **Diya Agencies v. State Tax Officer 2023 (9) TMI 955 - Kerala High Court**
 - **Gargo Traders v. Joint Commissioner 2023 (6) TMI 533 - Calcutta High Court**
 - **Henna Medicals v. State Tax Officers 2023 (10) TMI 98 - Kerala High Court**
 - **D.Y. Beathel Enterprises Vs State Tax officer (Data Cell), (Investigation Wing), Tirunelveli 2021(3) TMI 1020-Madras High Court**
 - **LGW Industries limited Vs UOI 2021 (12) TMI 834 -Calcutta High Court**

M. J. S.



- Bharat Aluminium Company Limited Vs UOI & Others 2021 (6) TMI 1052 – Chhattisgarh High Court
- Sanchita Kundu & Anr. Vs Assistant Commissioner of State Tax 2022 (5) TMI 786 - Calcutta High Court.

34. The Petitioner respectfully submits that with respect to the demand of Rs.1,66,520/- towards under declaration of ITC, in this regard, Petitioner submits that Petitioner has not availed the ITC as alleged in the impugned Order. In fact, the Petitioner clearly explains in its submissions in the reply to SCN. The ITC availed by the Petitioner has been verified during the course of audit and have not pointed the same. Since the audit is already completed. Thus, the Respondent No.1 without any verification and non-application of mind has not verified the facts on record and has vaguely confirmed the demands.
35. Therefore, when the issues have already been explained, the Respondent no. 1 did not call for any further records of the Petitioner or explanation if any clarification was required, this shows the non-application of mind while passing the Impugned order which is in violation of the principles of natural justice.
36. In light of the above legal and factual position, this shows the negligence of Respondent No. 1 in not verifying the records/supporting documents furnished by Petitioner and shown utter ignorance and moreover never asked for any further details or clarifications needed instead of harping upon that documents were not submitted. This shows the lack of proper verification and



misconstruing of the facts which are readily available from the GST Portal by the Respondents.

37. Petitioner submits that the impugned order has confirmed the demand without considering the submissions made in the SCN reply, which is a clear violation of principles of natural justice.
38. Petitioner respectfully submitted that the impugned order has been passed without giving an opportunity to the Petitioner to produce documents. It is respectfully submitted that the show cause notice is based on the GST returns filed by the Petitioner whereas the order is passed stating that no supporting documents were filed by the Petitioner. If the first respondent needed any clarification/documents, same ought to have put the petitioner company on notice before passing an order on something which was never raised in the Show Cause Notice. The first respondent, after issuance of SCN and submission of reply, has never sought any further clarification or documents. In the absence of any further query from the first respondent, the petitioner company assumed that the documents submitted are sufficient for proper adjudication. Suddenly the first Respondent claims in the impugned order that there is no sufficient documentary proof. It is not the case that the petitioner company was asked to provide certain documents but the same was not submitted. The impugned order is passed in a mechanical way with pre-determined and pre-judged mindset to confirm the demand in the show cause notice without application of mind.



Interest and penalties imposed in the impugned order is not valid:

39. The Petitioner respectfully submits that no penalty should be imposed where the breach flows from the bona-fide belief that the offender is not liable to act in the manner prescribed by the statute. Reliance is placed on **Hindustan Steel Ltd. Vs State of Orissa 1978 (2) E.L.T. (J159) (S.C.)**.
40. The Petitioner respectfully submits that for various High Courts in plethora of cases held that that GST is still in a "trial and error" phase.
41. The Petitioner submits that GST is new law, which is developing day by day. Every day there will be notification or Circular clarifying the GST issues from the Government. It is undisputed fact the Government horridly implemented the GST Law without being much preparatory work and trade was not fully ready for GST implementation. Due dates & deadlines were extended many times for the first two years of implementation of the GST Law.

Only efficacious remedy is to file the present Petition:

42. The Petitioner submits that there is no efficacious or alternative remedy available as the impugned order is passed without jurisdiction, authority of law and being violative of principles of natural justice. The Petitioner has been left with no other efficacious alternative remedy but to challenge the impugned order by way of this writ petition.
43. Petitioner submits that this Hon'ble Court in the case of GVPR Engineers Ltd vs. UOI 2021 (51) G.S.T.L. 164 (Telangana) held that writ jurisdiction is



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invokable when the material evidence was not considered by a statutory authority, and alternative remedy is not a bar for the same.

44. The petitioner respectfully submits that the instant case squarely falls under the exception to alternative remedy and fit case for entertaining the discretion of Hon'ble High court to invoke writ jurisdiction under Article 226. Hence, the Petitioner prays to the Hon'ble High Court to set aside the impugned order.
45. The Petitioner has not filed any other writ petition in this or any other court in regard to matters in issue in the present writ petition. The Petitioner has no effective alternative remedy except to approach the Hon'ble High Court under Article 226 of the Constitution of India.
46. The entire cause of action has arisen within the jurisdiction of this Hon'ble Court. This Hon'ble Court, therefore, has jurisdiction to entertain, try and dispose of this petition.
47. For the above reasons, it is humbly prayed that the Hon'ble High Court may be pleased to issue
 - i. a writ, order, or direction more particularly one in the nature of a Writ of Mandamus declaring impugned Order-In-Original vide No. 24/2024-25(GST-Adjn) dated 19.04.2024 along with DRC 07 having reference no. ZD3605240051401 dated 02.05.2024 passed by the Respondent No.1 under the provisions of CGST/TGST Act, 2017 as being void, arbitrary, illegal, without jurisdiction, violative of the principles of natural justice apart from being violative of Articles 14, 19(1)(g) and



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265 of the Constitution of India, and to consequently set aside the same and pass such further or other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.

- ii. a writ, order, or direction more particularly one in the nature of a Writ of Mandamus declaring that the Notification No. 09/2023-C.T dated 31.03.2023 issued by Respondent No. 4 through Respondent No. 6 and corresponding GO Ms. No. 118 dated 25.08.2023 issued by Respondent No. 5 and the Notification No. 56/2023- CT dated 28.12.2023 issued by Respondent No. 4 through Respondent No. 6 and corresponding GO. Ms. 170 dated 30.12.2023 issued by Respondent No. 5 which extended the time limit for passing the orders, are without authority of law and ultra vires to the section 73(10) of the GST Act 2017 and Section 168A of CGST Act, 2017 and violative of articles 14, 19(1)(g) 21 and 265 of the Constitution of India and/or pass such further or other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.

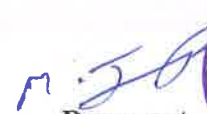
Pending disposal of the writ petition, it is humbly prayed that this Hon'ble Court may be pleased to stay operation of impugned Order-In-Original vide No. 24/2024-25(GST-Adjn) dated 19.04.2024 passed by the Respondent No.1 and pass such



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further or other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.


Deponent 

Solemnly affirmed and signed

on this the 30th day of July 2024

Hyderabad

BEFORE ME

ADVOCATE/HYDERABAD

VERIFICATION STATEMENT

I, Mangilipelli Jayaprakash, S/o M Venkataiah, aged about 49 years, residing at 3-4-63/13/C/1, Aravinda Nagar, Ramanthapur, Hyderabad, Telangana-500013 do hereby verify that the facts stated above in the Affidavit filed on support of the writ petition as true and correct to the best of my knowledge, information and belief.

Verified on this the 30th day of July 2024



COUNSEL FOR THE PETITIONER


Deponent 

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P-1

Order-In-Original No. 24/2024-25(GST-Adjn) dated 19.04.2024

	 केन्द्रीयकरसहायक आयुक्त कार्यालय,सिकंदराबादमालाएवमसेवाकरमण्डल, सिकंदराबाद। OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL TAX, SECUNDERABAD GST DIVISION, SECUNDERABAD SALIK SENATE, D.No: 2-4-416 & 417, RAMGOPALPET,M.G. ROAD, SECUNDERABAD- 500 003 Phone 7901243130 E-mail- cgst.secddiv@gov.in	
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C.No.GEXCOM/ADJN/GST/2889/2023-CGST-DIV-SNBD-COMMRTE-SECUNDERABAD

दिनांक/Date: 19.04.2024

DIN: 20240456Y0000000BE0F

ORDER-IN-ORIGINAL No. 24/2024-25 (GST-Adjn)

(Passed by Shri R.Satyanarayana, I.R.S., Assistant Commissioner of Central Tax, Secunderabad GST Division)

PREAMBLE

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

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

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

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

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

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

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

अपीलका आधारऔरफॉर्मकेसत्यापनकेरूपमेंफॉर्मजीएसटीएपीएल01 मेंनिहितहै, केंद्रीयसामानऔरसेवाकर नियम, 2017 केनियम26 मेंनिर्दिष्टरीकेसेहस्ताक्षरकीजाएंगे।

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

केंद्रीयवस्तु एवम सेवाकर नियम, 2017 के108 केउपनियम1 केतहतअपीलभरनेकेसातदिनोंकेभीतरआदेशकीप्रमाणितप्रतिप्रस्तुतकीजाएगी।

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

(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

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Order-In-Original No. 24/2024-25(GST-Adjn) dated 19.04.2024

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

केंद्रीयवस्तु एवम सेवाकरअधिनियम, 2017कीधारा 107 (6) केअनुसार, अपीलकतनेकेंद्रीयवस्तु एवम सेवाकरअधिनियम, 2017कीधारा 107 (1) केतहतकोईअपीलदायरनहींकीजाएगी, जबतककिअपीलकतनिभुगताननहींकियाहो-

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

(बी) दसप्रतिशतकेबराबरराशि।उक्तआदेशसेउत्पन्नविवादमेंकरकीशेषराशि, जिसकेसंबंधमेंअपीलदायरकीगईहै।

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

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

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

2.1. ISSUE -1: Excess claim of ITC:

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

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

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

Scrutiny of ITC availed:

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

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

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

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

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

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

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

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

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

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

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

- (i) an amount of **Rs.1,00,08,610/-** (CGST: **Rs.50,04,305/-** & SGST: **Rs.50,04,305/-** (Rupees One Crore Eight Thousand Six Hundred and Ten only), as discussed supra in Para. 2.1 should not be demanded from them under section 73(1) of the CGST Act, 2017/TSGST Act, 2017.
- (ii) interest at the applicable rate should not be demanded from them on tax demanded at (i) above under section 50 of CGST Act, 2017/TSGST Act, 2017.
- (iii) Penalty should not be imposed on them demands at (i) above under Section 73 of CGST Act, 2017 read with Section 122 of CGST Act, 2017/TSGST Act, 2017.

7. Reply to Show Cause Notice

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

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

The taxpayer submitted that the demand was raised in the previous SCN in any case, such alleged differences between ITC in GSTR3B Vs GSTR2A is factually wrong as impugned SCN was based on the old GSTR2A as on the date

of filing of annual returns. Once, the updated GSTR2A was considered, the actual difference was quite less than the amount arrived in the SCN. Further, submitted that ITC cannot be denied merely due non-reflection of invoices in GSTR2A as all the conditions specified under Section 16 have been satisfied. The taxpayer submitted that GSTR2A cannot be taken as a basis to deny the ITC in accordance with Section 41, Section 42 of CGST Act, 2017, Rule 69 of CGST Rules, 2017. Finally, requested to drop further proceedings initiated in the show cause notice.

7.2. ISSUE-2: Under declaration of In-eligible ITC

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

8. Personal Hearing:

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

9. Discussions & Findings :

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

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

10.1. In terms of Section 16(2)(c) of the CGST Act 2017, one of the conditions for availing ITC by the recipient customer was that the tax charged in respect of the supply has been paid to the Government by the supplier. However, the tax payer has not produced any evidence including GSTR-2A in support of payment of tax (CGST and SGST) to the Government by the supplier to the extent of the said excess credit of Rs. 98,42,090/- (CGST: Rs.49,21,045/- and SGST: Rs.49,21,045/-) as envisaged in Rule 16(2)(c) of CGST Act, 2017 either by way of getting the details of outward supplies uploaded by their suppliers in their GSTR-1 Returns which in turn would appear in the taxpayer's auto-populated 2A statement for the relevant period or by furnishing

irrefutable evidence to the effect that the supplier had in fact paid the applicable taxes to the Government on the said input supplies by furnishing the suppliers' GSTR-3B Returns for the relevant period. Hence the tax payer is not eligible for the above input tax credit as the same was availed in contravention of provisions of the CGST Act 2017. Therefore, the taxpayer had contravened Section 16(2)(c) of CGST Act 2017 read with Section 20 of IGST Act, 2017, inasmuch as the taxpayer did not produce any evidence including GSTR-2A in support of payment of GST to the Government by the supplier to the extent of the excess credit availed by them. They have also contravened Section 50(3) of the CGST Act 2017, inasmuch as they did not pay interest on the excess input tax credit availed. Further, as the taxpayer had irregularly availed said excess ITC in contravention of the provisions of 16 (2)(c) of CGST Act, 2017. Therefore, the said credit is recoverable under Section 73(1) along with interest under Section 50(3) and is also liable for penalty under Section 73 (1) read with Section 122(2)(a) of CGST Act, 2017 .

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

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

Section 17. Apportionment of credit and blocked credits.-

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

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

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

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

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

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

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

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

(aa):

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

- (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;
- (ii) where received by a taxable person engaged-
- (I) in the manufacture of such motor vehicles, vessels or aircraft; or
- (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;]

(b) ⁵[the following supply of goods or services or both-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

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

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

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

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

14. Further, Section 6 of the Telangana State Goods & Services tax Act, 2017 authorizes the officers appointed under the Central Goods and Services Tax Act as proper officers for the purposes of the said Act, subject to such conditions as the Government shall, on the recommendations of the Council,

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Order-In-Original No. 24/2024-25(GST-Adjn) dated 19.04.2024

By Notification, specify. Accordingly, the demand of levy of SGST is authorized under the provisions of Section 6 of the TGST Act, 2017.

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

ORDER

- (i) I confirm the demand of **Rs.98,42,090/- (CGST: Rs.49,21,045/- & SGST: Rs. 49,21,045/- /- (Rupees Ninety Eight Lakh Forty Two Thousand and Ninety only)**, as discussed supra under Section 73(9) of the CGST Act, 2017 and similar provisions as laid in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.
- (ii) I confirm the demand of **Rs.1,66,520/- (CGST: Rs.83,260/- & SGST: Rs.83,260/- (Rupees One Lakh Sixty Six Thousand Five Hundred and Twenty only)**, as discussed supra under Section 73(9) of the CGST Act, 2017 and similar provisions as laid in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.
- (iii) I confirm the demand of interest at the applicable rate from them on tax demanded at (i) & (ii) above under Section 50 of CGST Act, 2017 read with Section 20 of IGST Act and similar provisions under TGST Act, 2017.
- (iv) I confirm the demand penalty from them on the demands at (i) & (ii) above under Section 73(9) of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and Section 20 of IGST Act, 2017 and similar provisions under TGST Act, 2017

(आर.सत्यनारायण)/(R.SATYANARAYANA)

सहायक आयुक्त/Assistant Commissioner

सिकंदराबाद मण्डल/ Secunderabad GST Division

To,

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

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

Copy to

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

Office copy & Master file.

Received
24/4/24
A-111



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FORM GST DRC - 07

[See rule 100(1), 100(2), 100(3) & 142(5)]

Summary of the order

Reference No: ZD3605240051401

Date: 02/05/2024

To,

GSTIN/ID: 36ADBFS3288A2Z7

Name: SILVER OAK VILLAS LLP

Address: 5-4-187/3 AND 4, 2ND FLOOR, SOHAM MANSION, M.G ROAD, SECUNDERABAD,
SECUNDERABAD, Ranga Reddy, Telangana, 500003

1. Details of order -

(a) Order no: 3CEEYO0103A042400322

(b) Order date: 19/04/2024

(c) Financial year: 2018-2019

(d) Tax period: Apr 2018 - Mar 2019

2. Issues involved - Excess ITC claimed

3. Description of goods / services -

Sr. No.	HSN	Description
1.	9954	Construction services

4. Section of GST Act under which demand is created: 73

5. Details of demand

(Amount in Rs.)

Sr. No.	Tax rate(%)	Turnover	Place of supply	Act	Tax/Cess	Interest	Penalty	Fee	Others	Total
1.	0	0.00	Telangana	CGST	5,004,30 5.00	0.00	0.00	0.00	0.00	5,004,30 5.00
2.	0	0.00	Telangana	SGST	5,004,30 5.00	0.00	0.00	0.00	0.00	5,004,30 5.00

Signature:

Name: Ravula Satya Narayana

Designation: Assistant Commissioner

Jurisdiction: M.G.ROAD -

S.D.ROAD: Begumpet: Telangana

Copy to- --

[See rule 142(4)]

Reply to the Show Cause Notice

ARN: ZD360224031508L

Date: 19/02/2024

1. GSTIN	36ADBFS3288A2Z7		
2. Name	SILVER OAK VILLAS LLP		
3. Details of Show Cause Notice	Reference No. ZN3601240374349	Date of issue 24/01/2024	
4. Financial Year	2018-2019		
5. Reply	Dear Sir, Please find the attached SCN Reply attached in four parts.		
6. Documents uploaded	Silver Oak_SCN_18-19_PART-A.pdf Silver Oak_SCN_18-19_PART-B.pdf Silver Oak_SCN_18-19_PART-C.pdf Silver Oak_SCN_18-19_PART-D.pdf		
7. Option for personal hearing	☒ Yes	☐ No	

8.Verification-

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

Signature of Authorized Signatory
Name : SOHAMMODI
Designation / Status: Designated
Partner
Date: 19/02/2024



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

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01C

P2

Date: 19.02.2024

To,
The Assistant Commissioner of Central Tax,
Secunderabad GST Division,
Salike Senate, D.No. 2-4-416 & 417,
Ramgopalpet, M.G. Road,
Secunderabad-500003.

Dear Sir,

Sub: Filing of Reply to Show Cause Notice in Form GST DRC - 06.

Ref: SCN No. 39/2023-24 vide DIN :20231256YO0000116641 dated 28.12.2023
pertaining to **M/s. Silver Oak Villas LLP.**

1. We have been authorized by M/s. Silver Oak Villas LLP to submit the SCN reply to the above referred SCN No. 39/2023-24 vide DIN :20231256YO0000116641 dated 28.12.2023 and represent before your good office and to do necessary correspondence in the above referred matter. A copy of authorization is attached to the reply.
2. In this regard, we are herewith submitting the SCN reply along with authorization letter and other annexures referred in the reply.

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

Thanking You,

Yours faithfully,

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

R. Lakshman Kumar
CA Lakshman Kumar K
Partner



4th Floor, West Block, Sride Anushka Pride, R.No. 12, Banjara Hills, Hyderabad,
Telangana - 500 034, INDIA.

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5	Copy of SCN No. 39/2023-24 dated 28.12.2023	I	14-18
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FORM GST DRC – 06

[See rule 142(4)]

Reply to the Show Cause Notice

1.GSTIN	36ADBFS3288A2Z7	
2.Name	Silver Oak Villas LLP	
3.Details of Show Cause Notice	Ref. No. 39/2023-24 vide DIN 20231256YO0000116641	Date of issue: 28.12.2023
4.Financial Year	Apr 2018-March 2019	
5.Reply	Given as Annexure A	
6.Documents uploaded		
7.Option for personal hearing	Yes- Required	☐ No

8.Verification –

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



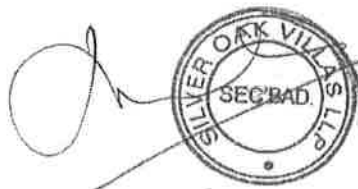
Signature of Authorised Signatory

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ANNEXURE A:

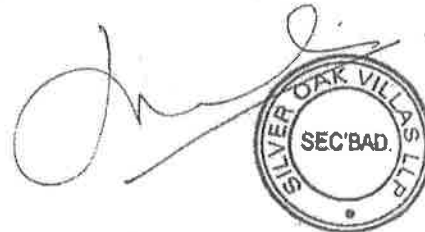
FACTS OF THE CASE:

- A. M/s. Silver Oak Villas LLP (hereinafter referred as "Noticee") located at 2nd Floor, U-22, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad, Hyderabad, Telangana – 500003 is inter alia engaged in the provision of taxable services viz. Works Contract services, construction services in respect of residential villas and are registered with Goods and Services Tax department vide GSTIN No: 36ADBFS3288A2Z7.
- B. Noticee is availing Input Tax Credit (ITC) of taxes paid on inputs and input services and discharging taxes on output liability on timely basis by filing the monthly returns. Noticee has also filed the GSTR-09 for the period 2018-19.
- C. Subsequently, the department has conducted audit for the period July 2017 to March 2019 and on verification of the records the following points were observed and the same was communicated to the Noticee vide Final Audit Report No. 707/2020-21-GST dated 11.06.2021
- (Copy of Final Audit Report is enclosed as Annexure IV)
- Short payment of GST during the period 2017-18 and 2018-19 (Rs. 22,11,128/-)*
 - Non-payment of GST under RCM on Brokerage/Commission paid to unregistered persons (Rs. 2,22,792/-)*
 - Interest for Rs. 911/- on delayed filing of GSTR-3B returns for the month August 2017*
 - Short payment of GST in F.Y. 2017-18 and 2018-19*
 - Irregular credit availed and reversed*
 - Irregular credit taken in the month of September, 2018*
- D. In response to the above final audit report, Noticee has filed the detailed reply along with appropriate annexures stating the reasons as to why there is no short payment of GST on the part of the Noticee (Copy of reply dated 21.03.2021 & 07.09.2021 is enclosed as Annexure V).



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- E. Subsequently, Noticee was is in receipt of the Show Cause Notice vide Ref No. C.No.V/01/GST/81/2020-GR.12/CIR-I dated 12.01.2022 and proposed the demands (Copy of SCN is enclosed as Annexure III):
- F. In response to the SCN dated 12.01.2022, the Noticee furnished its reply vide submissions dated 28.02.2023 filed on 01.03.2023 & and also filed additional submissions dated 08.09.2023 thereby stating that the demands proposed vide the SCN has already been discharged and thus the demands proposed are not maintainable per se in law.
- G. To the utter surprise of the Noticee, Noticee is in receipt of the impugned SCN No. 39/2023-24 dated 28.12.2023 proposing the following demands which were the very same demands that were already proposed in the show cause notice dated 12.01.2022. Copy of SCN No. 39/2023-24 dated 28.12.2023 enclosed as Annexure I.
- a. *an amount of Rs.1,00,08,610/- (CGST: Rs.50,04,305/- & SGST: Rs.50,04,305/- (Rupees One Crore Eight Thousand Six Hundred and Ten only), as discussed supra in Para 2.1 should not be demanded from them under section 73(1) of the CGST Act, 2017/TSGST Act, 2017.*
 - b. *interest at the applicable rate should not be demanded from them on tax demanded at (i) above under section 50 of CGST Act, 2017/TSGST Act, 2017.*
 - c. *Penalty should not be imposed on them demands at (i) above under Section 73 of CGST Act, 2017 read with Section 122 (2)(a) of CGST Act, 2017/TSGST Act, 2017.*
- H. Noticee herein below makes the submissions in response to the allegations and propositions made in the impugned SCN which are independent and without prejudice to one another.



Submissions

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1. Notice submits that they deny all the allegations made in Show Cause Notice (SCN) as they are not factually/legal 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 issued on assumptions and presumptions

3. 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."*
4. 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)**



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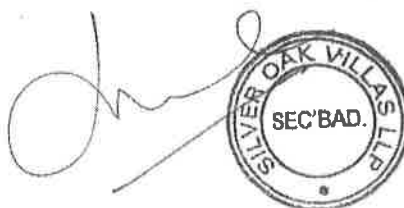
Notice is vague and lack of details

5. Noticee submits that the impugned notice has not given clear reasons as to how the Noticee has availed the credit in excess and how the Noticee has availed ineligible ITC u/s 17(5) of the CGST Act, 2017, 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. Dayamay Enterprise Vs State of Tripura and 3 OR's. 2021 (4) TMI 1203 - Tripura High Court
 - c. Mahavir Traders Vs Union of India (2020 (10) TMI 257 - Gujarat High Court)
 - d. Teneron Limited Versus Sale Tax Officer Class II/Avato Goods and Service Tax & Anr. (2020 (1) TMI 1165 - Delhi High Court)
 - e. 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.

Separate SCN to be issued for CGST & SGST

6. 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*.

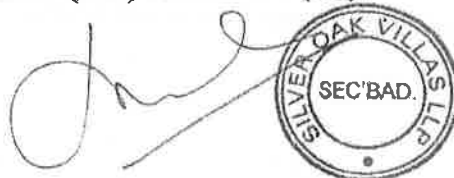


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The present demand is already raised in previous SCN dated 12.01.2022

7. Without prejudice to the above submissions, Noticee submits that the the department has already conducted audit for the period July 2017 to March 2019 audit *inter alia* verified the returns, ie., GSTR-3B & GSTR-2A & and made certain observations which were finally culminated into issuance of earlier SCN dated 12.01.2022 *inter alia* vide Paras 71-113 under the head "No irregular availment of ITC" of such SCN has raised the demand alleged ITC on comparison of GSTR-3B & GSTR-2A for FY 2018-19.
8. Thus, previous SCN dated 12.01.2022 has raised very same demands that were raised in the impugned SCN. Thereby, the present demand is clearly duplicated, unwarranted and requires to be dropped outrightly.
9. Furthermore, the returns verification is one of the basis features of GST audit by the department as evident from the Para 5.5.4 & 5.8.3 of GST Audit Manual, 2019 issued by CBIC (Relevant extracts are enclosed as annexure VII). Therefore, the demand proposed vide the impugned SCN is completely duplicated, fallacious and devoid of any merit.
10. Noticee further submits that in response to the previous SCN dated 12.01.2022, the Noticee has filed the submissions dated 28.02.2023 & additional submissions dated 08.09.2023. (Copy of the submissions are enclosed as Annexure-II). Thus, when the demands on the same issue has already been scrutinized and proposed then there was no necessity to raise the very same demands covering same period and same issue again in the present SCN.
11. Noticee submits that reopening of the already adjudicated assessment is not permitted in law. In this regard, Noticee places reliance on **UOI v. Vicco Laboratories 2007 (218) E.L.T. 647 (SC)**.
12. Further, it is submitted that two assessments are not permissible in law for the same period, especially on the same issue and same period. In this regard, Noticee places reliance on the following judicial pronouncements:

a. **Duncans Industries Ltd. v. CCE 2006 (201) E.L.T. 517 (SC).**



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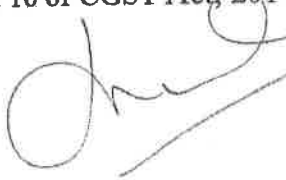
- b. **Ambey Mining Pvt. Ltd. vs. Commissioner of State Tax, Dhurwa 2023 (76) G.S.T.L. 191 (Jhar.)** wherein the Hon'ble HC quashed the two show cause notices by two different authorities for the same period on the same issue.
- c. **V.S. Enterprises vs. State of UP 2022 (56) G.S.T.L. 287 (All.)** wherein Hon'ble HC held that multiple adjudication orders passed for overlapping tax periods involving same dispute by different adjudicating authorities would not be sustainable.
- d. **Core Health Ltd. Vs. Union of India 2006 (198) E.L.T. 21 (Guj.)** wherein the Hon'ble HC held that *"13. In the circumstances, the respondent authority, especially respondent No. 4, has failed to place any material on record to show, even prima facie, that it is entitled to assume jurisdiction for the purpose of issuance of impugned show cause notice for the same period and relating to the same issue which has already been adjudicated upon in past. Once the respondent authority fails to establish jurisdictional facts for assumption of jurisdiction as a natural corollary the impugned show cause notice cannot be allowed to stand and the same is accordingly quashed and set aside."*

In Re: There was no excess ITC availment as misconstrued in SCN:

13. The impugned SCN has proposed demand of Rs.98,42,090/- (first table in Para 2.1.2) towards alleged excess ITC availed in GSTR-3B on comparison to GSTR-2A. It is submitted that this demand was raised in the previous SCN and in any case, such alleged differences between ITC in GSTR-3B Vs GSTR-2A is factually wrong as impugned SCN was based on the old GSTR-2A as on the date of filing annual returns. Once the updated GSTR-2A was considered, the actual difference was quite less than the amount arrived by impugned SCN. In any case, the mismatches were not due to the faults of Noticee but faults, if any of the suppliers of Noticee whom to be investigated first instead of direct recovery from Noticee.

