O/c

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

Date: 01.08.2024
To
The Joint Commissioner of State Tax (Appeals),
Punjagutta, C.T Complex, Nampally
Hyderabad-500001.

Dear Sir,

Sub: Filing of attested copy of DRC-07 and Appeal in from GST APL – 01.

Ref: i. Appeal filed online against the Order No: ZD3604240584872 dated 25.04.2024 for the FY 2018-19 passed by the The Assistant Commissioner of State Tax, M.G Road-S.D Road, Begumpet, Telangana.

ii. GSTIN No:36ACXFS3783R2ZO pertaining to M/s. Silver Oak Reality.

1. We have been authorized by M/s. Silver Oak Reality to submit an appeal against the above-referred Order vide Reference no. ZD3604240584872 dated 25.04.2024 to represent before your good office and to do necessary correspondence in the above-referred matter. A copy of the authorization is attached to the appeal.
2. With reference to the above, we would like to bring to your notice that we have filed an appeal memorandum online vide provisional acknowledgement number AD3607240093165 against the above referred order passed by The Assistant Commissioner of State Tax, M.G Road-S.D Road, Begumpet, Telangana in Form GST APL-01 along with authorization and annexures.
3. In regard to this, we are herewith submitting the Appeal memorandum in duplicate for your perusal. We humbly request you to provide the final acknowledgement in Form GST APL-02 at the earliest.

Kindly acknowledge the receipt of the above and post the matter for hearing at the earliest.

Thanking You,
Yours truly
For M/s. H N A & Co. LLP
Chartered Accountants

R. Lakshman Kumar

CA K. Lakshman Kumar
Partner

H N A & CO LLP Hyderabad Chartered Accountants

Office of the Appellate Joint Commissioner (ST) 01 AUG 2024 Punjagutta Division, Hyderabad.

Enclosure:

1. Provisional Acknowledgement along with APL-01 form filed online.
2. 2 Copies of Complete Appeal Memorandum for each of the years along with the attested copy of order.

4th Floor, West Block, Srida Anushka Pride, R.No. 12, Banjara Hills, Hyderabad, Telangana - 500 034. INDIA.
040 2331 8128, 3516 2881 | sudhir@hnaindia.com | www.hnallp.com
Bengaluru | Hyderabad | Visakhapatnam | Gurugram (NCR) | Mumbai | Pune | Chennai | Guwahati | Vijayawada | Kolkata | Raipur | Kochi | Indore | Ahmedabad | Coimbatore

Provisional Acknowledgement for submission of Form of Appeal

Your appeal has been successfully submitted against	**AD3607240093165**
GSTIN/UIN/Temporary ID	36ACXFS3783R2ZO
Date of filing	23/07/2024
Time of filing	19:21
Place of filing	Hyderabad
Name of the Taxpayer	SILVER OAK REALTY
Address	2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003
Name of the person who is filing Appeal	SOHAM MODI
Amount of pre-deposit	₹ 9214

It is a system generated acknowledgement and does not require any signature.

Electronic Credit ledger

GSTIN - 36ACXFS3783R2ZO
Legal Name - SILVER OAK REALTY
Period: From -23/07/2024 To - 23/07/2024

Sr.No	Date	Reference No.	Tax period, if any	Description	Transaction Type [Debit (DR) / Credit (CR)]	Credit/Debit (₹)					Balance Available(₹)				
						Integrated Tax	Central Tax	State Tax	CESS	Total	Integrated Tax	Central Tax	State Tax	CESS	Total
-	-	-	-	Opening Balance	-	-	-	-	-	-	23208	257763	257763	0	538734
1	23/07/2024	DI3607240188560	Mar-24	Outstanding Demand ID	Debit	23208	0	0	0	23208	0	257763	257763	0	515526
2	23/07/2024	DI3607240188656	Mar-19	Payment of Demand under Appeal	Debit	0	4607	4607	0	9214	0	253156	253156	0	506312
-	-	-	-	Closing Balance	-	-	-	-	-	-	0	253156	253156	0	506312

FORM GST APL-01

[Refer Rule 108(1)]