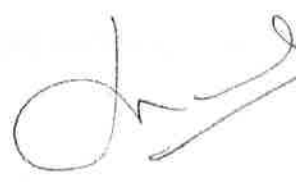
14. Noticee further submits that Noticee is rightly eligible for ITC for the following reasons even though such alleged ITC is not reflected in GSTR-2A:

- a. 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 have been satisfied.




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- b. GSTR-2A cannot be taken as a basis to deny the ITC in accordance with Section 41, Section 42 of CGST Act, 2017, Rule 69 of CGST Rules, 2017.
- c. Finance Act, 2022 has omitted Section 42, 43 and 43A of the CGST Act, 2017 which deals ITC matching concept. 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.
- d. 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 statute.
- e. The Section 38 read with Rule 60 had prescribed the FORM GSTR 2 which is not made available till 30.09.2022. Further, Form GSTR 2 has been omitted vide Notification No. 19/2022 Central Tax dated 28.09.2022 w.e.f. 01.10.2022.
- f. 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.
- g. 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.
- h. 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 order is not correct.
- i. Fact that there is no requirement to reconcile the invoices reflected in GSTR-2A vs GSTR-3B is also evident from the amendment in Section 16 of CGST Act, 2017

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vide Section 100 of Finance Act, 2021. Hence, there is no requirement to reverse any credit in the absence of the legal requirement during the subject period.

- j. 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.
- k. The fact of payment or otherwise of the tax by the supplier is neither known to Noticee nor is verifiable by Noticee. 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 '*lex non-cogit ad impossibilia*'. 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.
- l. In the same context, Appellant also wish to place reliance on the decision in case of *Arise India Limited vs. Commissioner of Trade and Taxes, Delhi - 2018-TIOL-11-SC-VAT* and *M/s Tarapore and Company Jamshedpur v. State of Jharkhand - 2020-TIOL-93-HC-JHARKHAND-VAT*.
- m. Section 41 allows the provisional availment and utilization of ITC, there is no violation of section 16(2)(c) of CGST Act 2017
- n. The above view is also fortified from press release dated 18.10.2018
- o. Even if there is differential ITC availed, if the same is accompanied by a valid tax invoice containing all the particulars specified in Rule 36 of CGST Rules and the payment was also made to the suppliers, the Appellant is rightly eligible for ITC.
- p. Under the earlier VAT laws there were provisions similar to Section 16(2) *ibid* which have been held by the Courts as unconstitutional.

15. In this regard, Noticee relies on following decisions:

- **Suncraft Energy Pvt. Ltd. vs. Assistant Commissioner 2023 (77) G.S.T.L. 55 (Cal.) affirmed by Supreme Court as reported in 2024 (80) G.S.T.L. 225 (S.C.)**
- **Diya Agencies v. State Tax Officer 2023 (9) TMI 955 - Kerala High Court**



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- Gargo Traders v. Joint Commissioner 2023 (6) TMI 533 - Calcutta High Court
- Henna Medicals v. State Tax Officers 2023 (10) TMI 98 - Kerala High Court
- D.Y. Beathel Enterprises Vs State Tax officer (Data Cell), (Investigation Wing), Tirunelveli 2021(3) TMI 1020-Madras High Court
- LGW Industries limited Vs UOI 2021 (12) TMI 834 -Calcutta High Court
- Bharat Aluminium Company Limited Vs UOI & Others 2021 (6) TMI 1052 – Chhattisgarh High Court
- Sanchita Kundu & Anr. Vs Assistant Commissioner of State Tax 2022 (5) TMI 786 - Calcutta High Court

In Re: There is no under declaration of ineligible ITC and hence, there is no requirement to reverse the ITC:

16. Impugned SCN has proposed Rs.1,66,520/- alleging that Noticee is required to reverse the ITC. In this regard, it is submitted that Noticee has not availed any ITC on the motor vehicles as alleged in the impugned notice. The ITC availed by the Noticee has been verified during the course of audit and have not pointed the same. Since the audit is already completed, Noticee requests to drop further proceedings in this regard.

In Re: Impugned SCN is time barred and Notification No. 09/2023-C.T dated 31.03.2023 & Notification No. 56/2023-C.T dated 28.12.2023 are bad in law:

17. Noticee submits that the impugned SCN was issued under section 73 of CGST Act, 2017 which provides for adjudication of demand within 3 years from the due date of annual return of corresponding FY. For FY 2018-19, the annual return due date falls on 31.10.2020 and the 3 years time limit expires on 31.10.2023. Therefore, the last date for issuance of the show cause notice u/s. 73(2) of CGST Act, 2017 is 31.07.2023 only.
18. Citing the difficulties caused due to Covid-19, the Government has extended the time limit to 31.03.2024 exercising the powers u/s. 168A of CGST Act, 2017 as amended vide Notification No. 09/2023-C.T dated 31.03.2023. However, again exercising the powers u/s. 168A, ibid the time was further extended to 30.04.2024 by the Notification No. 56/2023-C.T dated 28.12.2023.
19. In this regard, it is submitted that extension of the time period prescribed for issuance of show cause notice under Section 73 (10) of the Goods and Service Tax Act, 2017 is not sustainable in law, in as much as COVID restrictions were uplifted long back in the year 2022 and the revenue had sufficient time to complete the scrutiny and audit



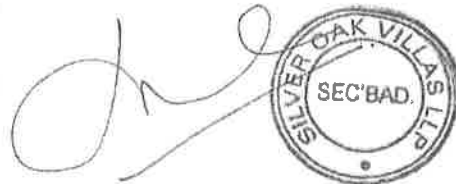
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process. Further, the 'force majeure' as defined u/s. 168A, ibid was never occurred from 2022 till the expiry of extended due date of 31.10.2023. Hence, the extension of time from 31.10.2023 to 31.03.2023 & again to 30.04.2024 runs beyond the mandate of Section 168A and is not sustained in the law. Similarly, the extending of the time limits prescribed under section 73, ibid by exercising the notification issued u/s. 168A, ibid runs contrary to the provisions of section 73(10) of CGST Act, 2017 as amended. Therefore, both the Notifications No. 09/2023 dated 31.03.2023 & 56/2023-C.T dated 28.03.2023 are illegal, arbitrary, unjust, improper, unfair and contrary to provisions of the CGST Act, 2017.

20. Noticee submits that it is settled law that any delegated legislation travelling beyond the Statutory provisions be 'ultra vires' and do not sustain in law. It is also manifestly arbitrary and violative of Article 14 of the Constitution of India.
21. The Noticee submits that it is a settled position of law that in indirect Taxes, demands proposed after the expiry of the time limit prescribed under the statute is time-barred and not enforceable in law. In this regard wish to place reliance on the judgment in the case of CCE vs Classic Strips Pvt Ltd 2015 (318) E.L.T. 20 (S.C.).
22. Therefore, the impugned demand raised for FY 2018-19 deserves to be dropped as the proceedings are deemed to be concluded in terms of Section 75(10) of CGST Act, 2017 in absence of passing the order before 31.10.2023 and also non-issuance of SCN in 3 months prior to 31.10.2023.

Interest and penalties are not payable/imposable:

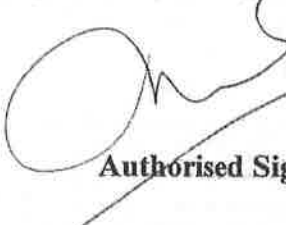
23. The Noticee respectfully submits that issue involved in the present case is critical analysis of various provisions of GST provisions and Notifications issued thereunder. Therefore, it is settled position of the law that when the issue involved is interpretation of statutory provisions, the imposition of penalties not warranted.
24. The Noticee respectfully submits that no penalty should be imposed where the breach flows from the bona-fide belief that the offender is not liable to act in the manner prescribed by the statute. Reliance is placed on **Hindustan Steel Ltd. Vs State of Orissa 1978 (2) E.L.T. (J159) (S.C.)**.
25. The Noticee respectfully submits that various High Courts in plethora of cases held that that GST is still in a "trial and error" phase.



SS

26. Noticee submits that GST is new law, which is developing day by day. Every day there will be notification or Circular clarifying the GST issues from the Government. It is undisputed fact the Government horridly implemented the GST Law without being much preparatory work and trade was not fully ready for GST implementation. Due dates & deadlines were extended many times for the first 3 years of implementation of the GST Law. The alleged violations are purely unintentional and without any malafide intentions as explained supra. When the issue involved is interpretation of Law, therefore failure/non-payment of tax with intent to evade cannot be attributed accordingly penalty under the provisions of the law cannot be imposed.
27. Noticee craves leave to alter, add to and/or amend the above reply.
28. Noticee would also like to be heard in personal, before any order being passed in this regard.

For M/s. Silver Oak Villas LLP



Authorised Signatory

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**BEFORE THE ASSISTANT/DEPUTY COMMISSIONER OF CENTRAL TAX,
SECUNDERABAD DIVISION, SALIKE SENATE, 1st FLOOR, D.NO. 2-4-416 & 417,
RAMGOPALPET, MG ROAD, SECUNDERABAD, 500003.**

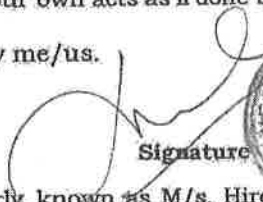
Sub: Proceedings under Show Cause Notice SCN No. 39/2023-24 vide DIN:20231256YQ0000116641 dated 28.12.2023 issued to M/s. Silver Oak Villas LLP.

I, SOHAM MOOTI, PARTNER of M/s Silver Oak Villas LLP hereby authorizes and appoint M/s. H N A & Co. LLP (formerly known as M/s. Hiregange & Associates LLP), Chartered Accountants, Bangalore or their partners and qualified staff who are authorized to act as an authorized representative under the relevant provisions of the law, to do all or any of the following acts: -

- To act, appear and plead in the above-noted proceedings before the above authorities or any other authorities before whom the same may be posted or heard and to file and take back documents.
- To sign, file verify and present pleadings, applications, appeals, cross-objections, revision, restoration, withdrawal and compromise applications, replies, objections and affidavits etc., as may be deemed necessary or proper in the above proceedings from time to time.
- To Sub-delegate all or any of the aforesaid powers to any other representative and I/We do hereby agree to ratify and confirm acts done by our above-authorized representative or his substitute in the matter as my/our own acts as if done by me/us for all intents and purposes.

This authorization will remain in force till it is duly revoked by me/us.

Executed this on February, 2024 at Hyderabad


Signature 

I the undersigned partner of M/s. H N A & Co. LLP (formerly known as M/s. Hiregange & Associates LLP), Chartered Accountants, do hereby declare that the said M/s. H N A & Co. LLP is a registered firm of Chartered Accountants, and all its partners are Chartered Accountants holding certificate of practice and duly qualified to represent in above proceedings under Section 116 of the SGST Act, 2017. I accept the above-said appointment on behalf of M/s. H N A & Co. LLP. The firm will represent through any one or more of its partners or Staff members who are qualified to represent before the above authorities.

Dated: 02.02.2024

Address for service:

H N A & Co. LLP,
Chartered Accountants,
4th Floor, West Block, Anushka Pride,
Above Himalaya Book World,
Road Number 12, Banjara Hills,
Hyderabad, Telangana 500034

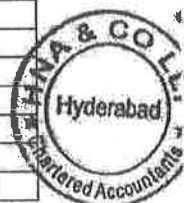
For H N A & Co. LLP
Chartered Accountants


CA Lakshman Kumar K
Partner (M.No. 241726)



I Partner/employee/associate of M/s. H N A & Co. LLP duly qualified to represent in above proceedings in terms of the relevant law, also accept the above said authorization and appointment.

S.No.	Name	Qualification	Membership No.	Signature
1	Sudhir V S	CA	219109	
2	Venkat Prasad P	CA, LLB	AP/3511/2023	
3	Srimannarayana S	CA	261612	
4	Revanth Krishna K	CA	262586	
5	Akash Heda	CA	269711	
6	Mohammed Shabaz	Advocate	TS/2223/2016	
7	Ankita Mehta	BBA LLB	TS/1578/2021	



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**NATION
TAX
MARKET**

केन्द्रीय कर सहायक कार्यालय, सिकंदराबाद माल एवम सेवाकर मण्डल, सिकंदराबाद ।
**OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL TAX,
 SECUNDERABAD GST DIVISION, SECUNDERABAD**
**SALIK SENATE, D.No: 2-4-416 & 417, RAMGOPALPET, M.G. ROAD,
 SECUNDERABAD- 500 003**
 Phone 7901243130 E-mail- cgst.secdiv@gov.in



C. No. : GEXCOM/ADJN/GST/2889/2023-CGST-DIV-SNBD-COMMITTEE-
 SECUNDERABAD

Date: 20.12.2023

DIN: 20231256YO0000406287

FORM GST DRC-01A

Intimation of tax ascertained as being payable under Section 73(5)/74(5)

[See Rule 142(1A)] Part A

To

M/s. SILVER OAK VILLAS LLP
 GSTIN: 36ADBFS3288A2Z7
 2ND FLOOR, 5-4-187/3 AND 4,
 SOHAM MANSION, M.G ROAD,
 SECUNDERABAD, Rangareddy, Telangana, 500003

FY: 2018-19

//By Speed Post//



Sub: - GST - Notice for intimating discrepancies in the returns for the FY 2018-19- **Issuance of GST DRC 01A** - Regarding.

Please refer to the above subject and reference. In this regard, the amount of tax liability payable by you under Section 73(5)/74(5) of the CGST Act, 2017 with reference to the said case as ascertained by the undersigned in terms of the available information, is as given below:

ISSUE I :- Excess claim of ITC:

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

Under Section 16(2)(c) of CGST Act, 2017, every registered person shall be entitled to take credit of ITC on supply of goods or services to him subject to the condition that the tax charged in respect of such supply has been actually paid to the Government either in cash or through utilization of ITC admissible in respect of such supply.

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

Scrutiny of ITC availed:

S.No	Description	SGST	CGST	Total
1	2	3	4	5
1	ITC in the year as per Table 8A of GSTR-09	5582555.00	5582555.00	11165110.00
2	ITC from ISD table 4A (4)	0.00	0.00	0.00
3	ITC from imports table 4A (1) +4A (2)	0.00	0.00	0.00
4	Inward Supplies liability to reverse charge 4A (3) (other than 4A(1) & 4A(2))	0.00	0.00	0.00
5	ITC brought forward from previous FY to current FY, Table 8C of previous FY GSTR-09	0.00	0.00	0.00
6	ITC carried forward from present FY to subsequent FY, Table 8C of GSTR-09	0.00	0.00	0.00

OC
 14/12/23

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7	Reversals in Table 4B of GSTR-3B	2627940.00	2627940.00	5255880.00
8	ITC Available for use in the same year (S.No 1+2+3+4+5-6-7)	2954615.00	2954615.00	5909230.00
9	ITC used in same year as per 4C of GSTR-3B	7875660.00	7875660.00	15751320.00
10	Net excess used (S.No 9-8)	4921045.00	4921045.00	9842090.00

Under declaration of Ineligible ITC:

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

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

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

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

From the above, the taxpayer is required to reverse the excess ITC claimed under Section 73 of the CGST Act, 2017 along with applicable interest under section 50 of the CGST Act, 2017.

Summary:

The total tax payable on account of these deficiencies after giving credit to the payments made in cash and ITC adjusted is arrived as follows:

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

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(The detailed workings of the above in tabular form are attached as Annexure-B)

You are hereby advised to pay the **amount of tax as ascertained above in full along with applicable interests and penalties**, immediately. In case if you wish to file any submissions against the above, the same may be furnished within 7 days from the date of receipt of this letter in Part B of DRC 01A, failing which Show Cause Notice will be issued under Section 73/74 of the CGST Act, 2017.

Encl: As above.

312-2121/121201
20/12/23

(आर.सत्यनारायण)/(R.SATYANARAYANA)
सहायक आयुक्त/Assistant Commissioner
सिकंदराबाद मण्डल/ Secunderabad Division

Copy to:

1, Superintendent of Central Tax, Ramgopalpet-I Range, Secunderabad Division.

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केन्द्रीय कर सहायक कार्यालय,सिकंदराबाद माल एवम सेवाकर मण्डल, सिकंदराबाद ।

OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL TAX,
SECUNDERABAD GST DIVISION, SECUNDERABAD
SALIKE SENATE, D.No: 2-4-416 & 417, RAMGOPALPET, M.G. ROAD,
SECUNDERABAD- 500 003

Phone 7901243130

E-mail- cgst.secdiv@gov.in

C.No GEXCOM/Adjn/GST/2889/2023-CGST-DIV-SNBD-COMMRTE-SECUNDERABAD Date: 28.12.2023

DIN: 20231256Y00000116641

SHOW CAUSE NOTICE 39/2023-24

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

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

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

2.1. ISSUE 1: Excess claim of ITC:

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

2.1.1. Under Section 16(2)(c) of CGST Act, 2017, every registered person shall be entitled to take credit of ITC on supply of goods or services to him subject to the condition that the tax charged in respect of such supply has been actually paid to the Government either in cash or through utilization of ITC admissible in respect of such supply.

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

Scrutiny of ITC availed:

S.No	Description	SGST	CGST	Total

OCNO

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

Under declaration of Ineligible ITC:

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

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

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

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

2.1.5. From the above, the taxpayer is required to reverse the excess ITC claimed under Section 73 of the CGST Act, 2017 along with applicable interest under section

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

3. The DRC 01A vide DIN-20231256Y00000406287 dated 20.12.2023 issued to the taxpayer requesting to pay tax along with interest and applicable penalty. However the taxpayer neither paid dues nor submitted any reply till now.

4. Now therefore, **M/s. SILVER OAK VILLAS LLP** (here-in-after referred to as "Taxpayer"), situated at 2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, M.G ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003, are required to Show Cause to the Assistant Commissioner of Central Tax (Adjudicating Authority), Secunderabad GST Division, Secunderabad GST Commissionerate, Salike Senate, D.No.2-4-416&417, Ramgopalpet, MG Road, Secunderbad – 500003 within thirty days (30) from the date of issue of this notice as to why: -

- (i) an amount of **Rs.1,00,08,610/- (CGST: Rs.50,04,305/- & SGST: Rs.50,04,305/- (Rupees One Crore Eight Thousand Six Hundred and Ten only)**, as discussed supra in Para 2.1 should not be demanded from them under section 73(1) of the CGST Act, 2017/TSGST Act, 2017.
- (ii) interest at the applicable rate should not be demanded from them on tax demanded at (i) above under section 50 of CGST Act, 2017/TSGST Act, 2017.
- (iii) Penalty should not be imposed on them demands at (i) above under Section 73 of CGST Act, 2017 read with Section 122 (2)(a) of CGST Act, 2017/TSGST Act, 2017.

5. **M/s. SILVER OAK VILLAS LLP** (here-in-after referred to as "Taxpayer"), situated at 2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, M.G ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003 having GSTIN No. **36ADBFS3288A2Z7** are hereby directed to produce all the evidence upon which they intend to rely in support of their defence. They should also indicate in their written reply, whether they wish to be heard in person, before the case is adjudicated. If no mention is made in their written explanation, it would be presumed that they do not desire a personal hearing.

6. If no reply is received to this notice within the stipulated period of time as above or if they do not indicate their wish for a personal hearing or having indicated so, if they do not appear before the adjudicating authority when the case is posted for personal hearing, then it shall be construed that they do not

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chargeable with tax under Sub-Section (1) or Sub-Section (3) pays the said tax along with interest applicable under Section 50 within thirty days (30) of issue of the notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded".

8. This notice is issued without prejudice to any other action that may be initiated against them in terms of the provisions of Central Goods and Services Tax Act, 2017 and Telangana Goods and Services Tax Act, 2017 and Rules made thereunder and/or any other law for the time being in force and enforceable in India.

9. Reliance for issuance of the notice is placed on the following documents which are already available with the taxpayer:

(i) DRC-01A issued from C.No. GEXCOM/Adjn/GST/2889/2023-CGST-DIV-SNBD-COMMRTE-SECUNDERABAD dt. 20.12.2023 issued by the Assistant Commissioner of Central Tax (Adjudicating Authority), Secunderabad GST Division, Secunderabad GST Commissionerate.

(ii) Observation communicated by the Telangana GST Authority as per GSTR-9 and other returns filed by the taxpayer.

31.12.2023
28/12/2023

(आर.सत्यनारायण)/(R.SATYANARAYANA)
सहायक आयुक्त/Assistant Commissioner
सिकंदराबाद मण्डल/ Secunderabad Division

To

M/s. SILVER OAK VILLAS LLP
GSTIN: 36ADBFS3288A2Z7
2ND FLOOR, 5-4-187/3 AND 4,
SOHAM MANSION, M.G ROAD,
SECUNDERABAD, Rangareddy, Telangana, 500003

Copy to:

1. Superintendent of Central Tax, Ramgopalpet-III Range, Secunderabad GST Division - He is directed to serve the SCN on the Tax payer, obtain dated acknowledgement and submit the same to this office for record.
2. Office Copy/Spare Copy,
3. Notice Board.

28/12/2023
Sofat-2023

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P-5

Silver Oak Villas LLP

5-4-187/3&4, II floor, MG Road,
Secunderabad - 500 003,
Phone: +91-40-66335551

Date: 07.09.2021

To
The Superintendent of Central Tax,
Group-12, Circle-I,
Door No.1-28/B/20, 21,
Sanvi Yamuna Pride, Krithika Layout,
Madhapur, Hitech City,
Hyderabad - 500 081

Sub: Reply to your letter dated 31.08.2021

Ref:

- i. Letter vide C. No. V/01/GST/81/2020-Gr.12/Cir-1 dated 31.08.2021
- ii. GST Audit- Final Audit Report No. 707/2020-21-GST dated 11.06.2021 pertaining to M/s. Silver Oak Villas LLP.

Dear Sir / Madam,

1. We are in the receipt of above referred letter stating that the the audit party has not received any correspondence regarding the payment of demand proposed in above referred Final Audit Report and also requested us to intimate the deatistl of payments made at the earliest.
2. In this regard, we would like to submit that we are not in agreement with the demands proposed in the above referred Final Audit Report and intends to contest demands, therefore, not paid any amounts. Hence, we request you to proceed further to issue the Show Cause Notice.

We shall be glad to provide any other information required in this regard. Kindly acknowledge the receipt of this letter and do the needful.

Thanking You

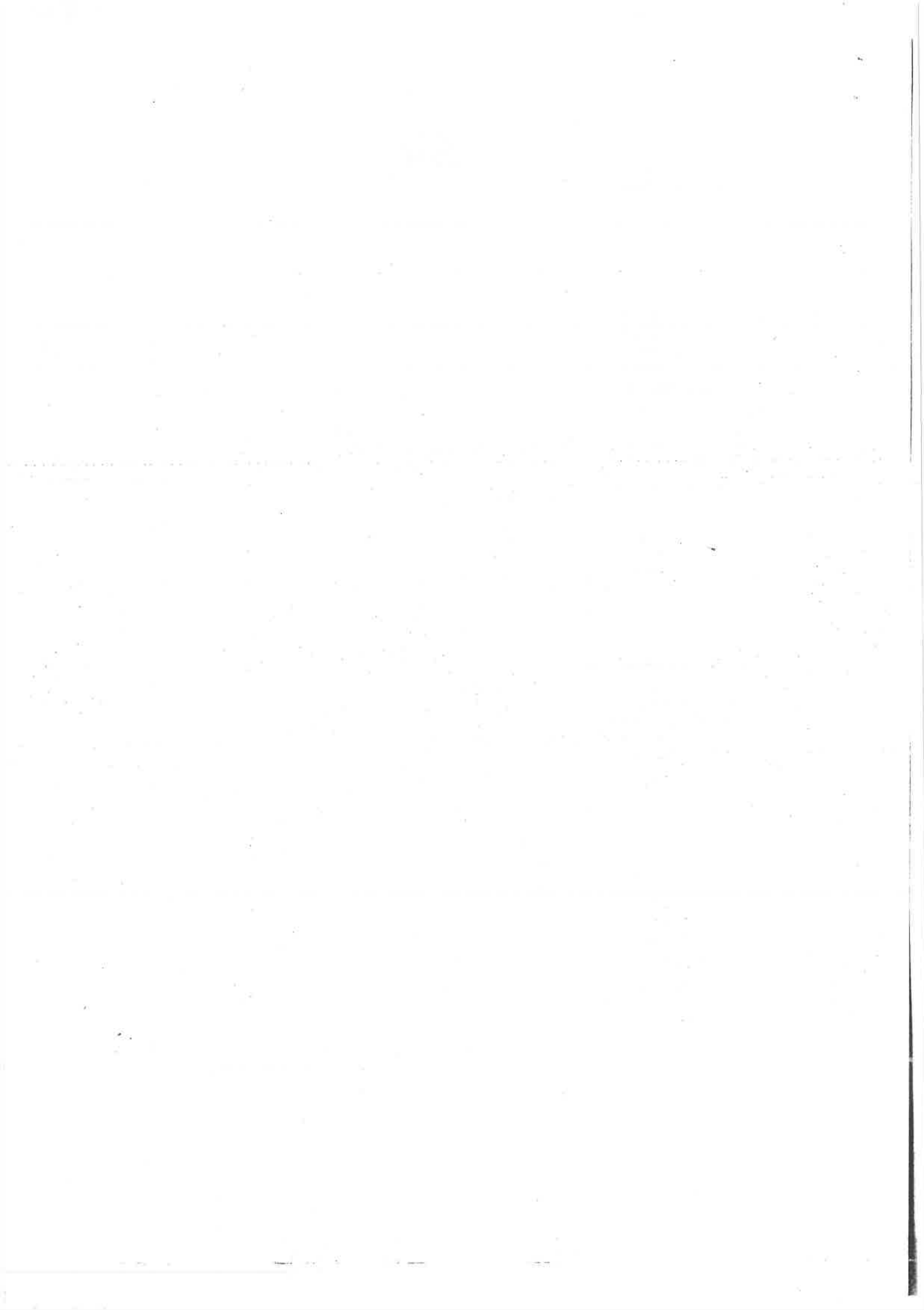
Yours truly

For M/s. Silver Oak Villas LLP


Authorised Signatory



09/09/21
Imp Gr-12





**Hiregange
& Associates LLP**
Chartered Accountants

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PC

Date: 28.02.2023

To

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

Dear Sir,

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

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

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

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

Thanking You,

Yours faithfully,

For M/s. Hiregange & Associates LLP
Chartered Accountants

CA Venkat Prasad P
Partner



4th Floor, West Block, Srida Anushka Pride, Beside SBI Bank, Above Lawrence & Mayo store,
Road Number 12, Banjara Hills, Hyderabad, Telangana - 500 034, INDIA.

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Chennai | Guwahati | Vijayawada | Kolkata | Raipur | Kochi | Indore

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01/01/2022

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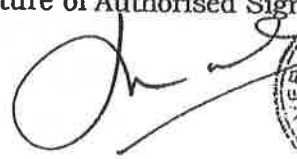
FORM GST DRC - 06*[See rule 142(4)]***Reply to the Show Cause Notice**

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

8.Verification -

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

Signature of Authorised Signatory



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ANNEXURE A:FACTS OF THE CASE:

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



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

- [Handwritten signature]*
- OAK VILLAGE
ILL. SEC. 3

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

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




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Submissions

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

In Re: Impugned notice is not valid

Notice passed is in gross violation of the natural justice principles

3. Notice submits that the impugned Notice has been issued without considering the submissions made by the Noticee in the replies to the letters which shows that the same is in gross violation of the principle of natural justice. In this regard, Noticee submits that the Hon'ble Supreme Court in the case of Dharampal Satyapal Limited Vs DC of Gauhati 2015 (320) ELT 3 (SC) held that
"18. Natural justice is an expression of English Common Law. Natural justice is not a single theory - it is a family of views. In one sense administering justice itself is treated as natural virtue and, therefore, a part of natural justice. It is also called the 'naturalist' approach to the phrase 'natural justice' and is related to 'moral naturalism'. Moral naturalism captures the essence of common-sense morality - that good and evil, right and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.
19. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi-judicial bodies, has assumed different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must be given to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as 'natural justice'. The principles of natural justice developed over a period of time and which is still in vogue and valid even today were : (i) rule against bias, i.e. nemo iudex in causa sua;

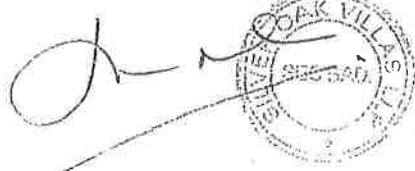
and (ii) opportunity of being heard to the concerned party, i.e. audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is duty to give reasons in support of decision, namely, passing of a 'reasoned order'

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:

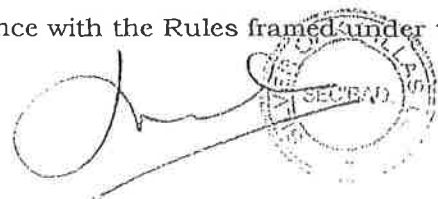
"Rule 142. Notice and order for demand of amounts payable under the Act

(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."

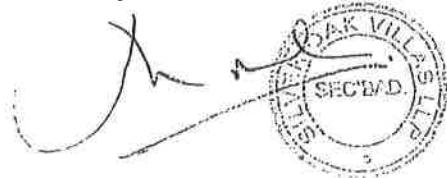
8. Noticee submits that summary of notice in Form DRC - 01 was neither uploaded online nor served along with Show Cause Notice. Further, no statement containing details of amount payable was issued to the Noticee. Thus, the notice is not issued in consonance with the Rules framed under this



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

9. In this regard, Noticee wishes to rely on the Judgement of Hon'ble Madhya Pradesh High Court in the case of **Mr. Akash Garg vs. The State of MP** [2020-TIOL-2013-HC-MP-GST] wherein the Hon'ble High Court has held that
- "6.1 A bare perusal of the aforesaid provision reveals that the only mode prescribed for communicating the show-cause notice/order is by way of uploading the same on website of the revenue.*
- 7. The State in its reply has provided no material to show that show-cause notice/orders No.11 and 11a dated 10.06.2020 were uploaded on website of revenue. In fact, learned AAG, Shri Mody, fairly concedes that the show-cause notice/orders were communicated to petitioner by E-mail and were not uploaded on website of the revenue.*
- 8. It is trite principle of law that when a particular procedure is prescribed to perform a particular act then all other procedures/modes except the one prescribed are excluded. This principle becomes all the more stringent when statutorily prescribed as is the case herein.*
- 9. In view of above discussion, this Court has no manner of doubt that statutory procedure prescribed for communicating show-cause notice/order under Rule 142(1) of CGST Act having not been followed by the revenue, the impugned demand dated 18.09.2020 vide Annexure P/1 and P/2 pertaining to financial year 2018-2019 and 2019-2020 and tax period September, 2018 to March, 2019 and April, 2019 to May, 2019 respectively, deserves to be and is struck down."*
10. Noticee submits that in the case of Pazhayidom Food Ventures (P) Ltd. Versus Superintendent Commercial Taxes, Addl. R2. Superintendent CGST, Pala., 2020-TIOL-1053-HC-Kerala-GST the Hon'ble Kerala High Court held that
- "Learned counsel appearing on behalf of the petitioner submits that the show cause notice in Form GST REG-17 did not mention about the date, month and year as well as the time for appearance of the petitioner. The contents of the same are vague and do not commensurate with the format prescribed in Central Goods and Service Tax Rules, 2017 where a column of day, month and year has been prescribed. It is on that account this Court had issued notice and sought the comments thus impelling to invoke, the extraordinary jurisdiction of this Court as the order under challenge is without jurisdiction."*

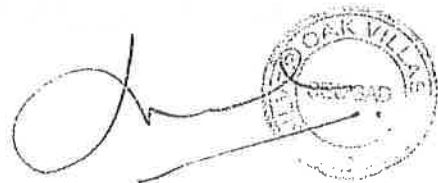


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11. Noticee submits that in the above-referred decision, the Hon'ble High Court has set aside the order because the contents in the form prescribed in rules are not filled properly. In the instant case, the Form DRC-01 which was prescribed in rules 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.



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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.

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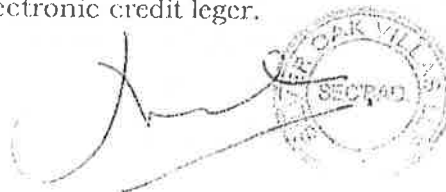
18. Noticee further submits that the audit under Section 35 has also been completed and Form GSTR-9C which is a reconciliation statement between books of accounts and GSTR-3B returns has also been filed wherein the Chartered Accountant has not pointed out any discrepancy in payment of taxes. A copy of the same is enclosed as Annexure - VI.

19. Further, for the period 2018-19. Noticee submits that Noticee have disclosed correct turnover of Rs. 2,28,60,376/- in the monthly returns for the period April 2018 to October 2018 but however have short paid certain taxes. In this regard, Noticee submits that the differential taxes have been observed by the Noticee and paid while filing the returns for the period November 2018. The detailed calculation is given as under:

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

20. Therefore, Noticee submits that from the above table it is clear that the differential taxes for the period April 2018 to October 2018 have been paid at the time of filing returns for the month of November 2018. Hence, there is no short payment of taxes to the extent above. Hence, the demand proposed by the impugned notice is liable to be dropped.

21. Further, Noticee submits that Noticee have discharged GST on the same only by utilizing the balance available in the electronic credit ledger.



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

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

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

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

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

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

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



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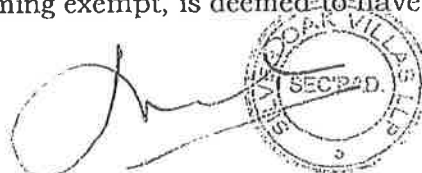
Bench passed its order and the Division Bench thus states that 'unfortunately, the recommendations of the GST Council are still on paper.

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

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

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

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



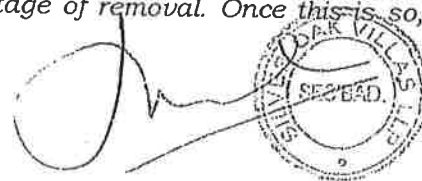
from 01.07.2017, Therefore, Noticee is of the belief that the GST is not required to be discharged on the supplies received from URP's.

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

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

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

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



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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.



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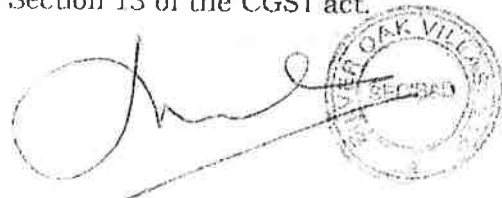
38. Noticee submits that the tax cannot be paid by the taxable person because he is not in the threshold and does not require registration, then the question of its collection from noticee would amount to doing something indirectly which cannot be done directly, which would go against the dictates of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

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

40. With respect to the above, the show cause notice has proposed to demand an amount of Rs. 911/- towards interest liability for delayed filing of GSTR-3B return for the month of August, 2017
41. In this regard, we would like to submit that we have paid an amount of Rs. of Rs. 911/- towards interest vide DRC - 03 ARN AD361220000585 dated 05.12.2020 (Copy of DRC-03 are enclosed as Annexure-VII).

In Re: No short payment of GST

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

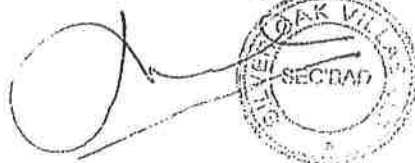


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45. Noticee submits that the difference of turnover under both GST and the income tax act is due to the timing difference of recording the transaction and apart from that there is no difference.
46. Noticee is herewith enclosing the table which clearly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

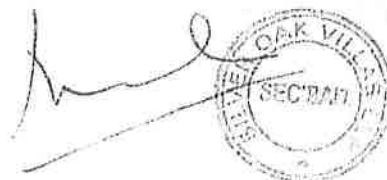
Particulars		FY 2017-18	FY 2018-19	Total
Turnover as per Income Tax Act, 1962	A	13,38,80,112	10,07,99,105	23,46,79,217
Difference due to timing difference	B	1,91,38,218	-7,03,98,159	5,12,59,941
Turnover needs to be reported in GST	C = A-B	11,47,41,894	17,11,97,264	28,59,39,158
Exempted Supplies - It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

47. Noticee submits that the differential amount i.e. Rs.45,000/- has been identified during the preparation of GSTR-9C and the same has been paid along with the interest vide form DRC-03 dated 05.12.2020. (Copy of DRC-03 is enclosed as Annexure 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
- Disclosure of revenue in the Financial Statements is in accordance with Indian Accounting Standard i.e. based on percentage completion method
 - Disclosure in GST returns is in accordance with section 12(2) of the CGST Act, 2017 based on advances received from customer



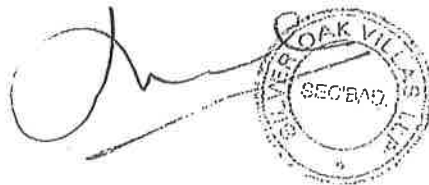
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49. In this regard, Noticee submits that the basic objective of Indian Accounting Standard - 11 (Ind AS-7) Construction Contracts is to prescribe accounting treatment of revenue and costs associated with construction contracts. Therefore, the primary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



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- a. Date of issuance of invoice or the last date on which invoice should have been issued; and
 - b. Date of receipt of payment.
56. In the present case, Noticee has been receiving advances from the customers before completion of the project, therefore, Noticee has discharged GST on the advances received and disclosed the same in GST returns.
57. Noticee submits that time of payment of tax as per CGST Act, 2017 is receipt of advance and the said compliance has been rightly by the Noticee, therefore, there is no short payment of GST as per CGST Act, 2017 and the allegation of impugned Notice are not valid.
58. Noticee submits that as explained in the previous Paras the basis on which the amounts disclosed in GST returns and Financials are different therefore the same cannot be compared, therefore the allegation of the impugned notice demanding tax on differences between the disclosures made in the Financial Statements and GST returns which are lead by two different statues is not tenable and the same needs to be set aside. In this regard, Noticee wishes to rely on
- a. Indian Oil Sky Tanking Ltd Vs. Commr. of Service Tax, Bangalore—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.

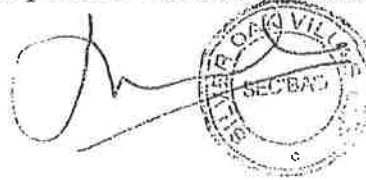
In Re: No interest is applicable on credit availed and reversed before utilization

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

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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



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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."

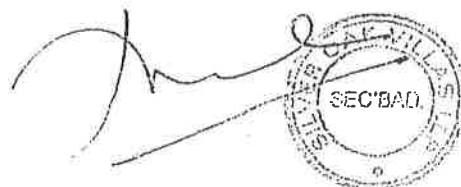
From the above referred submissions, it is clear that no interest is applicable when the credit is reversed before utilization. Further, the same was also clarified in the 45th GST Council Meeting wherein it was recommended to state that interest is applicable only on utilization and is not applicable 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:

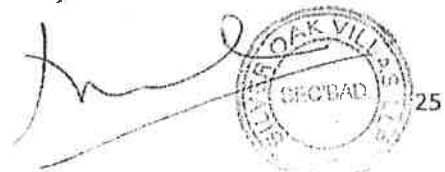
"Section 16(2)(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply;"

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

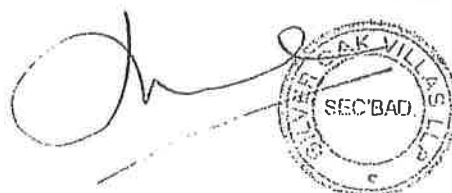
1. Every registered person shall, ***subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.***
2. The credit referred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



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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.

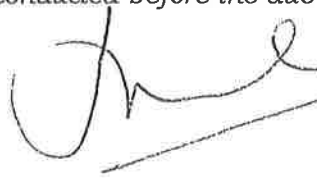


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82. Noticee further submits that Finance Act, 2022 has omitted Section 42, 43 and 43A of the CGST Act, 2017 which deals ITC matching concept. Noticee submits that the substituted Section 38 of the CGST Act, 2017 now states that only the eligible ITC 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 statute. 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.

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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*




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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.

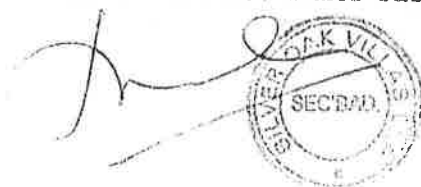
91. Without prejudice to the above, Noticee submits that even if the matching mechanism is in place, the unmatched ITC amount will get directly added to the electronic liability ledger of the assessee under sub-section (5) of Section 42 and there is no requirement to reverse the ITC availed.

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



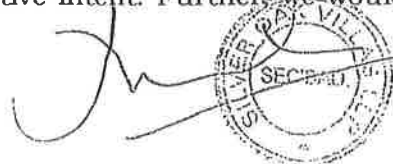
which Noticee has availed ITC. Further, Noticee submits that the value of such supplies including taxes has been paid to such vendors thereby satisfying all the other conditions specified in Section 16(2) of the CGST Act, 2017. As all the conditions of Section 16(2) are satisfied, the ITC on the same 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



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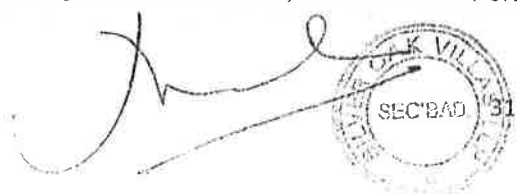
submit that the department cannot be a mute spectator or maintain sphinx like silence or dormant position. In this regard, Noticee wish to rely on recent Madras High Court decision in case of M/s. **D.Y. Beathel Enterprises Vs State Tax officer (Data Cell), (Investigation Wing), Tirunelveli** 2021(3) 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."*



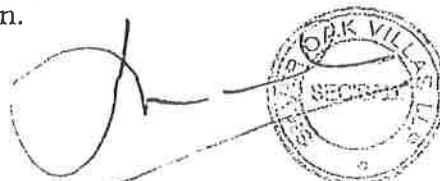
99. Noticee further submits that for the default of the supplier, the recipient shall not be penalized therefore the impugned notice shall be dropped. In this regard, reliance is placed on **On Quest Merchandising India Pvt Ltd Vs Government of NCT of Delhi and others 2017-TIOL-2251-HC-DEL-VAT** wherein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

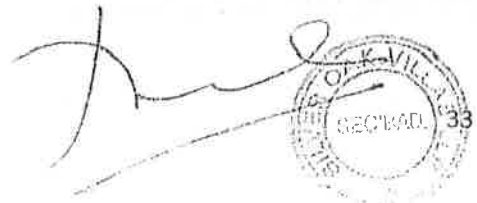
101. Noticee submits that under the earlier VAT laws there were provisions similar to Section 16(2) *ibid* which have been held by the Courts as unconstitutional. Some of them are as follows

- 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.

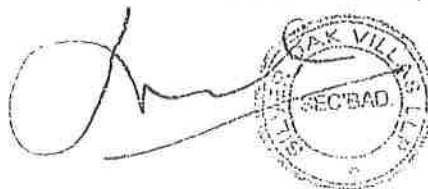


The decisions in the above cases would be equally applicable to the present context of Section 16(2) *ibid*

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.

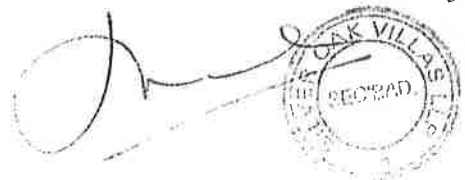


105. Noticee submits that the aforesaid Rule can be considered to be valid only if the provisions of the Act envisage such restriction. Noticee submits that Section 16(2) of the CGST Act, 2017 as presently applicable provides that a registered person shall not be entitled to ITC unless he satisfies the 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



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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

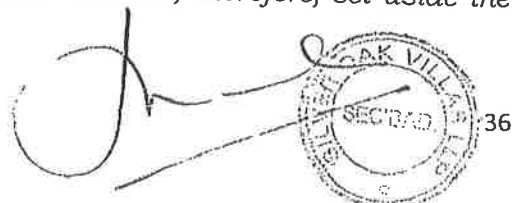
114. Noticee submits that in case any part of the demand sustains then, the same shall be re-quantified after allowing the benefit of cum-tax u/r. 35 of CGST Rules, 2017 since Noticee has not collected any GST from the customers to the extent of alleged short/non-payment of GST.

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 UOIO 1996 (88) E.L.T. 12 (S.C.).

In Re: Demand under Section 74 is not applicable:

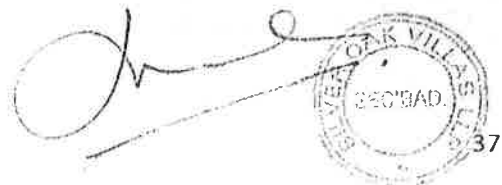
116. Without prejudice to the above, Noticee submits that when the time limit for issuance of notice under Section 73 is not expired, the invocation of Section 74 is not warranted. In this regard, reliance is placed on Godavari Khore Cane Transport Company Pvt. Ltd. v. Commissioner 2012 (26) S.T.R. 310 (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 75 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*

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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

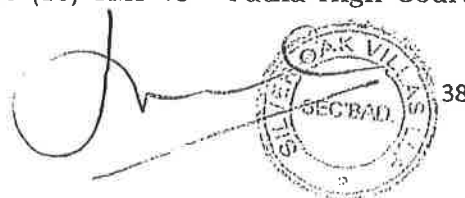
Since the issue involves interpretation and exists confusion during the disputed period, the suppression of facts cannot be invoked:

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

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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"

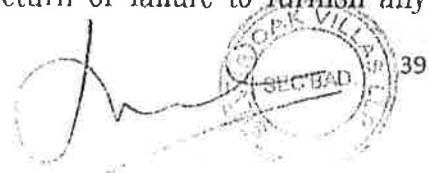
However, in the instant case, Noticee has not suppressed any details to the department. Therefore, the proposal of impugned notice to demand tax under Section 74 is not correct and the same needs to be dropped.

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

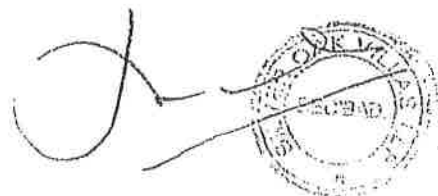
Explanation 2. —For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report, or any other document furnished under this Act, or the rules made thereunder, or failure to furnish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



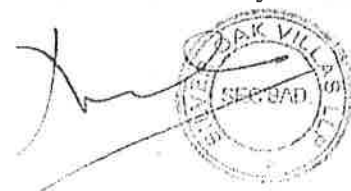
information on being asked for, in writing by the proper officer. In the present case, Noticee has submitted the required information as and when called for by the department authorities. Further, the audited financial statements were also submitted. Hence, the proposal of impugned notice to impose a 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.).



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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.

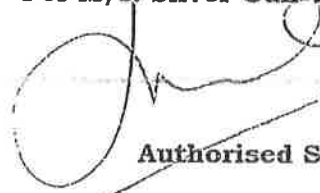
138. Noticee submits that the GST is still under trial-and-error phase and the assesseees are facing genuine difficulties and the same was also held by various courts by deciding in favour of the assessee. Therefore, the imposition of the penalty during the initial trial and error phase is not warranted 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.

For M/s. Silver Oak Villas LLP



 Authorised Signatory

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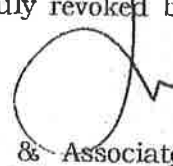
**BEFORE THE ADDITIONAL/JOINT COMMISSIONER OF CENTRAL TAX,
SECUNDERABAD GST COMMISSIONERATE, 7TH FLOOR, GST BHAVAN,
HYDERABAD, TELANGANA - 500004**

Sub: Proceedings under Show Cause Notice vide C.No. V/01/GST/81/2020-GR.12/CIR-I dated 12.01.2022 issued to M/s. Silver Oak Villas LLP.

I, Soham Satish Modi, Managing Partner of M/s Silver Oak Villas LLP hereby authorizes and appoint Hiregange & Associates LLP, Chartered Accountants, Bangalore or their partners and qualified staff who are authorized to act as an authorized representative under the relevant provisions of the law, to do all or any of the following acts: -

- To act, appear and plead in the above-noted proceedings before the above authorities or any other authorities before whom the same may be posted or heard and to file and take back documents.
- To sign, file verify and present pleadings, applications, appeals, cross-objections, revision, restoration, withdrawal and compromise applications, replies, objections and affidavits etc., as may be deemed necessary or proper in the above proceedings from time to time.
- To Sub-delegate all or any of the aforesaid powers to any other representative and I/We do hereby agree to ratify and confirm acts done by our above-authorized representative or his substitute in the matter as my/our own acts as if done by me/us for all intents and purposes.

This authorization will remain in force till it is duly revoked by me/us. Executed this on 28 February 2023 at Hyderabad


Signature

I the undersigned partner of M/s Hiregange & Associates LLP, Chartered Accountants, do hereby declare that the said M/s Hiregange & Associates LLP is a registered firm of Chartered Accountants, and all its partners are Chartered Accountants holding certificate of practice and duly qualified to represent in above proceedings under Section 116 of the CGST Act, 2017. I accept the above-said appointment on behalf of M/s Hiregange & Associates. The firm will represent through any one or more of its partners or Staff members who are qualified to represent before the above authorities.

Dated: 28.02.2023

Address for service:

**Hiregange & Associates LLP,
Chartered Accountants,
4th Floor, West Block, Anushka Pride,
Beside SBI Bank, Above Lawrence & Mayo,
Road Number 12, Banjara Hills,
Hyderabad, Telangana 500034**

**For Hiregange & Associates LLP
Chartered Accountants**


**Venkata Prasad P
Partner (M.No. 236558)**

I Partner/employee/associate of M/s Hiregange & Associates LLP duly qualified to represent in above proceedings in terms of the relevant law, also accept the above said authorization and appointment.

S.No.	Name	Qualification	Membership No.	Signature
1	Sudhir V S	CA	219109	
2	Lakshman Kumar K	CA	241726	
3	Rasika Kasat	CA	243001	
4	Srimannarayana S	CA	261612	

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OFFICE OF THE COMMISSIONER OF CENTRAL TAX (GST)
AUDIT-II COMMISSIONERATE, HYDERABAD
D.No.1-98/B/20 & 21, SANVI YAMUNA PRIDE, KRITHIKA LAYOUT, HI-TECH
CITY, MADHAPUR, HYDERABAD-500081

E-Mail: group12circle1@gmail.com

C.NO. V/01/GST/81/2020-GR.12/CIR-I

DATED: 12.01.2022

DIN: 20220156Y5000000E128

SHOW CAUSE NOTICE

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 Show Cause Notice - Reg.

M/s. SILVER OAK VILLAS LLP, 2nd Floor, U-22, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad-500 003, 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 GSTIN: 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.

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- and following objections were raised vide the Final Audit Report No.707/2020-21-GST dated 11.06.2021.

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 has been 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 paid (Rs.)	CGST (Rs.)	SGST (Rs.)	Total GST Payable (Rs.)	CGST (Rs.)	SGST (Rs.)	Total GST payable (Rs.)
Dec-17	1322250	79335	79335	158670	119003	119003	238005	39668	39668	79335
Feb-17	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	GST paid @12%			GST payable @ 18%			Differential GST payable		
		CGST	SGST	Total GST paid	CGST	SGST	Total GST	CGST	SGST	Total GST payable (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	1722443	1722443	3444885	2583664	2583664	5167328	861221	861221	1722443

From the above table it is observed that the Tax payer short paid the GST of Rs. 22,11,128 / (CGST: Rs. 11,05,564/- + SGST: Rs. 11,05,564/-) by adopting wrong rate of GST @ 12% instead of 18% and thus contravening Sec. 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%, which is re-produced here under:

Sl No	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
2	Section 5	Construction Services		
3	Heading 9954 (Construction services)	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	--

From the above it appears that the Tax payer is short paid GST to the tune of Rs. 22,11,128 /- (CGST: Rs. 11,05,564/- + SGST: Rs. 11,05,564/-) for the Financial year 2017-18 (July, 17 to March, 18) and F.Y. 2018-19 which is recoverable u/s 74 (1) of CGST Act, along with applicable interest and penalty.

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 is observed that the taxpayer has paid Brokerage /Commission to unregistered persons to the tune of Rs. 12,37,734/- during the period for the period 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 Rs. 2,22,792/- is payable under RCM as detailed below:

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Month	Value (Rs.)	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	2,22,792

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:

"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.

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 is 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.

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4. Short payment of GST as per the Turnover declared in GSTR-9/9C for the F.Y. 2017-18 and F.Y. 2018-19:

During course of Audit on verification of Annual Returns i.e. GSTR-9/9C, it is observed that the Turnover declared for the F.Y. 2017-18 is Rs. 13,38,80,112/- as per GSTR-9C and for the FY 2018-19 Rs. 17,11,97,264/- as per GSTR-9. Further on verification of GSTR-3B, it is noticed that there is a short of GST to the tune of Rs. 2,13,74,199/-. The details of short payment are shown as under:

F.Y.	Turnover as per GSTR-9/9C	Taxable value i.e 2/3rd of Turnover	GST payable @ 18%			GST paid as per GSTR-3B			GST short paid		
			CGST	SGST	TOTAL GST	CGST	SGST	TOTAL GST	CGST	SGST	TOTAL GST
	a	b	d	e	f	g	h	i	(d-g)	(e-h)	(f-i)
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		209384917			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 reproduced 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, 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 is 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.

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

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 Tax payer in GSTR-3B with the ITC available in GSTR-2A it is observed that the Tax payer have 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. 6,36,627/-) 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
2018-19	Dynamic data as per GSTR-2A Returns as on 10-12-2021	1143796	6939027	6939027	15021850
2018-19	Difference (Between Dynamic GSTR-2A with GSTR-3B Returns ITC claimed)	1115927	-3564566	-3564566	-7129132
2018-19	Reversed in GSTR-3B Return against Table-4B(2) in the month of Sept-2017	0	2627939	2627939	5255878
2018-19	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:

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(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 disclosed in Form GSTR - 2A. It is important to reconcile Form GSTR - 3B and Form 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 appears 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 appears that the tax-payer is not eligible for ITC of Rs.18,73,254/- (Rs.9,36,627/- of CGST, Rs9,36,627/- 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 appears 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 which is nothing but reflects their intention to evade GST.