Appeal to Appellate Authority

1	GSTIN/Temporary ID/UIN -	36ACXFS3783R2ZO
2	Legal Name -	SILVER OAK REALTY
3	Trade Name -	M/S SILVER OAK REALTY
4	Address -	2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003
	Order Type -	Demand Order
5	Order No - ZD3604240584872 Order Date -	25/04/2024
6	Designation and address of the officer passing the order appealed against	Assistant Commissioner and M.G.ROAD - S.D.ROAD:Begumpet:Telangana
	Demand Id -	ZD3604240584872
7	Date of communication of the order to be appealed against -	25/04/2024
8	Name of the authorised representative -	SOHAM MODI[ABMPM6725H]

Category of the case under dispute -

1	Others - ITC Excess availed in GSTR-3B when compared to GSTR-2A

9 Details of Case under dispute

(i) Brief issue of case under dispute - Refer to Annexure

(ii) Description and clarification of goods/ services in dispute - Refer to Annexure

(iii) Period of Dispute - From - 01/04/2018 To - 31/03/2019

(iv) Amount under Dispute

Description		Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Amount of Dispute	Tax/Cess	46066	46066	0	0	92132	179648
	Interest	33758	33758	0	0	67516	
	Penalty	10000	10000	0	0	20000	
	Fees	0	0	0	0	0	
	Other Charges	0	0	0	0	0	

(v) Market value of seized goods - Refer to Annexure

10	Whether the appelant wishes to be heard in person - Yes/No	Refer to Annexure
11	Statement of facts -	Refer to Annexure
12	Grounds of appeal -	Refer to Annexure
13	Prayer -	Refer to Annexure

14 **Amount Of Demand created/ admitted/ disputed**

Description		Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Amount of demand created (A)	Tax/Cess	46066	46066	0	0	92132	179648
	Interest	33758	33758	0	0	67516	
	Penalty	10000	10000	0	0	20000	
	Fees	0	0	0	0	0	
	Other Charges	0	0	0	0	0	
Amount of demand admitted (B)	Tax/Cess	0	0	0	0	0	0
	Interest	0	0	0	0	0	
	Penalty	0	0	0	0	0	
	Fees	0	0	0	0	0	
	Other Charges	0	0	0	0	0	
Amount of dispute (C)	Tax/Cess	46066	46066	0	0	92132	179648
	Interest	33758	33758	0	0	67516	
	Penalty	10000	10000	0	0	20000	
	Fees	0	0	0	0	0	
	Other Charges	0	0	0	0	0	

15 Details of payment of admitted amount and pre-deposit -

Pre-Deposit % of Disputed Tax/Cess - 10%

(a) Details of payment required

Description		Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Admitted Amount	Tax/Cess	0	0	0	0	0	0
	Interest	0	0	0	0	0	
	Penalty	0	0	0	0	0	
	Fees	0	0	0	0	0	
	Other charges	0	0	0	0	0	
Pre-deposit (10% of Disputed Tax/Cess)	Tax/Cess	0	0	0	0	0	

(b) Details of payment of admitted amount and pre-deposit

Description		Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Amount Paid	Tax/Cess	4607	4607	0	0	9214	9214
	Interest	0	0	0	0	0	
	Penalty	0	0	0	0	0	
	Fees	0	0	0	0	0	
	Other Charges	0	0	0	0	0	

(c) Details of amount payable towards admitted amount and pre-deposit

Description		Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Balance payable	Tax/Cess	0	0	0	0	0	0
	Interest	0	0	0	0	0	
	Penalty	0	0	0	0	0	
	Fees	0	0	0	0	0	
	Other Charges	0	0	0	0	0	

16 Whether appeal is being filed after the prescribed period - Yes/No Refer to Annexure

17 If 'Yes' in item 16 -

(a) Period of delay - Refer to Annexure

(b) Reason for delay - Refer to Annexure

Annexure to GST APL - 01 - Appeal.pdf

Upload Supporting Documents (Relied upon), if any -

Annexure-I	Annexure-I.pdf
Annexure-II	ANNEXURE-II_pagenumber.pdf

Verification

☑ **I, SOHAM MODI , hereby solomenly 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.**

Place: Hyderabad
Date: 23/07/2024

Name of the Applicant
SILVER OAK REALTY

Date: 23.07.2024

To
The Joint Commissioner of State Tax(Appeals),
Punjagutta, C.T Complex, Nampally,
Hyderabad, Telangana-500001.