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 appears 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 M/s. SILVER OAK VILLAS LLP, 2nd Floor, U-22, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad-500 003, Telangana are hereby required 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 this notice as to why:

- (i). An amount of Rs.22,11,128/- (Rupees Twenty Two Lakhs Eleven Thousand One Hundred and Twenty Eight only) (CGST: Rs.2,44,343/- + SGST: Rs.2,44,342/- totaling Rs.4,88,685/- for the year 2017-18 and CGST Rs. 8,61,221 + SGST Rs. 8,61,222/- Rs.17,22,443/- for the year 2018-19) towards GST short paid as explained in para 1 supra should not be demanded from the taxpayer under Section 74 (1) of the CGST Act, 2017;
- (ii). An amount of Rs.2,22,792/- (Rupees Two Lakhs Twenty Two Thousand Seven Hundred and Ninety Two only) (CGST: Rs.1,11,396/- (+) SGST: Rs.1,11,396/-) towards GST short paid under RCM during the F.Y. 2017-18 as explained in para 2 supra should not be demanded under Section 74 (1) of the CGST Act, 2017

- (iii). An amount of Rs.911/- (Rupees Nine Hundred and Eleven Only] towards Interest on delayed payment of GST as explained at para 3 supra should not be demanded in terms of Section 50 of the CGST Act, 2017;
- (iv). An amount of Rs.2,13,74,199/- (Rupees Two Crore Thirteen Lakhs Seventy Four Thousand One Hundred and Ninety Nine Only) (CGST: Rs.1,06,87,100/- (+) SGST: Rs. 1,06,87,100/-) towards GST short paid during the F.Y. 2017-18 and F.Y. 2018-19 as explained at para 4 supra should not be demanded from the taxpayer in terms of Section 74 (1) of the CGST Act, 2017;
- (v). An amount of Rs. 68,600/- (Rupees Sixty Eight Thousand and Six Hundred Only towards the interest payable on irregularly availed ITC of Rs.45,73,392/- as explained at para 5 supra should not be demanded from them under Section 50 of the CGST Act, 2017;
- (vi). An amount of Rs.18,73,254/- (CGST: Rs.9,36,627/- (+) SGST: Rs.9,36,627/-) as explained at para 6 supra, being the irregular ITC availed during the FY 2018-19 should not be demanded in terms of Section 74 (1) of the CGST Act, 2017;
- (vii). Interest as applicable terms of Section 50 of the CGST Act, 2017 should not be demanded on the tax amounts proposed to demand at Sl.No.(i) (ii), (iv) and (vi) above;
- (xvi). 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;
- (xiii). Penalty as applicable under Section 125 (5) of the CGST Act. 2017 should not be imposed on them on the proposed demands at Sl. No (iii) and (v) above;
10. The taxpayer is required to produce at the time of showing cause, all the evidence upon which they intend to rely in support of their defense in their written reply to the Show Cause Notice. They are further required to state in their written reply whether they wish to be heard in person before the case is adjudicated. If they do not reply to the Show Cause Notice within the stipulated period or if they do not indicate their wish for a personal hearing or if they do not appear when the case is posted for personal hearing, it would be construed that they do not have anything to state in their defense and the case will be decided based on the merits available on the records.

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C.NO. V/01/GST/81/2020-GR.12/CIR-I

11. This Show Cause Notice is issued without prejudice to any other action that may be initiated or has already been initiated against the taxpayer under the CGST Act, 2017 or the Rules made thereunder or under any other law for the time being in force and enforceable in India.

12. Reliance for issue of this notice is based on the following (available with the taxpayer):

- (i) Audited Financial Statements and Expenditure Ledgers for the period from 01.07.2017 to 31.03.2019;
- (ii) GST Returns for the period from July, 2017 to March, 2019;
- (iii) Annual Returns in Form GSTR-9 & GSTR-9C for the years 2017-18 filed by the taxpayer;


12/1/2022
ADDITIONAL COMMISSIONER
AUDIT-II COMMISSIONERATE.

To
M/s. SILVER OAK VILLAS LLP,
2nd Floor, U-22, 5-4-187/3 and 4,
Soham Mansion, M.G. Road,
Secunderabad-500 003, Telangana

Copy submitted to:

- 1) Joint/Additional Commissioner of Central Tax & GST, Secunderabad GST Commissionerate, GST Bhawan, L.B. Stadium Road, Hyderabad 500 003 (Adjudicating Authority).
- 2) The Assistant/ Deputy Commissioner of Central Tax, Secunderabad GST Division, Secunderabad GST Commissionerate, Salike Senate, D. No. 2-4-416 and 417, Ramgopalpet, Secunderabad- 500 003
- 3) The Superintendent of Central Tax, Ramgopalpet-III CGST Range, Secunderabad GST Division, Secunderabad GST Commissionerate, Salike Senate, D. No. 2-4-416 and 417, Ramgopalpet, Secunderabad- 500 003
- 4) Master copy / file copy / spare copy.

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केंद्रीयकरआयुक्तकार्यालय :: लेखापरीक्षा-IIआयुक्तालय
OFFICE OF THE COMMISSIONER OF CENTRAL TAX
AUDIT-II COMMISSIONERATE

DOOR NO. 1-98/B, PLOT NOS. 20 & 21 SANVI YAMUNA PRIDE:
KRITHIKA LAYOUT, MADHAPUR, HI-TECH CITY, HYDERABAD-500081

C.No. V/01/GST/81/2020-Gr.12/Cir-I

Date: 11.06.2021

PIN NO. 20210156YS000000 EAA3

अनुलग्नक ANNEXURE - X

अंतिमलेखापरीक्षा रिपोर्टस- Final Audit Report No. 707 /2020-21-GST

Sub:- GST Audit on the accounts of M/s. SILVER OAK VILLAS LLP, 2ND Floor, 5-4-187/3 and 4, Soham Mansion, M.G.Road, Secunderabad, Hyderabad
Telangana-500003 covering the period from 07/2017 to 03/2019-Reg.

भाग- I Part - I

1.	करदाताकानामवपता Name & Address of the Taxpayer	M/s. SILVER OAK VILLAS LLP 2 ND Floor, U-22, 5-4-187/3 and 4, Soham Mansion, M.G.Road, Secunderabad, Hyderabad Telangana-500003.
2.	मुख्यकार्यालय, क्षेत्रीय/शाखाकार्यालय आदि Regional/Branch offices	Head Office, -do-
3.	करदाताकीस्थिति Status of the taxpayer	Limited Liability Partnership
4.	अधिकारक्षेत्र आयुक्तालय/मण्डल/रेंज Commissionerate / Division / Range	Secunderabad GST Commissionerate, Secunderabad GST Division, Ramgopalpet-III GST Range.
5.	दी गई/ प्राप्त कर योग्य सेवाओं के नाम (रिवर्स चार्ज मेकैनिज्म के अंतर्गत सेवा कर कानगद भुगतान) Name of taxable Goods/Services provided / received (in case of payment of GST under reverse charge mechanism)	Construction of Residential Complex Service (HSN 9954).
6.	GST Reg. No.	36ADBFS3288A227
7.	अंतिम लेखापरीक्षा की तिथि Date of last audit	First Audit.
8.	अवधि जिसके लिए वर्तमान लेखापरीक्षा की गई Period for which current Audit undertaken	July 2017 to March 2019
9.	लेखापरीक्षा की तारीखें Dates on which audit undertaken	19.02.2021, 20.02.2021 and 22.02.2021
10.	लेखापरीक्षकों के नाम Names of the Auditors	सर्वश्री S/Shri 1. D.Subhash, AC (Insitu). 2. K.Santhi Sekhar, AC (Insitu) 3. Manoj Kumar Verma, Inspector
11.	Total amount detected	Rs.1,24,12,525 /- + Int + Penalty

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लेखापरीक्षाकेपरिणामकासारांश /SUMMARY OF AUDIT RESULTS

[लेखापरीक्षाकेदौरानचिन्हितमहत्वपूर्णवठोसगैरअनुपालनामामलोंकीरूपरेखाप्रदानकरें]
[PROVIDE AN OUTLINE OF IMPORTANT AND MATERIAL NON-COMPLIANCE ISSUES IDENTIFIED
DURING THE AUDIT]

महत्वपूर्णवठोसगैरअनुपालनाकेचिन्हितकिएगएभामलेऔरउनपरकरदातोंकीप्रतिक्रियानिम्नसारणीमेंदी गई है।

The important and material non-compliance issues identified and reaction of the tax payer is indicated in the table given below: -

ऑडिटपैरा नं. Audit Para No.	आपत्तियोंकासार Gist of objections Attested write- up/workings may be enclosed if warranted	राजस्वआलिप्तता,यदि कोई (रु.में)Revenue Implications, If any (in Rs.)	करदाताकीसहमतिहो/ नहीं,यदिअसहमतिकोई कारणनहोतो Tax payer's Agreement Yes/No, If no reasons for Disagreement	विभागकानिष्कर्षकारणसहित Department's conclusion with reasons; MMC date & decision
1	Short payment of GST during the period 2017-18 and 2018-19	Rs.22,11,128/- (CGST.11,05,564/- +SGST Rs. 11,05,564/-) + Interest and Penalty	Yes	Admitted in the MMCM held on 09.03.2021
2	Non payment of GST under RCM on Brokerage/ Commission paid to Un-Registered persons.	Rs.2,22,792/- (CGST.111,396/-+SGST Rs. 111,396/-) + Interest and Penalty	Yes	Admitted in the MMCM held on 09.03.2021
3	Interest of Rs.911/- on delayed filing of GSTR-3B Return for the month Aug.2017	Interest amount Rs.911/- along with penalty under Section 125(5) of CGST Act,2017.	Yes	Admitted in the MMCM held on 09.03.2021
4.	Short payment of GST in F.Y 2017-18 and 2018-19	CGST Rs.91,71,104/- (CGST 45,85,552 + SGST 45,85,552)	No	Admitted in the MMCM held on 09.04.2021
5.	Irregular ITC and availed reversed	Interest amount of Rs.68,600/-	No	Admitted in the MMCM held on 09.04.2021
6.	Irregular credit taken in the month of Sept,2018	CGST Rs.8,06,590/- (CGST 4,03,295 +sgst 4,03,295)	No	Admitted in the MMCM held on 09.04.2021

Para-1: Short payment of GST during the period 2017-18 and 2018-19
(Total short paid Rs.22,11,128/-)

During the course of verification of the records of M/s. SILVER OAK VILLAS LLP, it has been observed that the assessee has paid GST @ 12% instead of 18% as detailed below:

2017-18					GST Payable @18%			
Month	Taxable value (Rs)	GST Paid @12%		Total GST Paid (Rs)			Total GST Payable (Rs)	Short Paid (Rs)
		CGST	SGST		CGST	SGST		
Dec,17	1322250	79335	79335	158670	119003	119003	238005	79335
Feb,17	4300000	258000	258000	516000	387000	387000	774000	258000
March,17	2522500	151350	151350	302700	227025	227025	454050	151350
		488685	488685	977370			Total	488685

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2018-19								
Month	Taxable value (Rs)	GST Paid @12%		Total GST Paid (Rs)	GST Payable @18%		Total GST Payable (Rs)	Short Paid (Rs)
		CGST	SGST		CGST	SGST		
April,18	2284000	137040	137040	274080	205560	205560	411120	137040
May,18	2040000	122400	122400	244800	183600	183600	367200	122400
June,18	1523000	91380	91380	182760	137070	137070	274140	91380
Aug,18	2113500	126810	126810	253620	190215	190215	380430	126810
Sept,18	10298438	617906	617906	1235813	926859	926859	1853719	617906
Oct,18	10448438	626906	626906	1253813	940359	940359	1880719	626906
				3444885			5167328	1722443

Therefore, the assessee was advised to pay the short paid GST of Rs.22,11,128/- (in 2017-18 Rs.4,88,685/- and Rs.17,22,443/- in 2018-19) along with applicable interest under Section 50 of the CGST Act,2017 and applicable penalty in terms of Section 74(5) of the CGST Act,2017.

On being pointed out, the Tax Payer accepted the audit objection and sought time for payment.

Decision taken in the MMCM: Para was admitted in the Monthly Monitoring Committee Meeting for the month of Feb'2021 held on 09.03.2021 and directed the SAG to recover the above Tax or issue SCN.

Para 2: Non payment of GST under RCM on Brokerage/Commission paid to Un registered persons (Rs.2,22,792/-):

During the course of audit on scrutiny of GST Returns with Balance sheet and Ledgers it is observed that you have not discharged of Rs.2,22,792/- on payment made to un-registered persons under RCM for the period 01.07.2017 to 12.10.2017 as per Notification No.8/2017- Central Tax Rate Dt.28.06.2017.The details are as under:

Month	Value(Rs)	CGST @9%	SGST @9%	Total GST Payable (Rs)
July,17	5500	495	495	990
Aug,17	30755	2768	2768	5536
Sept,17	1201479	108133	108133	216266
				222792

Therefore, the assessee was advised to pay of Rs.2,22,792/- along with applicable interest under Section 50 of the CGST Act,2017 and applicable penalty in terms of Section 74(5) of the CGST Act,2017.

On being pointed out, the Tax Payer accepted the audit objection and sought time for payment.

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F.No.V/01/GST/81/2019/Gr-12/Cir-I

Decision taken in the MMCM: Para was admitted in the Monthly Monitoring Committee Meeting for the month of Feb'2021 held on 09.03.2021 and directed the SAG to recover the above Tax or issue SCN.

Para-3: Interest for Rs. 911/- on delayed filing of GSTR-3B Returns for the month August-2017:

On Verification of GSTR-3B Returns filed by the party, it is observed that delay in filing of GSTR-3B returns for the month August-2017 and the same is detailed hereunder:

MONTH	Cash paid(Rs)	DUE DATE	FILED DATE	DELAY	INTEREST @18%
Aug, 17	77000	20/09/2017	24/10/2017	24	911

Therefore, the assessee was advised to pay the interest amount of Rs.911/- along with applicable penalty under Section 125(5) of CGST Act, 2017.

On being pointed out, the Tax Payer accepted the audit objection and sought time for payment.

Decision taken in the MMCM: Para was admitted in the Monthly Monitoring Committee Meeting for the month of Feb'2021 held on 09.03.2021 and directed the SAG to recover the above Tax or issue SCN.

Para 4: Short payment of GST in F.Y 2017-18 and 2018-19:

On Verification of P&L account and GSTR-3B returns, it is observed that there is a short payment of Rs.91,71,104/- in the F.Ys 2017-18 and 2018-19. The details are hereunder:

(Rupees)	
Turnover in 2017-18 as per GSTR-9C	13,38,80,112
Turnover in 2018-19 as per GSTR-9C	17,11,97,264
Total Turnover in 2017-18 and 2018-19	30,50,77,376
2/3 of the Total Turnover for the two years	20,33,84,917
Tax to be paid on Rs.20,33,84,917/- @12%	2,44,06,190
Tax already paid in 2017-18 and 2018-19	1,52,35,086
Differential Tax to be paid	91,71,104

In view of the above, the taxpayer is liable to pay the GST amount of Rs.91,71,104/- (CGST Rs.45,85,552/- + SGST Rs.45,85,552/-) along with applicable interest and penalty.

The assessee not yet furnished reply.

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Decision taken in the MMCM: Para was admitted in the Monthly Monitoring Committee Meeting for the month of March'2021 held on 09.04.2021 and directed the SAG to recover the above Tax or issue SCN.

Para 5 : Irregular credit availed and reversed:

During the audit, it is observed that excess ITC amount of Rs.45,73,392/- availed in the month of Aug,2018 an 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% i.e., Rs.68,600/- on ITC reversal amount of Rs.45,73,392/-.

The assessee not yet furnished reply.

Decision taken in the MMCM: Para was admitted in the Monthly Monitoring Committee Meeting for the month of March'2021 held on 09.04.2021 and directed the SAG to recover the above Tax or issue SCN.

Para 6 : Irregular credit taken in the month of Sept,2018:

During the audit, it is observed that excess ITC amount of Rs.8,06,590/- (CGST Rs.4,03,295/- + SGST Rs.4,03,295/-) availed in the month of Sept,2018. As per the purchase Register available ITC is Rs.16,26,956/- (CGST Rs.8,13,478 + SGST Rs.8,13,478/-), whereas ITC taken Rs.24,33,546/- (CGST Rs.12,16,773/- + SGST Rs.12,16,773/-). The taxpayer is liable to reverse the irregular ITC availed Rs.8.06,590/- along with applicable interest.

The assessee not yet furnished reply.

Decision taken in the MMCM: Para was admitted in the Monthly Monitoring Committee Meeting for the month of March'2021 held on 09.04.2021 and directed the SAG to recover the above Tax or issue SCN.

21/5/2021
11.06.2021
(RAVINDRA LAL JAISWAL)
ASSISTANT COMMISSIONER
CIRCLE - I

To,
M/s. SILVER OAK VILLAS LLP 2ND Floor, U-22, 5-4-187/3 and 4,
Soham Mansion, M.G.Road, Secunderabad, Hyderabad
Telangana-500003.

1. The Commissioner of Central Tax & Customs, Secunderabad Commissionerate, Hyderabad.
2. The Additional Director General Audit, Central Tax and Customs, Hyderabad.

Copy to:

- 1) The Deputy/Assistant Commissioner of Central Tax, (MIS), Audit-II Commissionerate.
- 2) The Deputy/Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad Commissionerate.
- 3) The Superintendent of Central Tax, Ramgopalpet Range-III, Secunderabad GST Division, Secunderabad GST Commissionerate.

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(2024) 16 Centax 329 (Telangana)/2024 (84) G.S.T.L. 146 (Telangana) [28-02-2024]

(2024) 16 Centax 329 (Telangana)

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

P. SAM KOSHY AND N. TUKARAMJI, JJ.

RAYS POWER INFRA PRIVATE LIMITED

Versus

SUPERINTENDENT OF CENTRAL TAX

Writ Petition No. 298 of 2024, decided on 28-2-2024

GST : Where during GST audit certain discrepancies were pointed out by audit team and assessee immediately cleared entire tax liability along with interest which was accepted in final audit report, initiating proceedings under Section 74 thereafter and raising demand was in excess of jurisdiction and same was to be set aside.

Demand - Tax or ITC not involving fraud, etc. - Proceedings after discharge of tax liability - Period July, 2017 to March, 2019 - Accepting findings of provisional audit of returns filed, assessee immediately paid entire additional tax along with interest - Final audit report accepted such payments - However, authority passed impugned order and raised demand - HELD : A bare perusal of Section 73(5) of CGST Act, 2017 indicate that in event assessee clears all tax liability along with interest at any day prior to issuance of show cause notice, they would not be liable for any further additional taxes by way of penalty and interest - Sub-section (1) of Section 73 ibid permits a taxpayer to even clear wrongly availed ITC and also wrongly utilized ITC and it is this what is alleged against assessee of having wrongfully and irregularly availed ITC - In instant case, assessee paid entire tax liability along with updated interest much before final audit report was published - Therefore, action on part of respondent authority in initiating show cause proceedings under Section 74 ibid and passing of impugned order was in excess of jurisdiction and same was to be set aside - Since challenge to impugned order in original and show cause notice at first instance itself was not sustainable in eye of law in terms of sub-sections (5) and (6) of section 73 ibid, assessee could not be forced to undergo entire process of litigation under statute once again when issuance of show cause notice itself was per se bad and since it was a case of excess of jurisdiction exercised by authorities, assessee had a right to avail a writ remedy rather than undergoing process of appeal, revision etc. under statute [Section 73 read with Section 74 of Central Goods and Services Tax Act, 2017/Telangana Goods and Services Tax Act, 2017]. [paras 18 and 19]

Petition allowed in favour of assessee

[Order per : P. Sam Koshy, J.]. - This Writ Petition has been filed by the petitioner under Article 226 of the Constitution of India praying this Court to issue a writ, direction or order, more particularly, one in the nature of a Writ of Mandamus by declaring the impugned order in Original No.1/2023-24-GST (Supdt.), dated 15.11.2023, and also the consequent demand raised in Form DRC-07 bearing reference No.ZD361223018542R, dated 11.12.2023, as void, illegal, arbitrary, without jurisdiction and without authority of law and to set aside the same.

2. Heard Mr.M. Naga Deepak, learned counsel for the petitioner and Mr.Dominic Fernandes, learned Standing Counsel for Central Board of Indirect Tax (C.B.I.C.), for the respondents.

3. Vide the impugned order, the 1st respondent has confirmed a demand of Rs. 92,160/- (CGST Rs. 46,080/- + SGST Rs. 46,080/-) towards irregularly availed Input Tax Credit (I.T.C.) on ineligible supplies. Further, the authorities concerned have also confirmed demand of notice towards irregularly availed I.T.C. on common services used for providing taxable services and exempted supplies of Rs. 2,34,700/-. In addition, there was also a demand for interest amount of Rs. 6,642/- and Rs. 39,100/- in terms of Section 50 of the Central Goods and Services Tax Act, 2017 (for short, 'the C.G.S.T. Act') r/w corresponding similar provisions of the Telangana Goods and Services Tax Act, 2017 (for short, 'the T.G.S.T. Act') and Section 20 of the Integrated Goods and Services Tax Act, 2017 (for short, 'the I.G.S.T. Act'). In addition, there was also imposition of penalty in terms of Section 74(9) r/w Section 122(2)(b) of C.G.S.T. Act and the corresponding provision under the T.G.S.T. Act and Section 20 of the I.G.S.T. Act. The period of dispute as regards tax is from July, 2017 to March, 2019.

4. The petitioner herein is a company engaged in the business of generation of electricity through solar plants and is a registered establishment under the C.G.S.T. Act and I.G.S.T. Act. The return filed by the petitioner for the period July, 2017 to March, 2019 was subjected to G.S.T. audit by the 3rd respondent. The summary of the audit findings was communicated to the petitioner on 14.10.2021. Accepting the findings of the audit, the petitioner immediately paid the entire additional tax that was required to be paid along with interest. The demand was made on 28.10.2021. Subsequent to the entire aforesaid payment being made, the final audit report was passed on 10.11.2021. In the final audit report, the auditors have accepted the payment made by the petitioner and the same was received by the department. Despite the entire payment being made, the 1st respondent issued show-cause notice dated 20.04.2022 under Section 74(1) of the C.G.S.T. Act. Thereafter, the petitioner submitted a reply to the said show-cause notice on 04.09.2023 highlighting the facts to the concerned authorities in respect of the entire tax liability having been discharged along with interest on 28.10.2021 and stating that the entire irregularly availed I.T.C. already stood reversed for dropping of the show-cause proceedings. Subsequently, the petitioner was provided with personal hearing and after hearing the petitioner, the authorities concerned have passed the impugned order confirming the demand raised which has led to filing of the present writ petition.

5. Learned counsel for the petitioner contended that initiation of the proceedings under Section 74(1) of the C.G.S.T. Act by the respondents at the first instance is itself bad in law and the entire proceedings and the final order passed by the 3rd respondent is liable to be set aside / quashed.

6. Referring to the provision of Section 73 of the C.G.S.T. Act, particularly relying upon Sub-Section (5) of Section 73 of the C.G.S.T. Act, the learned counsel for the petitioner contended that the case of petitioner squarely falls within the purview of Section 73(5) and for this reason itself, the entire show-cause proceedings and the final order under challenge in this writ petition deserves to be set aside / quashed. He further contended that when the petitioner, at the first instance, was given the findings of the audit before the final audit report was submitted on 14.10.2021 and after scrutinizing the same, immediately the petitioner cleared the entire tax payable by him in respect of the I.T.C. that was availed by the petitioner wrongly. The petitioner also paid the entire interest amount on 28.10.2021 itself. According to learned counsel for the petitioner, the show-cause notice in the instant case was issued only on 20.04.2022. Therefore, the proceedings drawn by the respondents would get hit by proviso to Section 73(5) and the writ petition to the aforesaid extent deserves to be allowed. He further submitted that the authorities concerned have wrongly initiated proceedings under Section 74 which otherwise would not be sustainable particularly when the petitioner falls within the purview of proviso to Section 73(1) and 73(5) of the C.G.S.T. Act.

7. Per contra, Mr. Dominic Fernandes, learned Standing Counsel for Central Board of Indirect Tax, appearing on behalf of the respondents, vehemently contended that the case of petitioner being not a simple wrongful availment of I.T.C., but a deliberate, willful act on the part of petitioner with an intention of evading tax, and therefore, it is a case which would fall squarely within the purview of Section 74(1) where there is an element of misstatement made by the petitioner, and also an element of suppression of fact, till it was noticed in the course of audit, which on the part of petitioner amounts to a fraudulent act. According to him, it is not an inadvertence on the part of petitioner insofar as having wrongly availed the I.T.C. and that it was also not a case where the petitioner was ignorant of the fact that the I.T.C. that has been availed by the petitioner was in respect of certain ineligible supplies and also in respect of taxable supplies and supplies which are otherwise exempted from G.S.T.; and it was in this context that proviso to Section 74(1) was invoked and the impugned proceedings had been drawn; and therefore, contended that the impugned order does not warrant any interference.

8. Learned Standing Counsel for the respondents further contended that under challenge herein is an order which is otherwise appealable under the statute by preferring an appeal under Section 107 of the Act; and therefore, the writ petition deserves to be dismissed on the ground of there being a statutory, alternative remedy available to the petitioner and the grounds raised by the petitioner could also be agitated before the appellate authority.

9. The point of issue for consideration in the present writ petition is as to whether the petitioner having been discharged his entire tax liability along with the accrued interest immediately upon the finding of the audit team having been made available to the petitioner. Could the respondent authorities have subsequently initiated a proceeding under Section 74 of the C.G.S.T. Act.

10. The fact which needs to be considered is that admittedly there was some wrongful availment of I.T.C. by the petitioner in respect of certain exempted tax. This fact was highlighted in the provisional audit report which has been made available to the petitioner by the audit team. The said provisional report was served upon the petitioner on 14.10.2021. The petitioner accepting the said finding immediately discharged the tax liability along with the accrued interest on 28.10.2021, i.e., within a span of around two weeks time, which was much thereafter that the petitioner's audit report was published on 10.11.2021 and where in the audit report itself it has been highlighted that the petitioner has since cleared off all the tax liability and has also paid the relevant interest also up to date. Admittedly, the show cause notice was thereafter has been issued much thereafter on 20.04.2022.

11. At this juncture, it would be relevant to take note of the contents of Section 73 of the C.G.S.T. Act. The relevant portion for adjudication of the present writ petition is being reproduced hereunder:

"73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than 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 for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or 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 leviable under the provisions of this Act or the rules made thereunder.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 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) or, as the case may be, the statement under sub-section (3), 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) Where any person chargeable with tax under subsection (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded."

12. A bare perusal of Section 73(5) of the C.G.S.T Act gives a clear indication that the framers of the law were very clear in mind that in the event if the assessee the tax payer clears all the tax liability along with interest at any day, prior to the issuance of show cause notice, they would not liable for any further additional taxes by way of penalty or interest. For this purpose, the provisions of Section 73(1) and Section 73(5) both have to be read together. The reading of the aforesaid two provisions would give a clear indication that Sub-Section (5) refers to even those payments which have been cleared by the taxpayers which were otherwise termed as wrongfully availed I.T.C.

13. What further needs to be appreciated is that on plain reading of the provisions of Section 73(1) of the C.G.S.T Act, particularly Sub-Sections 5 to 8 which are already reproduced in the preceding paragraphs, the law makers were very clear in their mind so far as expecting the taxpayer to clear the unpaid tax or reversal of the wrongfully availed I.T.C. at the earliest in order to provide stringent coercive recovery measures including imposition of penalty. A plain reading of Sub-Section (1) of Section 73 gives an inference of the liability of a taxpayer being in respect of (i) any tax that has not been paid or (ii) any tax which is short paid (iii) any erroneously refunded tax (iv) where ITC has been wrongly availed (v) the I.T.C. having utilized for any reason other than fraud or willful misstatement or suppression of facts in order to evade payment of tax. The said by itself would show how exhaustive was Sub-Section (1) of Section 73 and the intentions of the law makers incorporating all those unpaid or wrongly availed tax benefit.

14. Further reading of other Sub-Sections, i.e. Sub-Sections (5) to (8) would again force this Court to draw the only inference, that of, it is this very nature of wrongly availed tax or any other tax which has not been paid or erroneously refunded. In respect of this very category of wrongfully availed or wrongly retained tax from the taxpayer immediately upon them coming to know about it either by his own self-assessment or the tax as ascertained by the proper officer.

15. Admittedly in the instant case, the show cause notice was issued on 20.04.2022, however, during the course of the audit itself certain discrepancies were pointed out by the audit team. Even much before of the final audit report being published, the petitioner is said to have paid the entire tax liability along with the updated interest on 28.10.2022. In the said circumstances, we are of the considered opinion that the case of the petitioner is one which that would fall strictly under Sub-Sections (5) and (6) of Section 73 where it has been emphatically laid down by the law makers that any person chargeable with tax, if he pays the amount of tax along with the interest payable there on, proper officer upon receipt of such information shall not initiate any further proceedings under Sub-Section (1) and all the proceedings shall have to deemed to be concluded.

16. As regards the contention of the learned Standing Counsel that the show cause notice in the instant case has been issued under Sub-Section (1) of Section 74 and not under Sub-Section (1) of Section 73 of the C.G.S.T Act, this Court is of the firm view that Section 74 would get attracted only in the event of their being strong materials available on record to show that the petitioner had played fraud or there was any misstatement made by him and there being any suppression of fact.

17. We are also of the considered opinion that applicability of Section 74 would come into play only if the conditions stipulated in Section 73 has not been met with by the taxpayer i.e. to say in the event if the conditions stipulated in Sub-Section (5) of Section 73 is not honored by the taxpayer in spite of the tax liability being brought to his knowledge. Then in the said circumstances, Section 74 would automatically attract and in those circumstances, the contention of the learned Senior Standing Counsel would be acceptable. Further, keeping in view the provisions of Sub-Sections (5) and (6), it will go to establish that once having discharged their tax liability also by paying interest on the said tax payable, then no further proceedings could be drawn for the same tax any further. This view of the Bench stands further fortified from reading of Sub-Section (8) as well which again gives an indication that if necessary compliance in respect of tax as is stipulated under Sub-Sections (1) and (3) is paid along with interest even after issuance of show cause notice, even then the penalty cannot be levied and the notice proceedings shall be deemed to have been concluded.

18. Keeping in view the aforesaid statutory provision as it stands so far as Section 73 and the various Sub-Sections of the said Section, the element of fraud or misstatement or suppression of fact with an intention of evading tax which is halved upon by the learned Senior Standing Counsel would arose as has been stated earlier only in the event if the taxpayer fails to meet the provisions of Sub-Section (5) of Section 73. The attempt of the learned Senior Standing Counsel trying to bring the conduct of the petitioner within the purview of fraud, misstatement and suppression of fact would not be sustainable and the said contention stands negated by the Bench simply for the reason that Sub-Section (1) of Section 73 permits a taxpayer to even

clear wrongly availed I.T.C. and also wrongly utilized I.T.C. and it is this what is alleged against the petitioner of having wrongfully and irregularly availed I.T.C.

19. In view of the same, we are of the considered opinion that the action on the part of the respondents in initiating the show cause proceedings under Section 74 and passing of the impugned order dated 15.11.2023 both would be in excess of their jurisdiction and the same therefore deserves to be and are accordingly set-aside / quashed. As regards the contention of the learned Senior Standing Counsel so far as the availability of a statutory alternative remedy of appeal, we are of the firm view that since the challenge to the impugned order in original and the show cause notice at the first instance itself is not sustainable in the eye of law in terms of Sub-Sections (5) and (6) of Section 73. The petitioner cannot be forced to undergo the entire process of litigation under the statute once when the issuance of show cause notice itself was per se bad and since it is a case of excess of jurisdiction exercised by the respondents, the petitioner has a right to avail a Writ remedy rather than undergoing the process of appeal, revision etc. under the statute.

20. The writ petition accordingly stands allowed. No costs.

21. Consequently, miscellaneous petitions pending if any, shall stand closed.

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HIGH COURT FOR THE STATE OF TELANGANA : HYDERABAD**MAIN CASE NO: WRIT PETITION NO.11449 OF 2024****PROCEEDING SHEET**

SL. NO	DATE	ORDER	OFFICE NOTE
	29.04.2024	<u>SP, J & NTR,J</u> Heard on admission. Sri M. Naga Deepak, learned counsel appears for the petitioner. Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC takes notice for respondent Nos.1 to 5 and 7 and Sri B. Mukherjee, learned counsel representing Sri Gadi Praveen Kumar, learned Deputy Solicitor General of India, takes notice for respondent No.6 and prays for four weeks time to file their counters. Learned counsel for the petitioner pressed for the interim relief by contending that when petitioner was put to notice, he fulfilled the tax liability. He placed reliance on two audit reports dated 05.12.2022 and 10.05.2023 and urged that the said reports in no uncertain terms make it clear that taxable amount has been paid and the Department used the wordings "<i>admitted and settled</i>". Thereupon, the petitioner was shocked to receive another notice under Section 73 of the Central Goods and Services Tax Act, 2017 (for short 'the Act'). The petitioner has filed his reply dated 22.01.2024 (Annexure P4) and raised the following objection:	Transferred to IO Folder before corrections.

SL. NO	DATE	ORDER	OFFICE NOTE
		<i>"We would like to bring to your notice that the Assistant Commissioner of Central Tax (Circle-V), Hyderabad Audit - I Commissionerate has successfully concluded the GST Audit of our business for the financial years 2017-18 to 2021-22 by verifying our books of accounts, GSTR 3B, GSTR 2A, GSTR 1, and GSTR 9, 9C returns. The observations made by the Assistant Commissioner were duly communicated to us, and we diligently complied with all directions and observations conveyed. For your convenience, we have enclosed the Final Audit Reports herewith."</i> The respondents without specifically dealing with this objection, decided otherwise and confirmed the demand of Rs.1,36,86,947/- by impugned order dated 18.04.2024. Assailing this order, learned counsel for the petitioner placed heavy reliance on a Division Bench order passed in W.P.No.298 of 2024 wherein, while considering the analogues provision i.e. Section 73 sub-section (5) and (6) of the Act, this Court opined that the law makers were clear that any person chargeable with tax, if he pays the amount of tax along with the interest payable thereupon, the proper officer, upon receipt of such information, shall not initiate any further proceedings under sub-section (1) and all the proceedings shall have to deem to be concluded. It is urged that in view of discharge of entire tax liability and satisfaction	

SL. NO	DATE	ORDER	OFFICE NOTE
		recorded by the respondents, it was no more open to them to pass the present impugned order. Considering the aforesaid and subject to hearing the other side, till next date of hearing, no coercive action be taken against the petitioner, pursuant to the impugned order dated 18.04.2024. List on 02.07.2024. _____ SP,J _____ NTR,J myk/tsr	

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Notification - GST - Central GST (CGST)

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

NOTIFICATION NO. 09/2023 – CENTRAL TAX

New Delhi, the 31st March, 2023

S.O.1564(E).— In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India, Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021 and No. 13/2022-Central Tax, dated the 5th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 516(E), dated the 5th July, 2022, the Government, on the recommendations of the Council, hereby, extends the time limit specified under sub-section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised, relating to the period as specified below, namely:—

**** (i)** for the financial year 2017-18, up to the 31st day of December, 2023;

**** (ii)** for the financial year 2018-19, up to the 31st day of March, 2024;

**** (iii)** for the financial year 2019-20, up to the 30th day of June, 2024.

[F. No. CBIC-20013/1/2023-GST]

ALOK KUMAR, Director

***See Notification No. 09/2023 – Central Tax dated 31.03.2023** for extended time limit for issuance of order under sub-section (9) of section 73, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised.

****See Notification No. 56/2023-Central Tax dated 28.12.2023** for extended time limit for issuance of order under sub-section (9) of section 73, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised.

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Tax Management India .com<https://www.taxmanagementindia.com>**Notification - GST - Central GST (CGST)****GOVERNMENT OF INDIA****MINISTRY OF FINANCE****(DEPARTMENT OF REVENUE)****CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS****NOTIFICATION NO. 56/2023- Central Tax****New Delhi, dated the 28th December, 2023**

S.O. 5483 (E).— In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India, Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021 and No. 13/2022-Central Tax, dated the 5th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 516(E), dated the 5th July, 2022, and No. 09/2023-Central Tax, dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number G.S.R. 1564(E) dated the 31st March, 2023, the Government, on the recommendations of the Council, hereby, extends the time limit specified under sub-section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, relating to the period as specified below, namely:—

- (i) for the financial year 2018-19, up to the 30th day of April, 2024;
- (ii) for the financial year 2019-20, up to the 31st day of August, 2024.

[F. No. CBIC-20013/7/2021-GST]**(Raghavendra Pal Singh)****Director**

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**GOVERNMENT OF TELANGANA
ABSTRACT**

The Telangana Goods and Services Tax Act, 2017 (Telangana Act No. 23 of 2017) - Extending time limit for specified compliances in exercise of powers under section 168A of the Act - Notification - Orders - Issued.

G.O.Ms.No. 118

Revenue (CT-II) Department

**Dated: 25-08-2023
Read the following:**

1. G.O.Ms No. 136, Revenue (CT-II) Department, Dt. 27-11-2020.
2. G.O.Ms No. 56, Revenue (CT-II) Department, Dt. 19-07-2021.
3. G.O Ms No. 106, Revenue (CT-II) Department, Dt. 28-09-2022.
4. Government of India, Ministry of Finance, (Department of Revenue), Central Board of Indirect Taxes and Customs, New Delhi, Notification No. 09/2023 - Central Tax, Dt. 31-03-2023.
5. From the Commissioner of Commercial Taxes, Telangana, Hyderabad, Lr No. CCT's Ref No. A(1)/55/2020, Dt.13-04-2023.

ORDER:-

The following Notification Shall be published in an Extra-ordinary issue of Telangana Gazette dt:25.08.2023.

NOTIFICATION

In exercise of the powers conferred by section 168A of the Telangana Goods and Services Tax Act, 2017 (Telangana Act No. 23 of 2017) (hereinafter referred to as the said Act) in partial modification of the notifications issued in G.O.Ms No.136, Revenue (CT-II) Department, Dt.27-11-2020, G.O.Ms. No.56, Revenue (CT-II) Department, Dt.19-07-2021 and G.O.Ms No.106, Revenue (CT-II) Department, Dt.28-09-2022, the Government, on the recommendations of the Council, hereby extends the time limit specified under sub-section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, relating to the period as specified below, namely:-

- (i) for the financial year 2017-18, up to the 31st day of December, 2023;
- (ii) for the financial year 2018-19, up to the 31st day of March, 2024;
- (iii) for the financial year 2019-20, up to the 30th day of June, 2024.

2. This notification shall be deemed to have come into force with effect from 31st day of March, 2023.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

**SANTHI KUMARI
CHIEF SECRETARY & SPECIAL
CHIEF SECRETARY TO GOVERNMENT (FAC)**

To:

The Commissioner of Printing, Stationery and Stores Purchase (Publication Wing) Telangana, Hyderabad for publication of the Notification (He is requested to supply 5 copies of the notification to this Department and 300 copies to Commissioner of Commercial Taxes, Telangana, Hyderabad)

The Commissioner of State Tax, Telangana State, Hyderabad.

The Secretary, GST Council, 5th Floor, Tower II, JeevanBharti Building, Janpath Road, Connaught Place, New Delhi-110 001.

The Principal Chief Commissioner, GST Hyderabad Zone, Kendriya GST Bhavan, L.B. Stadium Road, BasheerBagh, Hyderabad-500 004.

Copy to:

The Accountant General, Telangana State, Hyderabad.

The Law (A) Department

The Law (TLSP) Department

The PS to Principal Secretary to Hon'ble Chief Minister (NR)

The P.S. to Special Chief Secretary to Government, Revenue (CT & Ex) Department

Sf /Sc.

/FORWARDED :: BY ORDER//

SECTION OFFICER



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**GOVERNMENT OF TELANGANA
ABSTRACT**

The Telangana Goods and Services Tax Act, 2017 (Telangana Act No. 23 of 2017) - Extending time limit for specified compliances in exercise of powers under section 168A of the Act - Notification - Orders - Issued.

Revenue (CT-II) Department

G.O.Ms.No. 170

**Dated: 30-12-2023
Read the following:**

1. G.O.Ms No. 136, Revenue (CT-II) Department, Dt. 27-11-2020.
2. G.O.Ms No. 56, Revenue (CT-II) Department, Dt. 19-07-2021.
3. G.O Ms No. 106, Revenue (CT-II) Department, Dt. 28-09-2022.
4. G.O Ms No. 118, Revenue (CT-II) Department, Dt. 25-08-2023
5. Government of India, Ministry of Finance, (Department of Revenue), Central Board of Indirect Taxes and Customs, New Delhi, Notification No. 56/2023 - Central Tax, Dt. 28-12-2023.
6. From the Commissioner of Commercial Taxes, Telangana, Hyderabad, Lr No. CCT's Ref No. A(1)/55/2022, Dt:29.12.2023.

ORDER:-

The following Notification shall be published in an Extra-ordinary issue of Telangana Gazette dt:30.12.2023.

NOTIFICATION

In exercise of the powers conferred by section 168A of the Telangana Goods and Services Tax Act, 2017 (Telangana Act No.23 of 2017) (hereinafter referred to as the said Act) and in partial modification of the notifications issued in G.O.Ms No. 136, Revenue (CT-II) Department, Dt. 27-11-2020, G.O.Ms No. 56, Revenue (CT-II) Department, Dt. 19-07-2021, G.O.Ms No. 106, Revenue (CT-II) Department, Dt. 28-09-2022 and G.O.Ms No. 118, Revenue (CT-II) Department, Dt. 25-08-2023, the Government, on the recommendations of the Council, hereby, extends the time limit specified under sub- section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, relating to the period as specified below, namely:-

- (i) for the financial year 2018-19, up to the 30th day of April, 2024;
- (ii) for the financial year 2019-20, up to the 31st day of August, 2024;

2. This notification shall be deemed to have come into force with effect from 28th day of December, 2023.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

**SUNIL SHARMA
SPECIAL CHIEF SECRETARY TO GOVERNMENT**

To

The Commissioner of Printing, Stationery and Stores Purchase (Publication Wing) Telangana, Hyderabad for publication of the Notification (He is requested to supply 5 copies of the notification to this Department and 300 copies to Commissioner of Commercial Taxes, Telangana, Hyderabad)

The Commissioner of Commercial Taxes, Telangana State, Hyderabad.

The Secretary, GST Council, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi-110 001.

The Principal Chief Commissioner, GST Hyderabad Zone, Kendriya GST. Bhavan, L.B. Stadium Road, Basheer Bagh, Hyderabad-500 004.

Copy to:

The Accountant General, Telangana State, Hyderabad.

The Law (A) Department

The P.S. to Principal Secretary to Hon'ble Chief Minister, Government of Telangana.

The P.S. to Special Chief Secretary to Government, Revenue (CT&Ex) Department.

Sf /Sc.

//FORWARDED :: BY ORDER//

SECTION OFFICER

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R.K. Jain's

GST-ExCus

Electronic Library for GST, Customs, Excise, EXIM, FEMA & Allied Laws

2007 (218) E.L.T. 647 (S.C.)IN THE SUPREME COURT OF INDIA
Dr. Arijit Pasayat and P. Sathasivam, JJ.**UNION OF INDIA***Versus***VICCO LABORATORIES***Civil Appeal No. 5401 of 2007, decided on 26-11-2007*

Show cause notice - Jurisdiction - Re-opening of issue - Classification dispute finally concluded by decision of High Court and Apex Court in favour of writ petitioner - Fresh SCN issued pursuant to liberty given by SC to Department to take such test if otherwise so entitled for classifying the product - Impugned SCN was nothing but a repetition of earlier SCNs with slight variations which in no way was relatable to any different test - SCN amounts to reopening of issue which is not permissible - Section 11A of Central Excise Act, 1944. [para 31]

Writ jurisdiction - Interference at show cause notice stage - Abstinence from interference at stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule but not without exceptions - Where a show cause notice is issued either without jurisdiction or in an abuse of process of law, the writ Court would not hesitate to interfere even at stage of issuance of show cause notice - Interference at SCN stage should be rare and not in a routine manner - Mere assertion by writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice - It should be prima facie established to be so - Article 226 of Constitution of India. [para 30]

Appeal dismissed**CASES CITED**

- Amrutanjan Ltd. v. Collector — 1995 (77) E.L.T. 500 (S.C.) — *Referred*..... [Para 17]
 Commissioner v. Sharma Chemical Works — 2003 (154) E.L.T. 328 (S.C.) — *Referred*..... [Para 15]
 Dabur (India) Ltd. v. Commissioner — 2005 (182) E.L.T. 290 (S.C.) — *Referred*..... [Para 15]
 Meghdoot Gramodyog Sewa v. Commissioner — 2004 (174) E.L.T. 14 (S.C.) — *Referred*. [Para 16]
 Naturalle Health Products Pvt. Ltd. v. Collector — 2003 (158) E.L.T. 257 (S.C.) — *Referred* [Para 17]
 Shree Baidyanath Ayurved Bhavan Ltd. v. Collector — 1996 (83) E.L.T. 492 (S.C.) — *Referred* [Paras 6, 10]

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DEPARTMENTAL CLARIFICATIONS CITED

C.B.E. & C. Circular dated 31-10-1996..... [Para 6]

C.B.E. & C. Letter dated 12-5-1989..... [Paras 6, 28]

REPRESENTED BY : *S/Shri A. Subba Rao and B. Krishna Prasad, Advocates, for the Appellant.*
S/Shri F.S. Nariman, Sr. Advocate, Gopal Jain, Raj Nagrani, R.N. Jaranjawala, Ms. Nandini Gore, Ms. Pragya Singh Baghel, Ms. Simran Brara, Mrs. Manik Karanjawala and Subhash Sharma, Advocates, with him, for the Respondent.

[Judgment per : Arijit Pasayat, J.] - Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Bombay High Court allowing the writ petition filed by the respondent. Challenge in the writ petition was to the show cause notice dated 29th April, 2005 issued by the Commissioner of Customs and Central Excise, Nagpur (hereinafter referred to as the 'Commissioner') on the ground that the Commissioner was seeking to re-open and re-litigate the issues which have been finally concluded by the decision of the High Court and this Court in favour of the writ petitioner and, therefore, the said show cause notice was without jurisdiction and had been issued in arbitrary exercise of power and that it is an abuse of process of law.

3. The petition was resisted on the ground that at the stage of show cause notice there should not be any inference. In fact the notice was issued pursuant to the liberty given by this Court in C.A. Nos. 7896-97/2003 disposed of by a three-Judge Bench by order dated December 7, 2004. The High Court accepted the position that normally the High Court should not interfere at the show cause notice stage. But in view of the factual scenario the Court entertained the writ petition and decided in favour of the respondent.

4. Background facts in a nutshell are as follows :

The respondent is a manufacturer of various products including Vicco Vajradanti and Vicco Turmeric which are stated to be ayurvedic medicines. A show cause notice dated 8th November, 1976 was issued requiring the respondent to satisfy as to why the said products should not be classified as "cosmetics" and not "ayurvedic medicines". This show cause notice is hereinafter referred to as the "1st SCN". After hearing the respondent, the Commissioner under order, dated 4th June, 1977 classified the said products as "cosmetics". The same was challenged by the respondent by way of Civil Suit No. 143 of 1978 in the Court of Civil Judge, Senior Division, Thane, which came to be decreed in favour of the respondent holding that the said products were "ayurvedic medicines", and therefore, cannot be classified as "cosmetics". The appellants carried the matter in an appeal by filing First Appeal No. 613 of 1982 before the High Court without any success as the same was dismissed on 27th April, 1988 holding that the products were "Ayurvedic medicines". The Special Leave Petition preferred by the appellants being SLP No. 1918 of 1989 was dismissed on 6th September, 1990. Simultaneously, the respondent had also filed the Special Leave Petition No. 14082 of 1988 which came to be disposed of by an order dated 19th April, 1993, while affirming the judgment of this Court with a rider that the claim for refund of the amounts already paid, would be subject to ascertaining whether the amounts were passed on to the purchasers or not, and that the consequential relief shall be subject to the provisions of Section 11B of the Central Excise and Salt Act, 1944 (in short the 'Act') as amended by Act 40/1991.

5. On 28th February, 1986, Central Excise Tariff Act, 1985 (in short 'Tariff Act') was introduced, to be effective from 1st March, 1986. Under the Old Tariff Act, the ayurvedic medicines fell under the Notification No. 234 of 1982, the products being listed at Sl. No. 21. In term of the Tariff Act, the product was sought to be classified by the respondent under Chapter 30 sub-heading 3003.30 and the same was approved by Assistant Commissioner, Nagpur, by his order dated 6th

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October, 1986. Pursuant to the direction by the Commissioner, a show cause notice dated 3rd July, 1987 was issued requiring the respondent to show cause as to why the products should not be classified as cosmetics falling under Chapter 33. This was the second Show Cause Notice in relation to the same products, and hereinafter is referred to as the "2nd SCN". After the reply being filed to the 2nd SCN, the same was recalled under the order dated 21st June, 1989. The matter was, however, carried in appeal before the Commissioner of Central Excise (Appeals) but the same was withdrawn on 26th December, 1989.

6. On 31st October, 1996, the Central Board of Excise issued a circular withdrawing its earlier clarification dated 12th May, 1989 in respect of Vicco Products and asked the authorities to reopen and finalise the classification of Vicco products on the basis of the judgment in *Shree Baidyanath Bhavan v. CCE, Nagpur*, reported in 1996 (83) E.L.T. 492 : 1996 (9) SCC 402. Consequently, fresh show cause notices dated 2nd May, 1997, 18th September, 1997 and 27th October, 1997 came to be issued requiring the respondent to satisfy as to why the products should not be classified as "cosmetic" falling under Chapter 33. These three show cause notices are hereinafter referred to as the "3rd SCNs". Meanwhile, by Telex dated 8-9-1997, the Board further clarified that the circular dated 31-10-1996 is general in nature and the Vicco products having been subjected to the specific judgment and order of the High Court affirmed by this Court, the circular would not have overriding effect. The department further sought opinion of the Law and Judiciary Department on 13-11-1997. Thereafter, the Union of India moved an application being IA-1 of 1999 in this Court in Civil Appeal No. 2123 of 1993 arising out of the SLP No. 14082 of 1988 which was filed by the respondent for clarification of the order dated 19th April, 1993 with reference, to *Shree Baidyanath's* judgment (supra).

7. On 17-7-2000 the said application was withdrawn stating that the authorities will act in accordance with the provisions of law, which statement was recorded by this Court while disposing of the said application.

8. On 14-5-2001 with reference to the 3rd SCNs, the Deputy Commissioner passed orders classifying the respondent's products as "cosmetics" falling under Chapter 33. The respondent preferred appeal before the Commissioner of Central Excise (Appeals) which came to be allowed by an order dated 10-1-2002. The appellant carried the matter in appeal before CEGAT, which came to be dismissed by an order dated 3-2-2003. The appellant filed special leave petition before this Court. The same were converted into the Civil Appeals No. 7896-97 of 2003 and the appeals were dismissed by this Court on 7-12-2004.

9. Again, on 29-4-2005 a fresh show cause notice came to be issued requiring the respondent to satisfy as to why the products should not be held as products under Chapter 33. The same was questioned before the High Court and by the impugned judgment the same was quashed.

10. The stand of the appellants in support of the appeal is that the liberty granted by this Court in the earlier case was on the footing that there was need for factual adjudication on applying correct position. In the earlier round of litigation the foundation of the revenue's case was the decision in *Shree Baidyanath Ayurved Bhawan's* case (supra). This Court categorically held in the said case as follows :

2. In this connection your kind attention is also invited to the Board's Circular No. 11/91-CX-I dated 19-4-03 (copy enclosed) whereby the Board had circulated order No. 22/91-C, dated 8-1-91 of CEGAT in the case of *CCE, Indore v. M/s. Shree Baidyanath Ayurved Bhavan Ltd.* to the field formations. The Hon'ble Tribunal relying on its earlier Orders No. 438-439/85-C, dated 7-6-1985 [1985 (11) E.L.T. 175 (Tribunal)] and No. 714-715/90-C, dated 10-7-90 [1991 (51) E.L.T. 502 (Tribunal)], all in the cases of *M/s. Shree Baidyanath Ayurved Bhavan* is not an Ayurvedic drug or medicine and it is appropriately classifiable under Heading No. 33.06 of the CETA, 1985. Aggrieved by the judgments of the CEGAT the assessee had gone in appeal to Supreme Court. The appeals of *M/s. Dabur India Ltd.* on the same issue were also tagged with the appeal of *Shree Baidyanath Ayurved Bhavan Ltd.*

3. Now the Hon'ble Supreme Court vide its judgment dated 30-3-1995 [1996 (83) E.L.T. 392 (S.C.)] (copy enclosed), has dismissed the appeal of *M/s. Shree Baidyanath Ayurved Bhavan Ltd.* and *M/s. Dabur India Ltd.* and upheld the judgments of CEGAT wherein it had been held that

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the product "Dant Manjan Lal" is a toilet preparation and not a medicinal preparation (Ayurvedic) and therefore not classifiable as a medicine (Ayurvedic) and accordingly not eligible for the benefit of exemption notification. The judgment of Supreme Court is being circulated to all the field formations of CBEC for necessary action in the matter.

4. Therefore, keeping in view the aforesaid judgment of Supreme Court the Board has decided to withdraw its aforesaid instructions contained in letter No. F.No. 1031/14/88-CS.3 dated 12-5-1989. You may therefore decide classification of the goods in question in the light of Hon'ble Supreme Court's said judgment under intimation to the Board.

11. It was submitted that fresh materials had been considered and it has been found that the products are to be classified under Entry 33.04 and 33.06 and not by Entry 3003.31. Reference is also made to the Notes in Chapter 30 and Chapter 33. So far as Chapter 30's notes are concerned reference is made to notes 1 and 2 and notes of Chapter 33 which read as follows :

"Chapter 30 1. This Chapter does not cover :

- (a) Food or beverages (such as, dietetic, diabetic or fortified food, food supplements, tonic beverages and mineral waters) (Section IV);
- (b) Plasters specially calcined or finely ground for use in dentistry (Chapter 25);
- (c) Aqueous distillates or aqueous solutions of essential oils, suitable for medicinal uses (Chapter 33);
- (d) Preparations of Chapter 33 even if they have therapeutic or prophylactic properties;
- (e) Soap or other products of Chapter 34 containing added medicaments;
- (f) Preparations with a basis of plaster for use in dentistry (Chapter 34);
- (g) Blood albumin not prepared for therapeutic or for prophylactic uses (Chapter 35).

2. For the purposes of Heading No. 30.03 :

- (i) 'Medicaments' means goods (other than foods or beverages such as dietetic, diabetic or fortified foods, tonic beverages) not falling within heading No. 30.02 or 30.04 which are either :-
 - (a) Products comprising two or more constituents which have been mixed or compounded together for therapeutic or prophylactic uses; or
 - (b) unmixed products suitable for such uses put up in measured doses or in packings for retail sale or for use in hospitals.

(ii) 'Patent or proprietary medicaments' means any drug or medicinal preparation, in whatever form, for use in the internal or external treatment of, or for the prevention of ailments in human beings or animals, which bears either on itself or on its container or both, a name which is not specified in a monograph, in a Pharmacopoeia, Formulary or other publications, namely :-

- (a) The Indian Pharmacopoeia;
- (b) The International Pharmacopoeia;
- (c) The National Formulary of India;
- (d) The British Pharmacopoeia;
- (e) The British Pharmaceutical Codex;
- (f) The British Veterinary Codex;
- (g) The United States Pharmacopoeia;
- (h) The National Formulary of the U.S.A.;
- (i) The Dental Formulary of the U.S.A. and
- (j) The State Pharmacopoeia of the U.S.S.R.'

or which is a brand name, that is, a name or a registered trade mark under the Trade and Merchandise Marks Act, 1958 (43 of 1958), or any other mark such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to that medicine for the purpose of indicating or so as to indicate a connection in the course of trade between the medicine and some person, having the right either as proprietor or otherwise to use the name or mark with or without any indicating of the identity of that person.