Dear Sir,

Sub: Filing of Appeal in Form APL-01 against Order in Form DRC-07.

Ref: i. Order in Form DRC-07 vide Ref No. ZD3604240584872 dated 25.04.2024 pertaining to M/s. **Silver Oak Realty.**

ii. GSTIN: 36ACXFS3783R2ZO

1. We have been authorized by M/s. Silver Oak Realty to submit an Appeal in form APL-01 against the above referred Order in Form DRC-07 vide Ref No. ZD3604240584872 dated 25.04.2024 and represent before your good office to do necessary correspondence in the above referred matter. A copy of authorization is attached to the appeal memorandum.
2. In this regard, we submit that we are herewith filing the appeal in form APL-01 along with the annexures as referred to in the appeal.

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

Thanking You,

Yours faithfully,

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

R. Lakshman Kumar

H N A & CO LLP Hyderabad Chartered Accountants

CA Lakshman Kumar K
Partner

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BEFORE THE JOINT COMMISSIONER OF STATE TAX (APPEALS), PANJAGUTTA, C.T COMPLEX, NAMPALLY, HYDERABAD-500001

Sub: Proceedings under order vide Reference No. ZD3604240584872 dated 25.04.2024 issued to M/s Silver Oak Reality.

I, Jayprakash Managing Partner, of M/s Silver Oak Reality, the appellant herein, hereby authorize and appoint M/s. H N A & Co. LLP (Formerly known as Hiregange & Associates LLP), Chartered Accountants, Bengaluru 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: -

a. 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.
b. 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.
c. To Sub-delegate all or any of the aforesaid powers to any other representative and I/Appellant 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 20.07.2024 at Hyderabad.

Signature of Appellant

I the undersigned partner of M/s. H N A & Co. LLP (Formerly known as Hiregange & Associates) 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 Central Goods and Services Act, 2017. I accept the above-mentioned appointment on behalf of M/s H N A & Co. LLP (Formerly known as 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: 20.07.2024

Address for service:
H N A & Co. LLP,
Chartered Accountants,
4th Floor, West Block, Anushka Pride,
Road Number 12, Banjara Hills,
Hyderabad, Telangana 500034

For H N A & Co. LLP
Chartered Accountants
K. Lakshman Kumar
CA Lakshman Kumar K
Partner (M.No.2[illegible]1736)

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	Advocate	AP/3511/2023	
3	Srimannarayan S	CA	261612	
4	Revant Krishna	CA	262586	
5	Akash Heda	CA	269711	
6	P Manikanta	CA	277705	

GST APL – 01

Form of Appeal to Appellate Authority

[Under Section 107(1) of the Central Goods and Service Tax Act, 2017]

[See rule 108(1)]

BEFORE THE JOINT COMMISSIONER OF STATE TAX (APPEALS), PANJAGUTTA, C.T COMPLEX, NAMPALLY, HYDERABAD-500001

(1) GSTIN/ Temporary ID/UIN-		36ACXFS3783R2ZO	
(2) Legal Name of the Appellant		M/s Silver Oak Reality	
(3) Trade name, if any-		M/s Silver Oak Reality	
(4) Address		5-4-187/3 AND 4, 2ND FLOOR, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003.	
(5) Order No.	Reference No. ZD3604240584872	Order Date	25.04.2024
(6) Designation and address of the officer passing the order appealed against		Assistant Commissioner of State Tax, M.G. ROAD -S.D. ROAD, Begumpet, Telangana.	
(7) Date of communication of the order appealed against		25.04.2024	
(8) Name of the authorized representative		**CA. Lakshman Kumar** **C/o. M/s. H N A & Co. LLP,** **(Formerly M/s. Hiregange & Associates, LLP),** **Chartered Accountants,** **4th Floor, West Block,** **Anushka Pride, R. No.12, Banjara Hills, Hyderabad, Telangana 500034** Email: laxman@hnaindia.com Mob: 8978114334 **(And also copy to the Appellant)**	
(9) Details of the case under dispute			
i. Brief issue of the case under dispute		Excess ITC availed in GSTR-3B when compared to GSTR-2A.	
ii. Description and classification of goods/services in dispute		NA	
iii. Period of dispute		2018-2019	
iv. Amount under dispute			

Description	Central tax	State/UT tax	Integrated tax	Cess
a. Tax/Cess	46,066/-	46,066/-	NA	NA
b. Interest	33,758/-	33,758/-	NA	NA
c. Penalty	10,000/-	10,000/-	NA	NA
d. Fees	NA	NA	NA	NA
e. Other charges	NA	NA	NA	NA

v. Market value of seized goods	NA
(10) Whether the appellant wishes to be heard in person	Yes

SILVER OAK REALTY SEC'BAD

(11)	Statement of Facts	**Annexure – A**
(12)	Grounds of Appeal	**Annexure-B**
(13)	Prayer	To set aside the impugned order to the extent aggrieved and grant the relief sought

(14) Amount of Demand Created, admitted, and disputed

Particulars of demand/ Refund	Particulars		CGST	SGST	IGST	Cess	Total amount
	Amount of demand created (A)	a) Tax/ Cess	46,066/-	46,066/-	NA	NA	92,132/-
		b) Interest	33,758/-	33,758/-	NA	NA	67,516/-
		c) Penalty	10,000/-	10,000/-	NA	NA	20,000/-
		d)Fees	NA	NA	NA	NA	NA
		e) Other charges	NA	NA	NA	NA	NA
	Amount of demand admitted (B)	a) Tax/ Cess	NA	NA	NA	NA	NA
		b) Interest	NA	NA	NA	NA	NA
		c) Penalty	NA	NA	NA	NA	NA
		d)Fees	NA	NA	NA	NA	NA
		e) Other charges	NA	NA	NA	NA	NA
	Amount of demand disputed	Tax/ Cess	46,066/-	46,066/-	NA	NA	92,132/-
		Interest	33,758/-	33,758/-	NA	NA	67,516/-
		Penalty	10,000/-	10,000/-	NA	NA	20,000/-
		d)Fees	NA	NA	NA	NA	NA
		e) Other charges	NA	NA	NA	NA	NA

(15) Details of payment of admitted amount and pre-deposit:-

M. J. [signature]

SILVER OAK REALTY SEC'BAD

a) Details of payment required

Particulars			Central tax	State/UT tax	Integrated tax	Cess	Total
	a) Admitted amount	Tax/Cess	NA	NA	NA	NA	NA
		Interest	NA	NA	NA	NA	NA
		Penalty	NA	NA	NA	NA	NA
		Fees	NA	NA	NA	NA	NA
		Other charges	NA	NA	NA	NA	NA
	b) Pre-Deposit (10% of disputed tax or 25Cr. Whichever is lower)	Tax/Cess	4,607/-	4,607/-	NA	NA	9,214/-

b) Details of payment of admitted amount and pre-deposit (pre-deposit 10% of the disputed tax and cess)

Sr. No.	Description	Tax payable	Paid through cash/credit ledger	Debit entry No.	Amount of tax paid
1	2	3	4	5	6
1	Integrated tax	NA	NA	NA	NA
2	Central tax	NA	NA	NA	NA
3	State/UT tax	NA	Cash Ledger	NA	NA
		NA	Credit Ledger		
4	Cess	NA	Cash Ledger	NA	NA
		NA	Credit Ledger	NA	NA

c) Interest, Penalty, Late fee and any other amount payable and paid

Sr.No	Description	Amount Payable				Debit Entry No.	Amount paid			
1	2	3	4	5	6	7	8	9	10	11
1	Interest	NA	NA	NA	NA	NA	NA	NA	NA	NA