Chapter 33

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2. Heading Nos. 33.03 to 33.07 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings with labels, literature or other indications that they are for use as cosmetics or toilet preparations or put up in a form clearly specialised to such use and includes products whether or not they contain subsidiary pharmaceutical or antiseptic constituents or are held out as having subsidiary curative or prophylactic value.

4. In relation to products of heading Nos. 33.03, 33.04 and 33.05, conversion of powder into tablets, labelling or relabelling of containers intended for consumers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the products marketable to the consumer, shall be construed as 'manufacture'.

6. Heading No. 33.05 applies, *inter alia*, to the following products; brilliantines, perfumed hair oils, hair lotions, pomades and creams, hair dyes (in whatever form), shampoos, whether or not containing soap or organic surface active agents."

12. It was submitted that the products are sold across the counter and without prescription. The outward packings also described as cosmetics.

13. The primary stand also is that the High Court should not have interfered at the show cause notice stage.

14. In response, learned counsel for the respondent with reference to history of the long drawn litigation submitted that the High Court has rightly taken note of various factual aspects and quashed the show cause notice.

15. In *Dabur India Ltd. v. Commissioner of Central Excise, Jamshedpur*, [2005 (4) SCC 9], this Court reiterating its earlier decision in *Commissioner of Central Excise, Calcutta v. Shama Chemical Works*, [2003 (5) SCC 60] held that merely because a product is sold across the counters and not under a doctor's prescription does not by itself lead to the conclusion that it is not a medicament. It was also held that in the product the percentage of medicament may be small but that by itself does not *ipso facto* mean that the product is not a medicament. It was held that generally the percentage or dosage of the medicament will be such as can be absorbed by the human body and that the medicament would necessarily be covered by fillers/vehicles in order to make the product usable.

16. In *Meghdoot Gramodyog Sewa Sansthan, U.P. v. Commissioner of Central Excise, Lucknow* - [2005 (4) SCC 15] this Court had held that the products cannot be classified as cosmetics solely on the basis of outward packing of the products. It was specifically held that the composition and the curative properties of the product being admitted, it was not open to the department to hold the product to be cosmetics merely by reason of the outward packing.

17. In *Naturalle Health Products (P) Ltd. v. Collector of Central Excise, Hyderabad* - [2004 (9) SCC 136] it was held that the essential character of medicine and the primary function of the medicine is derived from the active ingredients contained therein and it has certainly a bearing on the determination of classification under the Act. Further re-iterating its earlier decision in *Amrutanjan Ltd. v. CCE* - [1996 (9) SCC 413] this Court held that "the mere fact that the ingredients are purified or added with some preservatives does not really alter their character."

18. First round of show cause notice dated 8-11-1976 states as follows :

"M/s Vicco Laboratories Ltd. furnished Photostat copies of the certificates bearing Nos. A/Cert/12/75 dated 6-1-1976 and A/Cert/388/76 dated 6-1-1970 issued by Food and Drug Administration, Maharashtra State, Bombay in support of their claim.

M/s Vicco Laboratories, Dombivli are hereby required to show cause to the Asst. Collector, Central Excise, Kalyan Division, Kalyan why "Vicco Vajradanti Paste" and Vicco Turmeric Vanishing Cream should not continue to be classified as tooth paste. T.I. No. 14FF and Cosmetic & Toilet preparation T.I. 14FF respectively as these products are marketed and are known in the Trade parlance as tooth paste and vanishing cream and not as Ayurvedic medicines."

19. Suit No. 143/1998 was filed challenging the show cause notice.

20. Whether the two products Vicco Vajradanti and Vicco Turmeric Skin Cream were

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Ayurvedic Medicines or Cosmetics (tooth paste, vanishing cream, cosmetic cream) was adjudicated in Thane Suit No. 143 of 1978, where evidence was led by the plaintiff (Vicco Laboratories) and by the defendants (Revenue Department). Amongst the issues framed were issue Nos. 1 to 3 reading as follows :

- (i) Do Plaintiffs prove that their products Vicco Vajaradanti and Vicco Vanishing Cream are Ayurvedic medicinal preparations?
- (ii) Do Defendants prove that Vicco Vajaradanti falls under item 14FF of first schedule of Central Excise and Salt Act, 1944? (Tooth paste including dental cream)?
- (iii) Do defendants prove that Vicco Turmeric Vanishing cream falls under item 14F(1) of the said Schedule? (Cosmetic and toilet Preparation for the care of the skin).

21. Eleven witnesses were examined on behalf of the plaintiff and three witnesses on behalf of the Department. The finding of the trial Court on issue Nos. 1 to 3 is as follows :

"In the result the plaintiff have proved their product Vicco Vajaradanti and Vicco Turmeric as Ayurvedic medicinal preparations whereas the defendants have failed that they fall under tariff items 14FF and 14F. Therefore, Vicco Vajaradanti is not merely a tooth paste but a medical formulation meant for treatment of tooth and gum trouble whereas Vicco Turmeric does not simply give a promise beauty but is meant for treatment of dermatitis. Accordingly, the issue No.1 is held in the affirmative and the issue Nos. 2 and 3 in the negative."

22. In appeal No. 613/1982 filed by the Department in the Bombay High Court, the High Court by judgment dated 27-4-1988 held :

"Whether the two products are medicine or merely tooth, paste and vanishing cream or rather a cosmetic cream has to be decided on this record. On the record as is available to us, it is more than amply proved by overwhelming evidence that the products would be excisable under Entry 14E and at the rates prescribed from time to time in respect of the said entry. The consumers and doctors, and the later category will include the general practitioners dentists and Ayurvedic experts, consider that the two products are medicines and further that they are Ayurvedic medicines. In this respect even the first two witnesses who were examined on behalf of the defendants were ultimately forced, much against their inclination, to concede that these products were prescribed by doctors and sold by them, under doctors' prescriptions. The third witness examined on behalf of the defendants has not carried the matter any further and her evidence is almost totally useless as far as these proceedings are concerned. In addition to this, we have the classifications made by various governmental authorities including the Sales Tax Commissioner accepting the status of the two products as Ayurvedic medicines. Last but not the least, we have unshaken testimony of P.W. 11 Dr Antarkar, admittedly an expert on Ayurvedic medicines.

There is overwhelming evidence, therefore, on the record which is almost one sided to establish that the two products under consideration must be regarded as Ayurvedic medicines although they may also be used as tooth paste and are used as cosmetic cream."

23. The High Court however held that the plea of plaintiff Vicco Laboratories raised an oral arguments that the products were "exclusively ayurvedic medicines (and therefore, wholly exempt under Entry 14E) could not be accepted since there were no pleadings to that effect: therefore they were taxable at 12¹/₂% as "patent and proprietary medicines". (Entry 14E).

24. The respondent and the Revenue both approached this Court by SLPs being SLP No. 14082 of 1988 (by Vicco Laboratories) and SLP No. 1918 of 1989 (by Department) against the judgment and order dated 27-4-1988 of the Bombay High Court. SLP No. 1918/1989 was dismissed by this Court on 6-9-1990 whereas consent order dated 19-4-1983 came to be passed in SLP No. 14082/88.

"We have heard Sri K.K. Venugopal, learned senior counsel for the appellants and Sri K.T.S. Tuli, learned Additional Solicitor General for the respondents. Leave granted.

2. The parties have broadly agreed to certain terms for the final disposal of this appeal.

3. In terms of the said agreement the parties accept judgment of the Bombay High Court that the products in question are rightly classifiable as Ayurvedic Medicines. The stand of the

Revenue is that Ayurvedic medicines are excluded from tariff Item No. 14E and are classifiable under tariff item 68 of the erstwhile Central Excise Tariff and entitled to full exemption under Serial No. 21 of Notification No. 234/82-C.E., dated 1st November 1982, a position which the appellants accept.

4. The question of the refund of the amounts paid would depend on whether the amounts were passed on to the purchasers or not. The consequential relief, if any, shall therefore, be subject to the provisions of Section 118 of the Central Excises and Salt Act, 1944 as amended by ACT 40 of 1991.

5. In terms of the compromise we affirm the judgment of the Bombay High Court dated 27th April, 1988 subject to the modifications indicated above.

6. The appeal is disposed of accordingly, No costs."

25. Clarification application filed before this Court by the Department that the Consent Order dated 19-4-1993 did not apply to the Tariff Act was dismissed as withdrawn on 17-7-2000.

26. Meanwhile, the Tariff Act, came to be passed which repealed the old Tariff Act. The new entries were :

Chapter 30 - dealt with Pharmaceutical products

Chapter 33 - dealt with Essential Oils and Resinoids,

Perfumery, Cosmetic or Toilet Preparations.

27. Meanwhile before the judgment and order of Bombay High Court and of this Court in Thane Suit, afresh (2nd) round of Show cause notices for the period December 1986 to March 1989 were issued. In the show cause notice it was alleged as follows :

"Whereas it appears that these products namely Vicco Vajradanti Powder Paste are meant for oral or dental hygiene and are used as tooth powder and tooth paste, the same appear to be classifiable under sub-heading 3306.00 and chargeable to duty at 15%. Similarly, Vicco Turmeric appears to be a Vanishing Cream falling under sub-heading 3304.00 and;

Whereas no material change in the composition of above mentioned products has been taken place, these products appear to be tooth powder, tooth paste and vanishing cream classifiable under heading 3306.00 and 3304.00 respectively, and

Whereas, Vicco Turmeric Cream has mainly prophylactic cosmetic effect and it cannot be considered Ayurvedic medicine, it appears to be Vanishing Cream only and;

Whereas as per Note 1(d) of Chapter 30 Preparation of Chapter 22 even if they have therapeutic and Prophylactic properties, they are classifiable, under Chapter 33 and are excluded from Chapter 30 and;

Whereas, Vicco Vajradanti Powder is put up in the form of "Dant Manjan" and paste has been put up in the form of "Tooth Paste" and Vicco Turmeric has been put up in the form of Cosmetic/Vanishing Cream; and

Whereas, for the last so many years you were advertising and marketing these products as tooth powder, tooth paste and vanishing cream respectively. Accordingly, Vicco Vajradanti Powder and Paste appear to be preparation for oral and dental hygiene falling under sub-headings 3306.00 and Vicco Turmeric appears to be falling under sub-heading 3304.00."

28. Advice was received from the Central Board of Excise and Customs by letter dated 12-5-1989 which stated as follows :

"Sir,

Sub : Central Excise - Vicco Vajradanti (powder and paste) and Turmeric - Classification under the Central Excise Tariff Act, 1985 - Regarding.

I am directed to refer to your letter F. No. V.Ch. 39 (30) 1/89/1369, dated the 4th January, 1989 on the subject mentioned above and to say that the matter of classification of Vicco Vajradanti (powder and paste) and Vicco Turmeric Cream manufactured by M/s Vicco Laboratories has been got examined in consultation with the Advisor (Ayurvedic and Siddha) in the Directorate General of Health Services.

2. The Board has taken note of Note (2) to Chapter 30 and 33 of the Schedule to the Central Excise Tariff Act, 1985 coupled with the opinion of the Advisor (Ayurvedic and Siddha) in the Directorate General of Health Services including the decision of the Bombay High Court feels

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that there are stronger reasons to treat the subject good as Ayurvedic medicines.

3. Accordingly, it is viewed that the above-mentioned products would be appropriately classifiable as Ayurvedic Medicaments under sub-heading No. 3003.30 of the Schedule of the Central Excise Tariff Act, 1985."

29. At this juncture, it would be necessary to take note of the stand of learned Counsel for the appellants that in the packages meant for export different descriptions were given. In this context it is to be noted that in the packing meant for export instead of the word 'Ayurved', the expression 'Herbal' is used. The special permission was taken from the Drugs Control Authority for such use. The letter dated 14-6-1996 of the Government of India, Ministry of Health & Family Welfare (Department of ISM & H) is relevant. The same reads as follows :

"New Delhi, dated 14-6-1996

To

The Asstt. Drug Controller (India),
New Custom House, Fort,
Bombay-400038.

Sub. : Export of Vicco-Vajradanti-Tooth Paste; Powder and Turmeric Cream- regarding

A representation received from the firm in regard to export of the subject products with labeling acceptable to importing countries and the modification made in the labels, which are otherwise used in the country. Having examined the matter, it is opined that there may be no objection in export of subject products labeled as herbal products. This permission is limited to export purpose only.

Sd/- Illegible.

(Ashwini Kumar)

For Drug Controller General (I)

Copy to :

Shri G.K. Pendharkar,
Vicco Laboratories,
25, Jerbai Wadia Road,
Parel, Bombay -400012"

30. Normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the concerned authorities and to satisfy the concerned authorities about the absence of case for proceeding against the person against whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule. However, the said rule is not without exceptions. Where a show cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be *prima facie* established to be so. Where factual adjudication would be necessary, interference is ruled out.

31. Case of the respondent that the classification of the said products having attained finality pursuant to the decision of this Court, the appellants have no jurisdiction to issue impugned show cause notice on the ground on which it has been issued and it virtually amounts to re-opening of the issue which stands concluded by the decision of this Court, and that therefore it is an abuse of process of law. The High Court after referring to the history of litigation rightly concluded that the matter stood concluded by judgments of this Court and the High Court in respondents' case.

32. In the earlier judgment this Court had given liberty to the Department in the following terms :

"Although the adjudicating authority had found in the course of the hearing that the market

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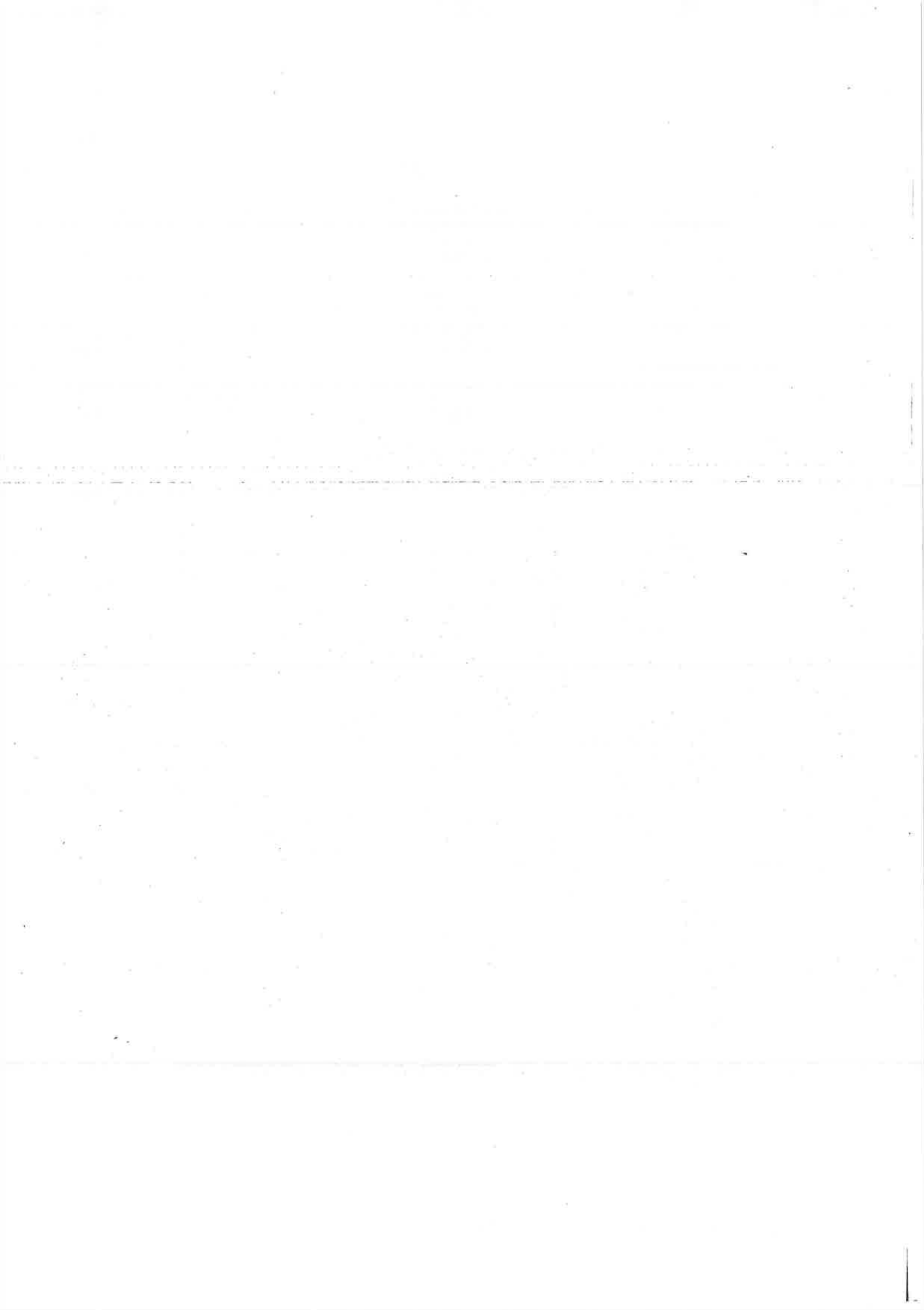
survey indicated that the product in question was known as a cosmetic we do not go into the question as this was not the ground on which the show cause notice was issued. The show cause notices having proceeded on a misapprehension of the tests laid down in *Shree Baidyanath's* case, the same cannot be sustained.

The appeals are accordingly dismissed without any order as to costs. It will be open to the Department to take such test if otherwise so entitled in respect of the products for the purpose of classifying the products under the appropriate tariff heading as they may be advised."

33. However, as rightly observed by the High Court the impugned show cause notice was nothing but a repetition of the earlier show cause notices with slight variations which in no way was relatable to any different test.

34. When the factual scenario is considered in the background of the legal principles set out above, the inevitable conclusion is that the appeal is sans merit, deserves dismissal which we direct. Costs made easy.

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2006 (201) E.L.T. 517 (S.C.)

IN THE SUPREME COURT OF INDIA

**Ashok Bhan and Markandey Katju, JJ.
DUNCANS INDUSTRIES LTD.***Versus***COMMISSIONER OF C. EX., NEW DELHI***Civil Appeal No. 754 of 2001 with C.A. Nos. 4075-4076 of 2001, decided on 22-8-2006*

Demand - Deletion of duty demand - Dues for entire period of dispute settled under Kar Vivad Samadhan Scheme, 1998 - After grant of certificate under Kar Vivad Samadhan Scheme, 1998 as having settled the dispute and payment of amount determined no further proceedings could be initiated or proceeded by any authority under the Act - Tribunal's order of deletion of duty demand of Rs. 17,65,13,315/- raised in show cause notice, affirmed - Section 11A of Central Excise Act, 1944. [paras 24, 26, 29]

Penalty - Matter settled in Kar Vivad Samadhan Scheme, 1998 - No allegation much less finding by Department of any clandestine removal of goods without assessment - Tribunal erred in upholding levy of penalty - Penalty set aside - Rules 9(2) and 52A of erstwhile Central Excise Rules, 1944 - Rule 4 of Central Excise Rules, 2002. [paras 28, 29]

Demand - No two assessment permissible for same period. [para 23]

Appeals disposed off**CASES CITED**

- Duncans Agro Industries Ltd. v. Union of India — 1989 (39) E.L.T. 511 (Del.) — *Referred* [Para 8]
 Government of India v. Madras Rubber Factory — 1995 (77) E.L.T. 433 (S.C.) — *Referred* [Para 16]
 Hira Lal Hari Lal Bhagwati v. C.B.I. — 2003 (155) E.L.T. 433 (S.C.) — *Relied on*..... [Para 25]
 N.B. Sanjana v. Elphinstone Spinning and Weaving Mills Co. Ltd. — 1978 (2) E.L.T. (J 399) (S.C.) — *Relied on* [Para 28]
 Serai Kella Glass Works Pvt. Ltd. v. Collector — 1997 (91) E.L.T. 497 (S.C.) — *Referred*.... [Para 8]
 Union of India. v. Godrej & Boyce Mfg. Co. (Pvt.) Ltd. — Civil Appeal No. 12824 of 1989 — *Referred* [Para 22]

REPRESENTED BY : S/Shri Joseph Vellapally, Sr. Advocate, U.A. Rana,
 Prashant Thakur, Raghvesh Singh and Ms. Srabonee Roy

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(for M/s. Gagrath & Co.), Advocates, with him for the Appellant.

S/Shri Mathai M. Paikeday, Sr. Advocate, Ms. Kiran Bhardwaj and B.K. Prasad, Advocates, with him for the Respondent.

[Judgment per : Ashok Bhan, J.] - These civil appeals are directed against the common impugned order Nos. 829 and 830 of 2000, dated 4-10-2000 passed by the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal") in Appeal Nos. E/1622/99-A and E/2095/2000-A. Revenue has filed Civil Appeal Nos. 4075-4076 of 2001 against the deletion of duty demand of Rs. 17,67,13,315/- raised in the show cause notice dated 1-10-1986 for the period September 1981 to February 1983 and the assessee has filed Civil Appeal No. 754 of 2001 against the levy of penalty of Rs. One crore. Since these appeals are directed against the common order passed by the Tribunal, we also propose to dispose them of by a common order. The facts are common in both the sets of appeals.

2. This case has a chequered history and has had various round of litigation in different forums. In order to determine the controversy and the point involved in these appeals the following facts may be noticed.

3. M/s. National Tobacco Company Limited, Agarpara, a manufacturer of cigarettes falling under erstwhile Central Excise Tariff Item No. 4-II(2), and holder of Central Excise Licence L-4 No. 3/84 for the manufacture of cigarettes, was merged with M/s. Mirpara Tea Company effective from 1-4-1977. Consequent to this, it became a Division of newly formed M/s. Duncans Agro Industries Limited, Calcutta. Thereupon, Central Excise Licence L-4 No. 1-Cig/IV/78 dated 18-2-1978 for the manufacture of cigarettes was issued to M/s. National Tobacco Company.

4. In April 1984, M/s. National Tobacco Company was demerged from M/s. Duncans Agro Industries Limited and was made a wholly owned subsidiary of M/s. Duncans Agro Industries Limited in the name and style of M/s. New Tobacco Company. M/s. Duncans Agro Industries Limited, is the respondent in the two appeals filed by the Revenue and the appellant in Civil Appeal No. 754 of 2001 and would be referred to as the assessee.

5. As a result of demerger, a new Central Excise Licence No. L-4 No. 1/Cig/IV/Khar/85 dated 9-3-1985 was issued to M/s. New Tobacco Company Limited for the manufacture of cigarettes.

6. As there was some dispute as to whether excise was leviable on manufacturing cost plus manufacturing profit and post manufacturing cost and profits arising from post manufacturing operations, the provisional assessments were made from July, 1973 to February, 1983. Final assessments were to be made later. On 8-5-1984, Assistant Collector of Central Excise, Calcutta issued a show cause notice to the assessee for the period July, 1973 to February, 1983 calling upon the assessee to show cause as to why :

"...the deductions claimed on account of freight, interest on freight, rebate, octroi, interest on receivables and tariff rate of duty from the wholesale price should not be disallowed and why the charges on account of freight, interest on freight, rebate, octroi and interest on receivables should not be included in the assessable value and also why the cost of C.F.C. packing charged and realized by them from the buyers should not be included in the assessable value under Section 4(1)(a) and Section 4(4)(d)(i) of Central Excise & Salt Act, 1944 and why price of each product should not be approved accordingly."

7. Collector of Central Excise, Delhi issued another show cause notice on 1-10-1986 to the assessee for the period September, 1981 to February, 1983 alleging that the assessee has willfully mis-declared assessable value of cigarettes from time to time during the period from September, 1981 to February, 1983 in the Central Excise documents. Price Lists with fraudulent intent to evade the payment of correct amount of duty and thereby they have short paid Central Excise duty amounting to Rs. 97,55,56,362/-. Accordingly, the assessee was called upon to show cause as to why :

- “(a) the duty short paid amounting to Rs. 97,55,56,362.00 as per Annexure ‘D’ should not be demanded under Rule 9(2) of the Central Excise Rules, 1944 read with the proviso of sub-section (1) to Section 11A of the Central Excise and Salt Act, 1944.
- (b) Penalties should not be imposed on them under Rules 9(2), 52A(5), 210 & 226 of the Central Excise Rules, 1944.”

8. Assessee being aggrieved filed a Civil Writ Petition No. 1708 of 1987 in the Delhi High Court on the ground that the show cause notice dated 1-10-1986 issued to the assessee alleging contravention of the central excise duty in respect of cigarettes manufactured and cleared from the factory at Agarpara during the period September, 1981 to February, 1983 and also addendum to the show cause notice dated 1-10-1986 was in excess of the jurisdiction and/or without authority of law inasmuch as the assessee had been paying the excise duty on the basis of the provisional assessments pursuant to filing of provisional price lists and till the price lists and the assessments were finalised a show cause notice could not be issued. According to the petitioner Section 11A of the Central Excises Salt Act, 1944 (for short “the Act”) could not be invoked in cases where duties are paid under provisional assessment made under Rule 9B of the Central Excise Rules, 1944 (for short “the Rules”) without first finalizing the assessment. The Division Bench of the High Court dismissed the writ petition by its order dated 12-8-1988 reported in *Duncans Agro Industries Ltd. v. Union of India & Ors.*-1989 (39) E.L.T. 511 (Del.). Contention of the assessee that the cause of action for invoking Section 11A would accrue only from the relevant date defined under Section 11A which in case of provisional assessment means the date of adjustment of duty after final assessment under Rule 9B was rejected. This judgment became final and is binding between the parties. This Court later took a contrary view in *Serai Kella Glass Works Pvt. Ltd. v. Collector of Central Excise, Patna* [1997 (4) SCC 641].

9. Collector of Central Excise, Delhi took up for hearing the proceedings arising from the show cause notice dated 1-10-1986 and disposed of the same on 27-3-1991 with the interim directions, which are as under :

“I direct the Divisional Assistant Collector, Kharda Division of Calcutta-II Collectorate to make final assessment in the case under Rule 9B(5) of the Central Excise Rules, 1944, for the period covered by the instant show cause notice as early as possible. He may use the material contained in the instant show cause notice as independent material to support the final assessment after according an opportunity to the manufacturer/other parties concerned to meet the case and after considering the cause show. He is further directed to intimate the undersigned as soon as he completes the said provisional assessment. Thereafter this show cause notice will be taken up for adjudication.”

10. In this order the Collector of Central Excise, Delhi gave three fold directions to the Divisional Assistant Collector, Kharda Division of Calcutta-II. namely, (1) To make final

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assessment in the case under Rule 9B(5) of the Rules for the period covered by the instant show cause notice (1-10-1986) as early as possible; (2) He could use the material contained in the show cause notice dated 1-10-1986 as independent material to support the final assessment after affording an opportunity to the manufacturer/other parties concerned to meet the case and after considering the show cause; (3) He was further directed to intimate the Collector of Central Excise, Delhi as soon as he completes the provisional assessment; and (4) The show cause notice dated 1-10-1986 was to be taken up for adjudication thereafter.

11. The assessee being aggrieved filed an appeal before the Appellate Tribunal at New Delhi, which was disposed of on 9-12-1997. The assessee challenged the finding/observation made by the Collector of Central Excise, Delhi that "thereafter this show cause notice will be taken up for adjudication" on the ground that after finalising of the assessment there would be nothing left for the Collector of Central Excise, Delhi for consideration or decision and therefore, this sentence in the order should be set aside. The appeal was disposed of by observing :

"....We do not understand the impugned order as recording a finding overruling the contention raised by the appellant the collector had no jurisdiction to adjudicate on the strength of show cause notice dated 1-10-86 or as to whether after finalisation of assessments anything would be left for the Collector to decide. Thereafter the appellant cannot have any grievance. It is open to the appellant to raise these aspects if after finalisation of assessment the Collector takes up the proceeding before him for adjudication in this matter.

With this observation, the appeal is disposed of."