M. J. [signature]

SILVER OAK REALTY SEC'BAD

2	Penalty	NA				NA	NA			
3	Late Fee	NA	NA	NA	NA	NA	NA	NA	NA	NA
4	Others	NA	NA	NA	NA	NA	NA	NA	NA	NA

(16) Whether the appeal is filed after the prescribed period – No

(17) If 'Yes' in item 16 –

a. Period of delay - NA
b. Reasons for delay – NA

(18) Place of supply wise details of the integrated tax paid (admitted amount only) mentioned in the Table in sub-clause (a) of clause 15 (item (a)), if any

Place of Supply (Name of State/UT)	Demand	Tax	Interest	Penalty	Other	Total
1	2	3	4	5	6	7
NA	Admitted amount [in the Table in sub-clause (a) of clause 15 (item (a))]	NA	NA	NA	NA	NA

SILVER OAK REALTY SEC'BAD

M. J

Appellant

Annexure-A

STATEMENT OF FACTS

A. M/s Silver Oak reality (hereinafter referred to as 'Appellant') located at 2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003 is Engaged in the business of providing construction and works contract services and registered under GST vide GSTIN: 36ACXFS3783R2ZO in the state of Telangana.

B. Appellant regularly discharges GST liability and files periodical returns. Appellant also filed the Annual Return in Form GSTR-9 and the reconciliation statement in Form GSTR-9C for the period 2018-19.

C. The Appellant was in receipt of Form DRC-01 vide Reference no. ZD360522015337M dated 29.05.2022 issued for the FY 2018-19 seeking clarification with respect to various issues and proposing to demand an amount of Rs. 16,39,960/- along with interest and penalty. (A copy of DRC-01 dated 22.01.2024 is enclosed as **Annexure-II**).

D. In response to the DRC-01 received, the Appellant has attended the personal hearing and explained the issue involved in the show cause notice. After considering the explanation submitted at the personal hearing, the officer was partially satisfied with the issues explained and for the rest passed the order in DRC-07.

E. Concerning another issue Appellant has not agreed with the department and as a result the Appellant is in receipt of Order in DRC-07 vide reference no. ZD3604240584872 dated 25.04.2024 seeking clarification with respect to Excess ITC claimed in GSTR-3B in comparison to ITC auto-populated in GSTR-2A during the FY 2018-19 and proposing to demand an amount of Rs. 92,132/- (CGST of Rs. 46,066/- and SGST of Rs. 46,066/-) along with interest and penalty. (A copy of Order DRC-07 dated 25.04.2024 is enclosed as **Annexure-I**).

Aggrieved by the impugned order, which is 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 appellant prefers this appeal on the following grounds (which are alternate pleas and without prejudice to one another) amongst those to be urged at the time of hearing of the appeal.

SILVER OAK REALTY SEC'BAD

ANNEXURE-B

GROUNDS OF APPEAL

1. Appellant submits that the impugned order is ex-facie illegal and untenable in law since the same is contrary to facts and judicial decisions.

2. Appellant 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 TGGST Act, 2017. Similarly, the provisions of the CGST Act, 2017 are adopted by the IGST Act, 2017 thereby the reference to CGST provisions be considered for IGST purposes also, wherever it arises.

In Re: No excess ITC availed in GSTR-3B when compared to ITC auto populated in GSTR-2A.

3. The Impugned order has alleged that the Appellant has excess claimed ITC in GSTR-3B when compared to ITC auto-populated in GSTR-2A and proposing to demand an amount of Rs. Rs. 92,132/- (CGST of Rs. 46,066/- and SGST of Rs. 46,066/-) along with interest and penalty.

4. In this regard, the Appellant submits that even if there is differential ITC availed by the Appellant, the same is accompanied by a valid tax invoice containing all the particulars specified in Rule 36 of CGST Rules based on which the Appellant have availed ITC. Further, the Appellant 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 Appellant. Hence, the impugned order needs to be dropped.

5. Appellant further submits that Section 43A of CGST Act, 2017 which provides the matching of invoices and ITC is not yet notified therefore the proceedings initiated under this impugned order is premature. Further, the said provision would be a prospective provision and the same cannot be applied to the preceding periods. Therefore, the demand to that extent needs to be dropped.

SILVER OAK REALTY SEC'BAD

6. Without prejudice to the above, we would like to submit that we are rightly eligible for ITC for the following reasons:
   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 has 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. Appellant further submits that Finance Act, 2022 has omitted Section 42, 43 and 43A of the CGST Act, 2017 which deals ITC matching concept. Appellant 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 statue.
   e. 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.
   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

M.S.P.

SILVER OAK REALTY SEC'BAD

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 Appellant 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. **Appellant further submit that the 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 Appellant nor is verifiable by Appellant. 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:**

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

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

SILVER OAK REALTY SEC'BAD

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. Appellant submit that under the earlier VAT laws there were provisions similar to Section 16(2) ibid which have been held by the Courts as unconstitutional.

q. Appellant wish to rely on recent decisions in case of

- 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
- LGW Industries limited Vs UOI 2021 (12) TMI 834 -Calcutta High Court
- Bharat Aluminium Company Limited Vs UOI & Others 2021 (6) TMI 1052 – Chattishgarh High Court
- M/s. Sanchita Kundu & Anr. Vs Assistant Commissioner of State Tax 2022 (5) TMI 786 - Calcutta High Court.
- Suncraft Energy Private Limited Versus The Assistant Commissioner, State Tax, Ballygunge Charge And Others 2023 (8) TMI 174-Calcutta High court affirmed by Supreme Court in case of The Assistant Commissioner of State Tax Vs Suncraft Energy Private Limited 2023 (12) TMI 739 – SC order
- Diya Agencies Versus The State Tax Officer, The State Tax Officer, Union of India, The Central Board Of Indirect Taxes & Customs, The State Of Kerala 2023 (9) TMI 955 - Kerala High Court
- M/S. Gargo Traders V/s The Joint Commissioner, Commercial Taxes (State Tax) & Ors. 2023 (6) TMI 533 - Calcutta High Court
- M/S. Henna Medicals Versus State Tax Officers, Deputy Commissioner (Arrear Recovery) Office Of The Joint Commissioner, State Goods And Service Tax Kannur, Union Of India, Central Board Of Indirect Taxes & Customs, State Of Kerala- 2023 (10) TMI 98 - Kerala High Court.

Hence proceedings need to be dropped to that extent.

7. In this regard, Appellant submits that the Appellant has availed the ITC in accordance with Section 16(2) of the CGST Act, 2017 and the Appellant is rightly eligible for the ITC. Further, denial of ITC only on account of non-payment of tax by

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supplier is not correct. In this regard, Appellant would like to place reliance on the recent judgment of Hon'ble Calcutta High Court in the case of **Lokenath Construction Private Limited Versus Tax/Revenue Government Of West Bengal And Others and Lokenath Construction Private Limited Versus Joint Commissioner Of State Tax/ Revenue, Large Tax Payers Unit And Others, 2024 (5) TMI 362**. The Hon'ble Calcutta court in the above-referred case has held that:

"................................

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.

The orders passed in the writ petition is set aside and the order passed by the first respondent namely the Assistant Commissioner, State Tax, Ballygunge Charge, is set aside - Appeal allowed."

8. The Appellant submits that the Input tax credit should not be denied only on the ground that the transaction has not been reflected in GSTR-2A. In this regard, the Appellant wishes to place reliance on the judgement of Hon'ble Calcutta High Court in the case of **The Assistant Commissioner of State Tax, Ballygunjge Charge & ORS Vs Suncraft Energy Private Limited & ORS" (2023 (12) TMI 739 – SC ORDER)** wherein it was held "*that the High Court of Calcutta has ruled that the buyers who adhere to the conditions specified in Section-16(2) of the CGST Act, and SGST Act of 2017 are entitled to claim Input Tax Credit(ITC) and are not responsible for discrepancies in the Goods and Service Tax Return(GSTR)-2A and GSTR-3B due to the sellers default. Consequently, the Appeal is granted. The orders made in the writ petition and the order issued by the Assistant Commissioner of State Tax are overturned. The court directs that the action should be first taken against the seller before any action can be commenced against the Appellant."*