[Emphasis supplied]

12. Thus the liberty to take up this point was reserved with the assessee after the finalisation of the proceedings.

13. In pursuance to the interim directions issued by the Collector of Central Excise, Delhi in its order dated 27-3-1991 the office of the Assistant Collector Central Excise, Kharda Division, Calcutta issued addendum dated 20-2-1992 incorporating the contents of the show cause notice dated 1-10-1986 in the show cause notice dated 8-5-1984 thereby assuming jurisdiction to adjudicate all issues raised in both the show cause notices.

14. The two show cause notices were finally adjudicated by the Assistant Collector Central Excise, Kharda Division, Calcutta by its order dated 11-1-1996. The assessable value was determined and consequent thereupon demand was raised by finalizing assessments for the entire period from July, 1973 to February, 1983.

15. On 3-7-1996 show cause cum demand notice was issued by the Superintendent, Office of the Assistant Collector Central Excise, Kharda Division, Calcutta on the basis of adjudication order dated 11-1-1996 quantifying the amount of short levy for the period July, 1973 to February, 1983. Assistant Collector Central Excise, Kharda Division, Calcutta adjudicated the show cause cum demand notice dated 3-7-1996 confirming the demands (short levy of Rs. 386,45,71,192.69 and Rs. 66,45,136.19 in respect of cigarettes and smoking mixtures respectively.

16. The assessee being aggrieved against the order of Assistant Collector Central Excise, Kharda Division, Calcutta filed an appeal before the Commissioner (Appeals) Central Excise, Calcutta. Commissioner of Appeals by his order in appeal dated 25-7-1997 accepted the appeal and remanded the matter to the Assistant Collector Central Excise, Kharda Division, Calcutta for recomputation of the duty afresh in the light of the decision of

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this Court in *Government of India v. Madras Rubber Factory* [1995 (4) SCC 349]. Assistant Collector, Central Excise, Kharda Division, Calcutta in compliance of the order of remand dated 25-7-1997 of the Commissioner of Appeals Central Excise, Calcutta recomputed the amount of duty short paid as Rs. 16,6,94,320.34 and Rs. 8,13,683.29 after adjusting Rs. 5.97 crores pre-deposited in the light of the judgment of this Court in *Madras Rubber Factory's* case (supra). This order was later on corrected by issuing a corrigendum and the amount was reduced.

17. After finalization of the proceedings by the Assistant Collector Central Excise, Kharda Division, Calcutta the Commissioner of Central Excise, Delhi passed an order-in-original in show cause notice dated 1-10-1986 determining Rs. 17.67 crores as due as duty liability and imposing a penalty of Rs. One crore.

18. Assessee being aggrieved filed Appeal No. E/1622/99-A/92E/ 2095/2000-A, which has culminated in the impugned order. Tribunal accepted the appeal partly. Duty liability was set aside as it had already been adjudicated in the earlier proceedings but upheld the levy of penalty. While deleting the duty liability the Tribunal observed thus :

"From this, it is clear that the Collector had left the duty demand raised in the show cause notice dated 1-10-1986 also to be included in the finalisation of the provisional assessment which was pending from 1973. The Revenue had not challenged that order. Pursuant to that order, the Assistant Collector had issued an Addendum to the assessee on 20-2-1992 making the materials relied upon in the show cause notice dated 1-10-1986 as part of the materials for finalising the assessments and the duty demand was finalised after assessee made their representations. That duty demand became final as the Revenue did not challenge it. The order passed on the assessee's appeal against that duty demand was also not challenged by both sides. We, therefore, hold that the duty demand made by the Assistant Collector was a consolidated demand and that demand having become final, no second demand could be made in another adjudication proceeding by the Commissioner. Accordingly, we set aside the duty demand of over Rs. 17 crores made in the impugned order."

19. Revenue being aggrieved has filed Civil Appeal Nos. 4075-4076 of 2001 against the deletion of the duty liability and the assessee has filed the Civil Appeal No. 754 of 2001 against the order maintaining the levy of penalty.

20. Another fact which needs to be noticed is that after the Assistant Collector Central Excise, Kharda Division, Calcutta finalized the assessment order dated 3-12-1996, the Assistant Collector Central Excise, issued show cause notice dated 27-5-1998 stating therein that the order-in-original dated 12-12-1997 the extra amounts realised as "additional consideration" was not taken into consideration and accordingly a demand of Rs. 21.58 crores was made on the assessee. In the meantime, Kar Vivad Samadhan Scheme, 1998 (for short "the KVS Scheme") was introduced by Finance (No. 2) Act, 1998. Pursuant to the said scheme the assessee filed a declaration under Section 89 of the Finance (No. 2) Act, 1998 in respect of the KVS Scheme. An order under the KVS Scheme was passed in pursuance to which the assessee paid the demand raised under the said scheme.

21. Counsel for the parties have been heard at great length.

22. The issue before the Assistant Collector Central Excise, Kharda Division, Calcutta was for the determination of the assessable value of the goods for the period July, 1973 to February, 1983 i.e. the period covered by the show cause notice dated 8-5-1984. The issue before the Commissioner of Central Excise, Delhi was also for determination of

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the assessable value of the goods for the period September, 1981 to February, 1983, the period covered by show cause notice dated 1-10-1986. The show cause notice dated 1-10-1986 was issued against 20 persons including the assessee company. As regards the assessee, for the period September, 1981 to February, 1983, the Commissioner of Central Excise passed the order dated 27-3-1991 directing the Assistant Commissioner to determine the assessable value taking into consideration the materials contained in show cause notice dated 1-10-1986. This he did by noticing the correct position of law laid down by this Court in the case of *Union of India v. Godrej & Boyce Mfg. Co. (Pvt.) Ltd.*, (Civil Appeal No. 12824 of 1989 decided on 8-3-90). The Assistant Collector Central Excise, Kharda Division, Calcutta thereafter issued addendum dated 20-2-1992 incorporating the allegations made in show cause notice dated 1-10-1986 in the show-cause notice dated 8-5-1984. The effect of the order passed by the Commissioner of Central Excise, Delhi was that the Assistant Collector Central Excise, Kharda Division, Calcutta alone had the jurisdiction to finally adjudicate and determine the assessable value of the goods cleared from the assessee's factory for the entire period and the consequent duty liability. Either party wishing to dispute the determination made by the Assistant Collector Central Excise, Kharda Division, Calcutta had to do so by invoking the right of appeal to the Commissioner of Appeals, Tribunal and the Supreme Court. In addition the Department could have invoked the short levy provision under Section 11A within a period of six months or invoked the extended period of limitation of 5 years under proviso to Section 11A provided the conditions laid down in the proviso were satisfied. The two show cause notices were finally adjudicated by the Assistant Collector Central Excise, Kharda Division, Calcutta on 11-1-1996. The assessable value determined and consequent demand was raised by finalizing assessments for the entire period July, 1973 to February, 1983. If the revenue was aggrieved by the above proceedings it was incumbent upon them to either invoke the right of appeal against that order under Section 35E(2) or issue a short levy notice under Section 11A within six months. Neither of these two options having been invoked, the order attained finality as against the revenue.

23. It need not be emphasized that there could not be two assessments for the same period.

24. This apart finally determined as due for the entire period of 10 years from the assessee having been settled under the Kar Vivad Samadhan Scheme, 1998, there is no scope for any further review or determination of that issue by any authority under the Act.

25. In *Hira Lal Hari Lal Bhagwati v. CBI*. [2003 (5) SCC 257], at page 274 this Court observed :

"We have carefully gone through the Kar Vivad Samadhan Scheme, 1998 and the certificate issued by the Customs Authorities. In our opinion, the GCS is immune from any criminal proceedings pursuant to the certificates issued under the said Scheme and the appellants are being prosecuted in their capacity as office-bearers of the GCS. As the customs duty has already been paid, the Central Government has not suffered any financial loss. Moreover, as per the Kar Vivad Samadhan Scheme, 1998, whoever is granted the benefit under the said Scheme is granted immunity from prosecution from any offence under the Customs Act, 1962 including the offence of evasion of duty. In the circumstances, the complaint filed against the appellants is unsustainable."

And at page 280 it was observed :

"The Kar Vivad Samadhan Scheme certificate along with *CBI v. Duncans Agro Industries Ltd.* - 1996 (5) SCC 591, and *Sushila Rani v. C.I.T.* - 2002 (2) SCC 697, judgments clearly

absolve the appellants herein from all charges and allegations under any other law once the duty so demanded has been paid and the alleged offence has been compounded. It is also settled law that once a civil case has been compromised and the alleged offence has been compounded, to continue the criminal proceedings thereafter would be an abuse of the judicial process."

26. Thus, after the grant of certificate under the Kar Vivad Samadan Scheme, 1998 as having settled the dispute and payment of the amount determined no further proceedings could be initiated or proceeded with for the period in question.

27. For the reasons stated above, we do not find any substance in the appeals filed by the Revenue. Accordingly, Civil Appeal Nos. 4075-4076 of 2001 are dismissed and the order passed by the Tribunal in this respect is affirmed.

28. Taking up the appeal of the assessee, it may be noted that the proposed penalty was under Rule 9(2) and 52A. This Court in *N.B. Sanjana v. Elphinstone Spg. & Wvg. Mills Co. Ltd.* [1971 (1) SCC 337], at page 348 held as under :

"To attract sub-rule (2) of Rule 9, the goods should have been removed in contravention of sub-rule (1). It is not the case of the appellants that the respondents have not complied with the provisions of sub-rule (1). We are of the opinion that in order to attract sub-rule (2), the goods should have been removed clandestinely and without assessment. In this case there is no such clandestine removal without assessment. On the other hand, goods had been removed with the express permission of the Excise authorities and after order of assessment was made. No doubt the duty payable under the assessment order was nil. That, in our opinion, will not bring the case under sub-rule (2)."

29. In the present case there is not even an allegation much less finding by the department that there has been any clandestine removal of goods without assessment. As such the penalty is liable to be set aside. The matter having been settled in the Kar Vivad Samadan Scheme, 1998 the question of determination of the duty payable or levy of penalty did not arise. In our view, the Tribunal clearly erred in upholding the levy of penalty. Accordingly, Civil Appeal No. 754 of 2001 filed by the assessee is accepted and the penalty levied is ordered to be deleted.

30. These two sets of appeals are disposed of in the above terms leaving the parties to bear their own costs.

**[NOTE : Text corrected as per Corrigenda Published in
2006 (204) E.L.T. 640 (25th December, 2006 - Vol. 204 : Part 4)]**

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2023 (76) G.S.T.L. 191 (Jhar.)

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Rongon Mukhopadhyay and Deepak Roshan, JJ.

AMBEY MINING PVT. LTD.

Versus

COMMISSIONER OF STATE TAX, DHURWA

W.P. (T) No. 361 of 2023, decided on 17-7-2023

Demand and recovery - Show cause notice - Res judicata - Period April, 2019 to November, 2019 - Interest was demanded for delay in filing of GSTR-3B returns - Petitioner's appeal was allowed by First Appellate Authority - Fresh adjudication proceedings were initiated for self-same cause of action, already finalized by First Appellate Order - Two show cause notices issued by different authorities for same period - HELD : First Appellate Order attained finality as per Section 107(16) of CGST Act, 2017 - Revenue could not re-agitate and issue fresh show cause notices again for same cause of action covering same period against which order passed by First Appellate Authority had been accepted by Department and same had attained finality - Fresh proceedings was contrary to settled law - Impugned Show Cause Notices were devoid of jurisdiction and hit by res judicata - Those are to be quashed and set aside - Section 73 read with Section 107 of Central Goods and Services Tax Act, 2017 - Section 73 read with Section 107 of Jharkhand Goods and Services Tax Act, 2017 - Rule 142 of Central Goods and Services Tax Rules, 2017 - Rule 142 of Jharkhand Goods and Services Tax Rules, 2017. [paras 8 to 10]

Application allowed in favour of assessee

CASES CITED

- Commissioner v. Gujarat State Fertilisers and Chem. Ltd. — 2008 (229) E.L.T. 9 (S.C.) — *Referred*..... [Para 8]
Commissioner v. Prince Gutkha Ltd. — 2015 (322) E.L.T. 165 (S.C.) — *Referred*..... [Para 8]
Duncans Industries Ltd. v. Commissioner — 2006 (201) E.L.T. 517 (S.C.) — *Referred*..... [Para 5]
Godavari Commodities Ltd. v. Union of India — 2020 (33) G.S.T.L. 16 (Jhar.) — *Referred* [Para 4]
Mahadev Construction Co. v. Union of India — 2020 (36) G.S.T.L. 343 (Jhar.) — *Referred*. [Para 4]
Union of India v. Vicco Laboratories — 2007 (218) E.L.T. 647 (S.C.) — *Referred*..... [Para 5]

NOTIFICATIONS CITED

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Notification No. 13/2017-C.T., dated 28-6-2017..... [Paras 6, 11]
 Notification No. 451, dated 29-7-2017..... [Paras 6, 11]
 Notification No. 31/2020-C.T., dated 3-4-2020..... [Paras 6, 11]
 Notification No. 31/2020-S.T., dated 25-6-2020..... [Paras 6, 11]

REPRESENTED BY : S/Shri K. Kurmy, N.K. Pasari and Ms. Sidhi Jalan, Advocates, for the Petitioner.

Shri Ashutosh Anand, AAG-III, for the Respondent.

[Judgment (CAV)]. - Heard Learned Counsel for the parties.

2. The instant writ application has been preferred for following reliefs :-

- (i) For issuance of an appropriate writ(s), order(s), or direction(s) for quashing and setting aside the impugned Show Cause Notice dated 16-9-2022 bearing Ref. No. 1131, dated 16-9-2022 along with Summary of Show Cause Notice in Form GST-DRC-01, dated 16-9-2022 which are at Annexure-1 hereto, issued by the respondent No. 3 for the period April, 2019 to March, 2020 in purported exercise of powers conferred under section 73, Section 75(120), Section 50 of the Jharkhand Goods and Service Tax Act, 2017 read with Rule 142(1) of the Jharkhand Goods and Service Tax Act, 2017 read with Rule 142(1) of the Jharkhand Goods and Services Tax Rules, 2017;
- (ii) For issuance of an appropriate writ(s), order(s), or direction(s) for quashing and setting aside the impugned Show Cause Notice dated 20-10-2022 bearing Ref. No. 1510 along with Summary of Show Cause Notice in Form GST-DRC-01, dated 20-10-2022 which are at Annexure-2 hereto, issued by the respondent no. 2 for the period April, 2019 to March, 2020 in purported exercise of powers conferred under section 73 of the Jharkhand Goods and Services Tax Act, 2017 read with Rule 142(1)(a) of the Jharkhand Goods and Services Tax Rules, 2017;

3. The brief fact of the case is that the petitioner is registered with the State GST Authorities under the Jharkhand Goods and Services Tax Act, 2017/Central Goods & Services Tax Act, 2017 vide GSTIN No. 20AAFCA2578R1ZD. The case of the petitioner is that two show cause notices were issued and both impugned show cause notices are for the same period for the self-same cause of action (except March, 2020) issued by two different authorities i.e., the Deputy Commissioner of State Tax, West Circle, Ranchi, the Respondent No. 2 and the Assistant Commissioner of State Tax, West Circle Ranchi, the Respondent No. 3. Both the impugned show cause notices (except to the extent of March, 2020) attempted to start a fresh adjudication proceeding in respect of the self-same cause of action which has already attained finality by First Appellate Order dated 16-1-2021.

As per the petitioner, their monthly GSTR-3B returns for the following months under Section 39 of the JGST Act/Rule 61 of the JGST Rules were filed with some delay as tabulated below :

Delay in filing GSTR-3B returns

Sl. No.	Month	Due Date	Date of filing	Delay
1.	April-2019	20-5-2019	14-6-2019	25
2.	May-2019	20-6-2019	20-8-2019	61
3.	Jun.-2019	20-7-2019	21-8-2019	32
4.	Aug.-2019	20-9-2019	21-9-2019	1
5.	March, 2020	20-4-2020	6-5-2020	16

Precisely, there was delay in filing returns on which interest is demanded. As far as delayed payment of tax is concerned; the Petitioner has already discharged interest of Rs. 23,95,500/- which is not the subject matter of dispute in the instant case.

4. By the impugned show cause notice dated 16-9-2022 interest is demanded not for delayed payment of tax but for delayed filing of GSTR-3B returns. In the first round of litigation, the respondent No. 2, straight away passed order No. 22, dated 14-3-2020 (Ref. No. ZA200320001253R) in purported exercise of powers under Section 73 of the JGST Act and issued

Summary Order in FORM DRC-07, dated 16-3-2022 in exercise of powers under Rule 100/Rule 142(5) confirming interest demand of Rs. 61,45,233.94/- (IGST Rs. 3,17,399.96 + CGST Rs. 28,99,045.40 + SGST Rs. 29,28,788.58) for the period April, 2019 to November, 2019 for purported delay in filing of GSTR-3B returns under Section 39(1) of the JGST Act read with Rule 61 (5) of the JGST Rules, 2017 for the period April, 2019 to November, 2019. The Respondent No. 2 before passing the said adjudication Order dated 14-3-2020 did not issue any show cause notice as mandated under Section 73 of the JGST Act, 2017, and on this ground the Petitioner-Company challenged the order dated 14-3-2020/DRC-07, dated 16-3-2020 before the Joint Commissioner of State Tax (Appeals), Ranchi U/s. 107 of the JGST Act.

The Joint Commissioner of State Tax (Appeals) Ranchi *vide* 1st Appellate Order dated 16-1-2021 accepted the contentions of the Petitioner and allowed the appeal filed by the Petitioner and determined the interest as NIL. The First Appellate Authority held that the Respondent No. 2 should have started proceedings in accordance with provisions of Section 73 of the JGST Act before creating the interest demand following judgments of this Court in *Godavari Commodities Ltd. v. UOI* [2020 (33) G.S.T.L. 16 (Jhar.) = [2020] 114 taxmann.com 563 (Jhar.)] and *Mahadev Construction Co. v. UOI* [2020 (36) G.S.T.L. 343 (Jhar.) = [2020] 116 taxmann.com 262/[2020] 81 GST 271 (Jharkhand)].

However, after more than 20 months of passing of 1st Appellate Order dated 16-1-2021 by the Joint Commissioner of State Tax (Appeal) Ranchi, the Respondent No. 3, initiated fresh proceeding by way of the impugned Show Cause Notice bearing Ref. No. 1131 under Section 73(1) read with Section 75(12) of the JGST Act, 2017 read with Rule 142(1) of the JGST Rules, 2017 demanding interest of Rs. 45,59,626.86/- for the same period *i.e.*, April, 2019 to November, 2019, and for the same cause of action which was already adjudicated and Petitioner's appeal was allowed by the First Appellate Authority. In the impugned Show Cause Notice interest of Rs. 6,63,025/- is also additionally demanded for the month of March, 2020, a period, which is not covered in the 1st Appellate Order dated 16-1-2021.

The Petitioner *vide* its reply dated 21-9-2022 challenged the jurisdictional legality and authority of the Respondent No. 3 in issuing the impugned show cause notice dated 16-9-2022. The Respondent No. 2, after issuance of impugned first Show Cause Notice dated 16-9-2022, issued the impugned Second Show Cause Notice dated 20-10-2022 bearing Ref. No. 1510 along with Summary of Show Cause Notice dated 22-10-2022 in Form GST-DRC-01 in purported exercise of powers conferred under Section 73 of the JGST Act, 2017 read with Rule 142(1) of the JGST Rules, 2017 for the second time, for the same period *i.e.*, April, 2019 to November, 2019, proposing demand of interest of Rs. 37,49,732.75/- (IGST Rs. 2,05,233.63 + CGST Rs. 18,58,308.02 + SGST Rs. 16,86,191.10) under Section 50 for the same cause of action which is already adjudicated and first appeal is allowed *vide* First Appellate Order dated 16-1-2021 and has attained finality. In this impugned show cause notice the period of March, 2020 is not included.

5. Mr. K. Kurmy, Learned Counsel for the petitioner assisted by Mr. N.K. Pasari and Ms. Sidhi Jalan submits that the initiation of fresh proceedings once again by the impugned Show Cause Notices (Annexure-1 & Annexure 2) by the Respondent No. 3 & Respondent No. 2 for the same cause of action (except month of March, 2020 in Annexure-1) even after the First Appellate Order dated 16-1-2021 which was decided in favour of the Petitioner and has attained finality; is wholly without jurisdiction and bad in law and procedure and is also against the principles of *res judicata* contemplated in Section 11 of the Code of Civil Procedure, 1908.

Learned Counsel further submits that in the case of *UOI v. Vicco Laboratories* reported in 2007 (218) E.L.T. 647 (S.C.) = 2008 taxmann.com 520 (SC), it is held that reopening concluded assessment amounts to abuse of the process of law. It is held that when there is abuse of the process of law, writ under Article 226 would be maintainable. The Hon'ble Apex Court in the case of *Duncans Industries Ltd. v. CCE* reported in 2006 (201) E.L.T. 517 (S.C.) = 2006 taxmann.com 1489 (SC), has held that for the same period two assessments are not permissible in law.

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6. With respect of demand for March, 2020, Learned Counsel contended that the demand of interest of Rs. 6,63,025/- in the impugned first Show Cause Notice dated 16-9-2022 (Annexure-1) is erroneous and is contrary to State GST Notification No. 451, dated 29-7-2017 as amended by Notification No. 31/2020-State Tax, dated 25-6-2020 and corresponding Central GST Notification No. 13/2017-Central Tax, dated 28-6-2017 as amended by Notification No. 31/2020-C.T., dated 3-4-2020, whereby the rate of interest for the month of February, 2020 to April, 2020 was reduced to Nil for the first 15 days of delay and 9% thereafter in place of 18%, for registered persons having annual turnover above Rs. 5.00 Cr.

It has been contended that since the annual turnover of the Petitioner is above Rs. 5.00 Cr.; hence, they are entitled to the benefit of said notification. Considering the above extension of limitation for filing of GSTR-3B returns and reduction in the rate of interest, amount of Interest demand should have been Rs. 12,791.44 only for the month of March, 2020 as against demand of interest of Rs. 6,63,026/- in the impugned Show Cause Notice dated 16-9-2022 for the month of March, 2020. Relying upon the aforesaid contentions, Mr. Kurmy submits that both the impugned show cause notices deserve to be quashed.

7. Mr. Ashutosh Anand, Learned AAG-III for the revenue submits that the returns filed by the petitioner for the period 2019-2020 were duly scrutinized by the concerned Assessing Officer. Based on available documents on records, an order No. 22, dated 14-3-2020 under the JGST Act, 2017 was passed as the same found mentioned in Summary Order mentioned in Form GST DRC-07, inclusive of interest and penalty for an amount of Rs. 61,45,233.94. It is categorically mentioned in Form DRC-07 that the reason for passing the said order is for 'delay in filing the return'. Further, the Form GST DRC-07, dated 16-3-2020 specifies that the demand is created under other section of GST Act and not what petitioner is submitting that said order was passed under Section 73 of the JGST Act.

Learned Counsel further submits that after perusing the Appellate Authority order dated 16-1-2021, the concerned authority after finding that the proceeding under 73 of the JGST Act is inevitable, a Show Cause Notice along with Form DRC-01 having reference No. 1131, dated 16-9-2022 was issued to the petitioner. Subsequently, looking into the importance of the matter the Circle In-charge DCST, West Circle, Ranchi took over the matter and issued a Show Cause Notice in Form DRC-01 vide process No. 1510, dated 20-10-2022 to the petitioner. Since the matter was taken over by the D.C.S.T., hence he had to issue fresh Show Cause Notice to provide the taxpayer opportunity of being heard. Consequently, the D.C.S.T. issued the notice in DRC-01 along with show cause notice.

He contended that as on date the proceeding as initiated under Section 73 of the JGST Act by the 'Assistant Commissioner of State Tax' has been taken over by the Deputy Commissioner of State Taxes, West Circle, Ranchi and only one proceeding under Section 73 of the JGST Act is going on. The simultaneous proceeding under Section 73 before two (2) authorities for the same period was an administrative process, which occurred due to reason above stated.

He lastly submits that the instant writ application is devoid of any merit and deserves to be dismissed.

8. Having heard Learned Counsel for the parties and after going through the averments made in the respective affidavits and the documents annexed therein; it is evident that the first Appellate Order dated 16-1-2021 passed by the Joint Commissioner of State Tax (Appeals), Ranchi was accepted by the department and no further appeal was filed and thus; the same has attained finality and therefore the same issue or cause of action cannot be re-agitated in a fresh proceeding as the same is contrary to settled proposition of law.

It further transpires that Section 107(16) of the JGST Act provides that every 1st appellate order passed thereunder shall be final unless subjected to Revision under Section 108, appeal to Tribunal under Section 113 or appeal to High Court under Section 117 or appeal to Supreme Court under Section 118 of the JGST Act. In the instant case, since the 1st appellate order is not subjected

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to Section 108, Section 113, Section 117, Section 118; thus, by virtue of sub-section (16) of Section 107, it has attained finality.

The Hon'ble Apex Court in the case of *CCE v. Prince Gulkha Ltd.* reported in (2015) 15 SCC 775 = 2015 (322) E.L.T. 165 (S.C.) has held that adjudicating authority dropping earlier demand accepting explanation of Assessee, issuance of second show cause notice on same cause of action, not permissible. Paragraph-3 of the said order is extracted herein below :

"3. Insofar as the issue of clandestine removal of goods by Respondent 1 is concerned, we find that on the statement of Respondent 5 given earlier, the adjudicating authority had dropped the proceedings accepting the explanation furnished. In view thereof, CESTAT has held that there could not have been second show cause notice on the same cause of action. In this behalf we do not find any error in the order passed by CESTAT."

In the case of *CCE v. Gujarat State Fertilisers and Chem. Ltd.* reported in (2008) 15 SCC 46 = 2008 (229) E.L.T. 9 (S.C.) it is held by the Hon'ble Apex Court that order of the Tribunal has attained finality due to non-filing of appeal by the department. Hence, appeal on the same issue is not maintainable which has already attained finality. Paragraph-9 of the said order is quoted herein below :

"9. On the second contention raised by the respondent, namely, that as per rule 57B(1) (iv), the Modvat credit was available on the inputs used for generation of electricity or steam, used for manufacture of final products or for any other purpose, within the factory of production, the Tribunal decided the case in favour of the assessee relying upon a decision of the Tribunal in *Raymond Ltd. v. CCE* [(2000) 37 RLT 447 (CEGAT)], wherein it has been held that the Modvat credit would be available on inputs used to manufacture steam which was in turn used for manufacture of exempted or nil duty rated final product or for any other purpose. It is stated before us that no appeal has been preferred by the Revenue against the decision in the aforesaid case. The same has thus become final."

9. At this stage it is pertinent to mention here that under Section 112(3) of the JGST Act, the Commissioner may, on his own motion or upon request from the Commissioner of Central Tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or under the Central Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed, for determination of such points arising out of said order as may be specified by the Commissioner in his order. Further, Section 112(4) of the JGST Act provides that where in pursuance of an order under Section 112(3) the authorized officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it is an appeal made against the order under Section (11) of Section 107.

The Respondents in the instant case being not aggrieved by the First Appellate Order dated 16-1-2021, did not challenge the same or availed remedies available under the law but accepted the same and allowed the same to attain finality; thus now they cannot be allowed to turn around and re-agitate a matter afresh which has already come to an end by due process of law.

10. It is also relevant to indicate that Section 107(11) envisages that the 1st Appellate Authority cannot remand the matter back. In such circumstances, to bypass the embargo of law, restarting fresh proceeding by lower authorities amounts to doing something indirectly which cannot be done directly. As per Section 107(11) of the JGST Act, no power is vested on the First Appellate Authority to remand the matter back to the assessing authority that passed the order. Therefore, since there is no power vested in the first appellate authority to remand the matter back to the Respondent No. 2 or Respondent No. 3 to initiate a *de novo* proceeding; the first appellate authority accordingly and rightly so, did not remand the matter back to the Respondent No. 2 or Respondent No. 3 for initiation of any fresh proceedings. Under the circumstances the Respondent No. 2 and/or the Respondent No. 3 are not vested with power to issue the impugned Show Cause Notices.