M. [signature]

SILVER OAK REALTY SEC'BAD

9. Similarly, the Appellant also wants to place reliance on the case law **Diya Agencies Versus The State Tax Officer, The State Tax Officer, Union Of India, The Central Board Of Indirect Taxes & Customs, The State Of Kerala 2023 (9) TMI 955** Dated 12.09.2023 pronounced by the Hon'ble Kerala High Court held that

   "If the seller dealer (supplier) has not remitted the said amount paid by the petitioner to him, the petitioner cannot be held responsible. Whether the petitioner has paid the tax amount and the transactions between the petitioner and seller dealer are genuine are the matter on facts and evidence. The petitioner has to discharge the burden of proof regarding the remittance of tax to the seller dealer by giving evidence as mentioned in the Judgment of the Supreme Court in THE STATE OF KARNATAKA VERSUS M/S ECOM GILL COFFEE TRADING PRIVATE LIMITED [2023 (3) TMI 533 - SUPREME COURT].

   The impugned Exhibit P-1 assessment order so far denial of the input tax credit to the petitioner is not sustainable, and the matter is remanded back to the Assessing Officer to give opportunity to the petitioner for his claim for input tax credit. -If on examination of the evidence submitted by the petitioner, the assessing officer is satisfied that the claim is bonafide and genuine, the petitioner should be given input tax credit.

   Merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of the input tax credit. The assessing authority is, therefore, directed to give an opportunity to the petitioner to give evidence in respect of his claim for input tax credit."

10. Appellant further submits that for the default of the supplier, the recipient shall not be penalized therefore the impugned order needs to be dropped. In this regard, reliance is placed on **M/S. Gargo Traders Versus The Joint Commissioner, Commercial Taxes (State Tax) & Ors. - 2023 (6) Tmi 533 - Calcutta High Court** *in this case law it was held that "Court Observed that, at the time of transaction the name of the Supplier was available with the government record and the Petitioner has paid the amount along with the tax to the Supplier through bank.Stated that, the Revenue Department solely on the basis of cancellation of registration of the Supplier with retrospective date rejected the claim, without considering the documents relied by the Petitioner which duly state that there was no failure on the part of the Petitioner in compliance of obligation required under the statute before entering into the transaction.the allegation raised by the Revenue Department are not correct for rejecting the Petitioner's refund application unless it is established*

M. S.

SILVER OAK REALTY SEC'BAD

that the Petitioner has not received the goods.Set aside the Impugned Order and directed the Revenue Department to dispose the claim of the Petitioner by passing speaking Order after giving an opportunity of hearing to the Petitioner."

11. Appellant 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*".

12. Appellant 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 -
    i. 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.
    ii. M/s Tarapore and Company Jamshedpur v. 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.

13. The decisions in the above cases would be equally applicable to the present context of Section 16(2) ibid. Hence, the demand proposed shall be dropped.

14. Thus, the Appellant submits that from a plain reading of the above rulings of various High Courts, it can be inferred that the courts have ruled in favour of bona fide purchasers and allowed them to avail ITC even when their supplier had defaulted in remitting the tax to the government. The courts took cognizance of the actions of authorities denying ITC to businesses where the seller has not deposited the tax and declared such conditions in the law as unfair, arbitrary, and inimical to business interests. The courts have clearly noted that it is impractical and unrealistic to expect the buyer of supplies to go and verify the supplier's

SILVER OAK REALTY SEC'BAD

accounts or to inquire with the department whether the tax paid by them on the inputs has been collected or not.

15. Further on the issue of reversal of ITC and recovery of dues from buyers, it is useful to refer to the Press Release issued by the Central Board of GST Council dated 4 May 2018 which clearly stated 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"*.

16. Appellant provides that in case where the supplier defaults in payment of tax, there shall not be any automatic reversal of input tax credit to the buyer unless an exceptional case can be made out. Instead, the recovery shall be made from the supplier first. The Government's intention behind ITC has further clarified in the 28th GST Council Meeting where it recommended that recovery of unpaid tax be done from the defaulting supplier.

17. Further impugned order has not given the reason as to why the taxes cannot be collected from the supplier. Just because the supplier registration is cancelled, the same cannot be grounds to state that the taxes cannot be collected from the supplier. The department has not given any evidence as to the actions taken by the dept against the suppliers. In the absence of taking any action on the supplier, the exception cannot be invoked in the instant case and hence order needs to be dropped.