Having regard to the discussions made herein above the Revenue cannot re-agitate and

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issue fresh show cause notices again for the same cause of action covering same period against which the Order passed by the First Appellate Authority has been accepted by the Respondents and same has attained finality. The actions of the Respondent No. 2 and the Respondent No. 3 is therefore bad in law and is without jurisdiction and is further hit by the principles of *res judicata* and is clearly not permissible under the law. As stated herein above, after passing of the 1st appellate order, only course available with the Respondents were to challenge the first Appellate Order dated 16-1-2021 before the Appellate Tribunal under Section 112 of the JGST Act, if at all aggrieved, and therefore, the impugned Show Cause Notices are wholly without jurisdiction, without authority of law and also barred by principles of *res judicata*.

11. So far as the demand of interest with respect of March, 2020 is concern; the demand of interest of Rs. 6,63,025/- in the impugned first Show Cause Notice dated 16-9-2022 (Annexure-1) is also erroneous and is contrary to State GST Notification No. 451, dated 29-7-2017 as amended by Notification No. 31/2020-State Tax, dated 25-6-2020 and corresponding Central GST Notification No. 13/2017-Central Tax, dated 28-6-2017 as amended by Notification No. 31/2020-C.T., dated 3-4-2020. As per Notification No. 31/2020-State Tax, dated 25-6-2020 and Notification No. 31/2020-C.T., dated 3-4-2020 as a COVID-19 relaxation Measures, the rate of interest for the month of February, 2020 to April, 2020 was reduced to Nil for first 15 days of delay and 9% thereafter in place of 18%, for registered persons having annual turnover above Rs. 5.00 Cr. Since the annual turnover of the Petitioner is above Rs. 5.00 Cr.; hence, they are entitled to the benefit of said notification.

Considering the above extension of limitation for filing of GSTR-3B returns and reduction in the rate of interest, amount of Interest demand should have been Rs. 12,791.44/- only for the month of March, 2020 as against demand of interest of Rs. 6,63,026/- in the impugned Show Cause Notice dated 16-9-2022 for the month of March, 2020. Thus; the petitioner is liable to pay interest of Rs. 12,791.44/- only for the month of March, 2020 as against demand of interest of Rs. 6,63,026/-. Thus, the petitioner is directed to pay the same amount within a period of two weeks, if not paid, from the date of receipt/production of copy of this Order.

12. In view of the aforesaid findings and the judicial pronouncements, both the impugned show cause notices, are hereby, quashed and set-aside. As a result, the instant writ application is allowed in the manner indicated herein above. I.A., if any, also stands disposed of.

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2022 (56) G.S.T.L. 287 (All.)IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
Naheed Ara Moonis and Saumitra Dayal Singh, JJ.**V.S. ENTERPRISES**

Versus

STATE OF U.P.*Writ Tax No. 414 of 2021, decided on 29-7-2021*

GST : Multiple adjudication orders passed ex parte for overlapping tax periods involving same dispute by different adjudicating authorities would not be sustainable

Adjudication order - Multiple adjudication orders for a tax period involving same dispute by different adjudicating authorities - Sustainability of - Two show cause notices for overlapping periods from September, 2017 to December, 2017 and July, 2017 to March, 2018 issued and adjudicated by one adjudicating authority whereas third show cause for November, 2017 was issued and adjudicated by another authority - Department admitted that same happened on account of bona fide mistake - Second show cause notice covering entire period was adjudicated ex parte without hearing assessee - All orders were quashed and second show cause notice was directed to be adjudicated afresh after affording assessee reasonable opportunity of hearing - Section 74 of Central Goods and Services Tax Act, 2017. [paras 3, 5, 7 to 9]

Petition disposed of**REPRESENTED BY :** Shri Shubham Agrawal, Counsel, for the Petitioner.

[Order]. - Heard Shri Shubham Agrawal, Learned Counsel for the petitioner; Shri Manu Ghildyal, Learned Counsel for the Revenue and; Learned Standing Counsel for the State.

2. Challenge has been raised to the three orders, all dated 9-6-2021 passed by the respondent Nos. 2 and 3 (annexed as Annexure Nos. 3, 6 and 10 to the writ petition).

3. Briefly, it has been submitted that the respondent No. 2 issued two notices under Section 74 of Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act') being notices dated 22-9-2020 and 22-12-2020 for the period September, 2017 to December, 2017 and July, 2017 to March, 2018 respectively. Another notice dated 9-4-2021 is stated to have been issued under Section 74 of the Act by respondent No. 3 for the period November, 2017. Arising therefrom, three adjudication orders (all dated 9-6-2021), came into existence, that have been challenged in the

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present petition on account of the fact that for one tax period and for one dispute, there can only be a single adjudication order.

4. Upon such submissions, writ petition was entertained by order dated 14-7-2021. It reads as below :

"Heard Learned Counsel for the petitioner and Learned Standing Counsel for the responders.

Submission of Learned Counsel for the petitioner is that under scheme of the UP GST Act only one order of adjudication could have been passed for a tax period. In the present case, three notices have been issued for overlapping period which are wholly without jurisdiction. Simultaneously, orders have been passed in all three cases by two different authorities which again are wholly without jurisdiction. Reference has also been made to the Government Notification dated 1-5-2021. He submits that in any case no order could have been passed till the date to furnish reply as extended by the aforesaid notification had lapsed.

Matter requires consideration.

Sri C.P. Tripathi, Learned Standing Counsel prays for and is granted 10 days time to complete the Instructions.

Put up in the additional cause list on 29-7-2021.

In the meanwhile, no coercive measures shall be adopted against the petitioner in pursuance to the impugned order dated 9-6-2021 (Annexure nos. 3, 6 and 10 to the writ petition) passed by the respondent Nos. 2 and 3."

5. Today, on instructions, Shri Ghildyal submits that on account of the *bona fide* mistake committed, three orders came into existence, however, it is respondent No. 2 who had and continues to have jurisdiction to make proper adjudication.

6. In view of the fair statement made by Learned Counsel for the Revenue, no useful purpose would be served in keeping the present petition pending or calling for counter affidavit.

7. Undisputedly, three periods for which the orders had been passed are overlapping. Notice dated 22-12-2020 was issued by respondent No. 2 for the period July, 2017 to March, 2018. It covers the entire period and dispute being sought to be adjudicated in the other two notices as well.

8. At the same time, we find that by notice dated 22-12-2020, next date fixed was 5-1-2021 but the petitioner could not participate in the same on account of the spread of pandemic COVID-19. Also, in that regard, it has been brought to our notice that realizing the difficulties from the spread of pandemic COVID-19, the Government had itself issued an order dated 1-5-2021 extending the period to submit reply and responses, up to 30-5-2021. Subsequently, it was extended up to 30-6-2021. In light of that fact, the order dated 9-6-2021 is clearly an *ex parte* order, which has been passed without allowing due opportunity of hearing to the petitioner.

9. In view of the above, present writ petition is *disposed of* with the following terms :

- (i) the orders dated 9-6-2021 passed by respondent No. 2 for the period September, 2017 to December, 2017 and the order dated 9-6-2021 passed by respondent No. 3 for the period November, 2017 are quashed.
- (ii) So far as the order dated 9-6-2021 passed by respondent No. 2 for the period July, 2017 to March, 2018 is concerned, the same arises from the proceedings initiated by notice dated 22-12-2020. That order dated 9-6-2021 is set aside and the matter remitted to respondent No. 2 to pass a fresh adjudication order after affording the petitioner reasonable opportunity of being heard. However, it is provided that the petitioner shall file his reply to the notice dated 22-12-2020 within a period of one month from today,

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not later than 31 August, 2021. Further proceedings may be conducted and concluded strictly in accordance with law.

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2023 (77) G.S.T.L. 55 (Cal.)

IN THE HIGH COURT AT CALCUTTA
T.S. Sivagnanam, C.J. and Hiranmay Bhattacharyya, J.

SUNCRAFT ENERGY PVT. LTD.

Versus

ASSISTANT COMMISSIONER, STATE TAX, BALLYGUNGE CHARGE

M.A.T. No. 1218 of 2023 with I.A. No. CAN 1 of 2023, decided on 2-8-2023

Input Tax Credit - Reversal of credit - Non-reflection of supplier's invoice in GSTR-2A - Period 2017-18 - Revenue reversed appellant's input tax credit alleging non-reflection of supplier invoices in GSTR-2A - Appellant argued compliance with Section 16(2) of CGST Act, 2017 and payment to supplier via valid tax invoice - HELD : Press release dated 18-10-2018 clarifies GSTR-2A for taxpayer facilitation and does not impact input tax credit availing - Reversal of credit from buyer is optional except under exceptional circumstances of collusion, missing supplier, or lack of assets - Appellant had clarified invoice possession and payment via bank statements - Revenue failed to inquire on supplier despite clarifications - Court has already held denial of credit due to supplier's default as unconstitutional - Show cause notice found faults with appellant's GSTR-1 and not with tax invoice possession or receipt - Hence, action against supplier was essential before seeking reversal from appellant - Revenue's action deemed to be arbitrary - Impugned order was to be set aside and authorities had to follow CBIC guidelines - Section 16 of Central Goods and Services Tax Act, 2017 - Section 16 of West Bengal Goods and Services Tax Act, 2017. [paras 8, 9 and 10]

Appeal allowed in favour of assessee

CASES CITED

- Arise India Ltd. v. Commissioner of Trade and Taxes — 2018 (10) G.S.T.L. 182 (Del.) — *Followed* [Para 6]
Commissioner of Trade and Taxes v. Arise India Ltd. — 2022 (60) G.S.T.L. 215 (S.C.) — *Referred* [Para 6]
Union of India v. Bharti Airtel Ltd. — 2021 (54) G.S.T.L. 257 (S.C.) — *Followed* [Paras 4, 6]

DEPARTMENTAL CLARIFICATIONS CITED

C.B.I. & C. Press Release dated 18-10-2018..... [Paras 4, 5, 10]

C.B.I. & C. Press Release dated 4-5-2018 [Paras 4, 5, 10]

REPRESENTED BY : S/Shri Ankit Kanodia, Ms. Megha Agarwal and Jitesh Sah, Advocates, for the Appellant.

S/Shri Anirban Ray, Ld. Govt. Pleader, Md. T.M. Siddiqui, Ld. A.G.P. and S. Sanyal, Advocate, for the Respondent.

[Judgment per : T.S. Sivagnanam, C.J.] - This intra Court appeal filed by the writ petitioner is directed against the order passed in WPA No. 12153 of 2023 dated 21-6-2023. The appellant had impugned the order passed by the Assistant Commissioner of State Tax, Ballygunge Charge, the Respondent No. 1, date 20-2-2023 by which the first respondent reversed the input tax credit availed by the appellant under the provisions of West Bengal Goods and Services Tax Act, 2017 (WBGST Act). The 4th respondent is a supplier of the appellant who provided supply of goods and services to the appellant who had made payment of tax to the fourth respondent at the time of effecting such purchase along with the value of supply of goods/services. However, in some of the invoices of the said supplier was not reflected in the GSTR 2A of the appellant for the Financial Year 2017-18. The first respondent issued notices for recovery of the input tax credit availed by the appellant and the grievance of the appellant is that without conducting any enquiry on the supplier namely, the fourth respondent and without effecting any recovery from the fourth respondent, the first respondent was not justified in proceeding against the appellant. It is seen that a scrutiny of the return submitted by the appellant was made under Section 61 of the Act for the Financial Year 2017-18 which was followed by a notice dated 3-8-2022 stating that certain discrepancies were noticed. The appellant had submitted their reply dated 24-8-2022. Thereafter the appellant was served with the show-cause notice dated 6-12-2022 proposing a demand as to the excess ITC claimed by the appellant for the Financial Year 2017-18 on the basis of the difference of the amount of ITC in Form GSTR-2A and Form GSTR-3B with respect to the purchase transaction made by the appellant with the fourth respondent. The appellant filed detailed replies on 6-1-2023 and 11-1-2023, denying the allegations made in the show-cause notice and among other things submitted that the appellant had made payment of tax to the fourth respondent arising from the transaction and thereafter availed ITC on the said purchase. The show-cause notice was adjudicated and by order dated 20-2-2023 a demand for payment of tax of Rs. 6,50,511/- along with applicable interest and penalty was confirmed under Section 73(10) of the Act. Challenging the said order, the appellant had filed the writ petition. The Learned Single Bench by the impugned order disposed of the writ petition by directing the appellant to prefer a statutory appeal before the appellate authority after complying with the requisite formalities and the appellate authority was directed to dispose of the appeal without rejecting the same on the ground of limitation. Aggrieved by such order, the appellant has preferred the present appeal.

2. We have heard Mr. Ankit Kanodia assisted by Ms. Megha Agarwal and Mr. Jitesh Sah, Learned Advocates for the appellant and Mr. T.M. Siddique, Learned Government Counsel for the respondent.

3. For a dealer to be eligible to avail credit of any input tax, the conditions prescribed in Section 16(2) of the Act have to be fulfilled. Sub-section (2) of Section 16 commences with a *non obstante* clause stating that notwithstanding anything contained in Section 16 no registered person shall be entitled to 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 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;
- (c) subject to the provisions of section 41 or section 43A, 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 such supply; and
- (d) he has furnished the return under section 39.

4. It is the case of the appellant that they have fulfilled all the conditions as stipulated under sub-section (2) of Section 16 and they also paid the tax to the fourth respondent, the supplier and a valid tax invoice has been issued by the fourth respondent for installation and commission services and the appellant had made payment to the fourth respondent within the time stipulated under the provisions of the Act. Thus, grievance of the appellant is that despite having fulfilled all the conditions as has been enumerated under Section 16(2) of the Act, the first respondent erred in reversing the credit availed and directing the appellant to deposit the tax which has already been paid to the fourth respondent at the time of availing the goods/services. In support of his contention, the Learned Counsel for the appellant had placed reliance on the decision of the Hon'ble Supreme Court in *Union of India (UOI) v. Bharti Airtel Ltd.* [(2022) 4 SCC 328 = 2021 (54) G.S.T.L 257 (S.C.) = [2021] 131 taxmann.com 319/[2022] 89 GST 1 (SC)]. The Learned Advocate for the appellant also placed reliance on the press release dated 18-10-2018 issued by the Central Board of Indirect Tax and Customs and also the press release dated 4-5-2018 to substantiate their argument that the ground on which the first respondent had passed the impugned order of recovery of tax is wholly unsustainable.

5. In the press release dated 18-10-2018 a clarification was issued stating that 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. Further, it has been clarified that the apprehension that ITC can be availed only on the basis of reconciliation between Form GSTR-2B and Form GSTR-3B conducted before the due date for filing of the return in Form GSTR-3B for the month of September, 2018 is unfounded and the same exercise can be done thereafter also. In the press release dated 4th May, 2018, it was clarified that there shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

6. The effect and purport of Form GSTR-2A was explained by the Hon'ble Supreme Court in *Bharti Airtel Ltd.* (supra) It was held that Form GSTR-2A is only a facilitator for taking a confirm decision while doing such self-assessment. Non-performance or non-operability of Form GSTR-2A or for that matter, other forms will be of no avail because the dispensation stipulated at the relevant time obliged the registered persons to submit return on the basis of such self-assessment in Form GSTR-3B manually on electronic platform. In *Arise India Ltd. and Ors. v. Commissioner of Trade and Taxes, Delhi and Ors.* [MANU/DE/ 3361/2017 = 2018 (10) G.S.T.L. 182 (Del.)], the challenge was to the constitutional validity of Section 9(2)(g) of the Delhi Value Added Tax Act, 2004 (DVAT Act) as being violative of Article 14 of 19(g) of the Constitution of India. Section 9(2) of the DVAT Act sets out the conditions under which tax credit or ITC would not be allowed. Sub-clauses (a) to (f) specify certain kinds of purchase which would not be eligible for the claim of ITC. Clause (g) of the Section 9(2) of the DVAT Act states that to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period, would not be eligible for claim of ITC. The question that arose for consideration was as to whether for the default committed by the selling dealer can the purchasing dealer be made to bear the consequences of the denying the ITC and whether it is the violation of Article 14 of the Constitution. After taking note of the language used in Section 9(2)(g) of the DVAT Act where the expression "dealer or class of dealers" occurring in Section 9(2)(g) of the DVAT Act should be interpreted as not including a purchasing dealer who has *bona fide* entered into purchase transaction with validly registered selling dealer who have issued tax invoices in accordance with Section 15 of the said Act where there is no mismatch of transactions in Annexures 2A and 2B and unless the expression "dealer or class of dealers" in Section 9(2)(g) is read down in the said manner, the entire provision would have to be held to be violative of Article 14 of the Constitution. It was further held that the result of such reading down would be that the department is precluded from invoking Section 9(2)

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(g) of DVAT Act to deny the ITC to the purchasing dealer who had *bona fide* entered into a purchase transaction with the registered selling dealer who had issued a tax invoice reflecting the TIN number and 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 a defaulting selling dealer to recover such tax and not denying the purchasing dealer the ITC. It was further held that where however, the department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the department can proceed under Section 40A of the DVAT Act. With the above conclusion, the default assessment orders of tax interest and penalty were set aside. The decision in *Arise India Ltd.* (supra) was challenged before the Hon'ble Supreme Court by the *Government in Commissioner of Trade and Taxes, Delhi v. Arise India Ltd.* and the special leave petition was dismissed by judgment dated 10-1-2018, reported in MANU/SCOR/01183/2018 = 2022 (60) G.S.T.L. 215 (S.C.). Though the above decision arose under the provisions of the Delhi Value Added Tax Act, the scheme of availment of Input Tax Credit continues to remain the same even under the GST regime though certain procedural modification and statutory forms have been made mandatory.

7. In the show cause notice dated 6-12-2022, the allegation was that the appellant had submitted that the fourth respondent has not shown the Bill in GSTR 1 and hence the appellant is not eligible to avail the credit of the input tax as per Section 16(2) of the WBGST Act, 2017 as the tax charged in respect of such supply has not been actually paid to the Government. The show cause notice does not allege that the appellant was not in possession of a tax invoice issued by the supplier registered under the Act. There is no denial of the fact that the appellant has received the goods or services or both.

8. In the reply submitted by the appellant to the said show cause notice the appellant had clearly stated that they are in possession of the tax invoice, they had received the goods and services or both and the payment has been made to the supplier of the goods or services or both. The reason for denying the input tax credit is on the ground that the detail of the supplier is not reflecting in GSTR 1 of the supplier. The appellant had pointed out that they are in possession of a valid tax invoice and payment details to the supplier have been substantiated by producing the tax invoice and the bank statement. The appellant also referred to the press release dated 18-10-2018. What we find is that the first respondent has not conducted any enquiry on the fourth respondent supplier more particularly when clarification has been issued where furnishing of outward details in Form GSTR 1 by a corresponding supplier and the facility to view the same in Form GSTR 2A by the recipient is in the nature of tax payer facilitation and does not impact the ability of the tax payers to avail input tax credit on self-assessment basis in consonance with the provisions of Section 16 of the Act. Furthermore, it was clarified that there shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by seller. Further it is clarified that in case of default in payment of tax by the seller recovery shall be made from the seller however, reversal of credit from the buyer shall also be an option available with the revenue authorities to address the exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

9. The first respondent without resorting to any action against the fourth respondent who is the selling dealer has ignored the tax invoices produced by the appellant as well as the bank statement to substantiate that they have paid the price for the goods and services rendered as well as the tax payable there on, the action of the first respondent has to be branded as arbitrarily. Therefore, before directing the appellant to reverse the input tax credit and remit the same to the government, the first respondent ought to have taken action against the fourth respondent the selling dealer and unless and until the first respondent is able to bring out the exceptional case where there has been collusion between the appellant and the fourth respondent or where the fourth respondent is missing or the fourth respondent has closed down its business or the fourth respondent does not have any assets and such other contingencies, straight away the first respondent was not justified in directing the appellant to reverse the input tax credit availed by them. Therefore, we are of the view that the demand raised on the appellant dated 20-2-2023 is not sustainable.

10. In the result, the appeal is allowed, the orders passed in the writ petition is set aside and the order dated 20-2-2023 passed by the first respondent namely the Assistant Commissioner, State

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Tax, Ballygaunge Charge, is set aside with a direction to the appropriate authorities to first proceed against the fourth respondent and only under exceptional circumstance as clarified in the press release issued by the Central Board of Indirect Taxes and Customs (CBIC), then and then only proceedings can be initiated against the appellant. With the above observations and directions the appeal is allowed.

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1978 (2) E.L.T. (J 159) (S.C.)

IN THE SUPREME COURT OF INDIA

J.C. Shah, Acting C.J.I., V. Ramaswami and A.N. Grover, JJ.

HINDUSTAN STEEL LTD.*Versus***STATE OF ORISSA***Civil Appeal Nos. 883 to 892 of 1966, decided on 4-8-1969***Penalty for technical breaches. -**

No penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the bona-fide belief that the offender is not liable to act in the manner prescribed by the statute.[para 7]

[Judgment per : J.C. Shah, Acting., C.J.] - M/s. Hindustan Steel Ltd., a Company incorporated under the Indian Companies Act, 1913 is a Government of India undertaking in the public sector. The Company is registered as a dealer under the Orissa Sales Tax Act, 1947 (14 of 1947), from the last quarter ending March, 1959.

2. Between 1954 and 1959 Company was erecting factory buildings for the steel plant, residential buildings for its employees and ancillary works such as roads, water supply, drainage. Some constructions were done departmentally and the rest through contractors. The Company supplied to the contractors for use in construction, bricks, coal, cement, steel, etc., for consideration and adjusted the value of the goods supplied at the rates specified in the tender.

3. In proceedings for assessment of tax under the Orissa Sales Tax Act, 1947, the Sales Tax Officer held that the Company was a dealer in building material, and had sold the material to contractors and was on that account liable to pay tax at the appropriate rates under the Orissa Sales Tax Act. The Sales Tax Officer directed the Company to pay tax due for ten quarters ending December 31, 1958, and penalty in addition to the tax for failure to register itself as a dealer. The Appellate Assistant Commissioner confirmed the order of the Sales Tax Officer. In second appeal the Tribunal agreed with the tax authorities and held that the Company was liable to pay tax on its turnover from bricks, cement and steel supplied to the contractors. The Tribunal however substantially reduced the penalty imposed upon the Company.

* * *

5. In these appeals filed with special leave substantially three matters fall to be determined :

(1) Whether the Company sold building material to the contractors during the quarters in question ?

(2) Whether the Company was a dealer in respect of building material within the meaning of the Orissa Sales Tax Act ?

(3) Whether imposition of penalties for failure to register as a dealer was justified ?

Solution of the first and the third matters does not present much difficulty. At the relevant time 'sale' was defined by Section 2(g) of the Orissa Sales Tax Act as follows :-

"Sale" means, with all its grammatical variations and cognate expressions, any transfer of property in goods for cash or deferred payment or other valuation consideration, including a transfer of property in goods involved in the execution of contract, but does not include a mortgage, hypothecation, charge or pledge :

* * * *

6. The Company supplied building material to the contractors at agreed rates. There was concurrence of the four elements which constitute a sale - (1) the parties were competent to contract; (2) they had mutually assented to the terms of contract; (3) absolute property in building materials was agreed to be transferred to the contractors; and (4) price was agreed to be adjusted against the dues under the contract. No serious argument was advanced before us that the supply of building material belonging to the Company for an agreed price did not constitute a sale.

7. Under the Act penalty may be imposed for failure to register as a dealer : Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out.

* * * *

IN THE HIGH COURT FOR THE STATE OF TELANGANA

W.P. No.

of 2024

BETWEEN:

M/s. Silver Oak Villas LLP,
Telangana- 500003

... Petitioner

AND

The Assistant Commissioner of Central tax,
and Others

... Respondents

I, Mangilipelli Jayaprakash, S/o M Venkataiah, aged about 49 years, residing at 3-4-63/13/C/1, Aravinda Nagar, Ramanthapur, Hyderabad, Telangana-500013, the Petitioner in the above Petition do hereby appoint and retain:

MOHAMMAD SHABAZ (22207)

VENKATA PRASAD P

ANKITA MEHTA

JAISHANKAR D

Advocates

4th Floor, Srida Anushka Pride, Road No.12, Banjara Hills, Hyderabad, Telangana - 500 034

Advocate /s of the High Court to appear for me/us in the above appeal/petition and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any applications connected with the same or any decree or order passed therein including all applications for return of documents or the receipt of any money that may be payable to me / us the said appeal/petition and also to appear in all application under Clause XV of the Letter patent and in all applications for review and for leave to the Supreme Court of India and in all applications review of judgment.



I Certify the contents of this VAKALAT were read out and explained in (TELUGU/URDU/HINDI/ENGLISH) in my presence to the executants' of executants who appeared perfectly to understand same and made his/her/their signatures mark in my presence.

Identified by:

Executed before this day of July 2024.

ADVOCATE/HYDERABAD

IN THE HIGH COURT FOR THE STATE OF
TELANGANA

W.P. No. OF 2024

VAKALAT

ACCEPTED

Date: .07.2024

MOHAMMAD SHABAZ (22207)
VENKATA PRASAD P
ANKITA MEHTA
JAISHANKAR D
Advocates
Counsel for Petitioner

Address for Service:

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Banjara Hills, Hyderabad, Telangana - 500 034
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Phone: 8978114341

MEMORANDUM OF WRIT PETITION MISCELLANEOUS PETITION
(Filed Under Section 151 of C.P.C.)
IN THE HIGH COURT FOR THE STATE OF TELANGANA

I.A No. OF 2024
IN

W.P. No. OF 2024

BETWEEN

M/s. Silver Oak Villas LLP,
5-4-187/3, 2nd Floor, Soham Mansion,
M.G Road, Secunderabad,
Telangana- 500003

Represented by the Manager
Shri. Mangilipelli Jayaprakash, S/o M Venkataiah,
Aged 49 years, R/o. 3-4-63/13/C/1, Aravinda Nagar,
Ramanthapur, Hyderabad, Telangana-500013

...Petitioner

-Vs-

1. The Assistant Commissioner of Central tax,
Secunderabad Division, Salike Senate,
D. No. 2-4-416 & 417, Ramgopal pet, M.G. Road,
Secunderabad – 500003
2. Assistant Commissioner of Central tax,
Audit-II Commissionerate, Sanvi Yamuna Pride,
Madhapur, Hi-Tech City, Hyderabad -500081
3. Additional Commissioner of Central tax,
Audit-II Commissionerate, Sanvi Yamuna Pride,
Madhapur, Hi-Tech City, Hyderabad -500081

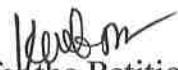
4. Union of India,
Ministry of Finance,
Represented by its Secretary,
North Block, New Delhi-110 001
5. State of Telangana
Through Principal Secretary to Government,
Revenue Department (Commercial Tax),
Hyderabad, Telangana
6. Central Board of Indirect Taxes and Customs,
GST Policy Wing, New Delhi
rep by its Commissioner

... Respondents

For the reasons stated accompanying in the affidavit it is humbly prayed that this Hon'ble Court may be pleased to stay operation of impugned Order-In-Original vide No. 24/2024-25(GST-Adjn) dated 19.04.2024 passed by the Respondent No.1 and pass such further or other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Place: Hyderabad

Date: 10-07-2024


Counsel for the Petitioner

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DISTRICT: HYDERABAD
IN THE HIGH COURT FOR THE
STATE OF TELANANGA

I.A. No. of 2024

IN
W.P. No. of 2024

STAY PETITION

FILED ON 20 07-2024

FILED BY:

MOHAMMAD SHABAZ(22207)
VENKATA PRASAD P
ANKITA MEHTA
JAISHANKAR D

ADVOCATES

COUNSEL FOR PETITIONER