In Re: Penalties and interest are not payable/imposable:

18. Appellant submits that Appellant is of vehement belief that the input availed by then Appellant is not required to reverse, therefore, the question of interest and penalty does not arise. Further, it is a natural corollary that when the principal is not payable there can be no question of paying any Penalty as held by the Supreme Court in Prathiba Processors Vs UOI, 1996 (88) ELT 12 (SC).

19. Further, the Appellant submits that the impugned order has not discharged the burden of proof regarding the imposition of the penalty under CGST Act, 2017. In this regard, wishes to rely on the judgment in the case of Indian Coffee Workers'

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Co-Op. Society Ltd Vs C.C.E. & S.T., Allahabad 2014 (34) S.T.R 546 (All) it was held that "It is unjustified in absence of discussion on fundamental conditions for the imposition of penalty under Section 78 of Finance Act, 1994".

20. Appellant submits that Section73(11) of the CGST Act, 2017 which provides for penalty in case of non-payment of self-assessed tax reads as follows

    "(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax."

    From the above referred sub-section, it is clear that the penalty is applicable only when any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax. However, in the instant case the Appellant has paid the self-assessed tax and there is no delay in payment of tax. Hence, the penalty under Section 73(11) is not applicable in the instant case.

21. Appellant submits that the Supreme Court in case of CIT Vs Reliance Petro Products Pvt Ltd (SC) 2010 (11) SCC (762) while examining the imposition of penalties under Section 271(1)(c) of Income Tax Act, 1961 held that penlaties are not applicable in similar circumstances.

22. Appellant submits that from the above referred decision of the Supreme Court, penalties cannot be imposed merely because the Appellant has claimed certain ITC which was not accepted. or was not acceptable to the revenue when the assessee has acted on bonafide belief that the ITC is eligible. In the instant case also, Appellant has availed the ITC on bonafide belief that the same is eligible which was not accepted by the department. Therefore, in these circumstances the imposition of penalties is not warranted and the same needs to be dropped.

23. Appellant submits that it is pertinent to understand that the Supreme Court in the above referred case has held that the penalties shall not be imposed even though the mens rea is not applicable for imposition of penalties.

24. Appellant submits that GST being a new law, the imposition of penalties during the initial years of implementation is not warranted. Further, Appellant submits that they are under bonafide belief that ITC availed by them are eligible, thus,

penalties shall not be imposed. Further, the government has been extending the due dates & waiving the late fees for delayed filing etc., to encourage compliance and in these circumstances imposition of penalties for claiming ITC on bonafide belief is not at all correct and the same needs to be dropped.

25. In addition to above, Appellant submits that where an authority is vested with discretionary powers, discretion has to be exercised by application of mind and by recording reasons to promote fairness, transparency and equity. In this regard the reliance is placed on the judgement of hon'ble Supreme Court in the case of Maya Devi v. Raj Kumari Batra dated 08.09.2010 [Civil Appeal No.10249 of 2003] wherein it was held that "14. It is in the light of the above pronouncements unnecessary to say anything beyond what has been so eloquently said in support of the need to give reasons for orders made by Courts and statutory or other authorities exercising quasi-judicial functions. All that we may mention is that in a system governed by the rule of law, there is nothing like absolute or unbridled power exercisable at the whims and fancies of the repository of such power. There is nothing like a power without any limits or constraints. That is so even when a Court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well recognized and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity."

26. Appellant submits that the Supreme Court in case of Hindustan Steel Ltd. v. State of Orissa —1978 [AIR 1970 SC 253] while dealing with the similar facts wherein a mandatory penalty is prescribed without the concept of mens rea held that ""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

27. Appellant 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. The 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 a deliberate violation of the provisions of the particular statute." Hence, Penalty cannot be imposed in the absence of deliberate defiance of law even if the statute provides for a penalty

28. Appellant submits that the Supreme Court in case of Price Waterhouse Coopers Pvt. Ltd Vs Commissioner of Income Tax, Kolkata S.L.P.(C) No.10700 of 2009 held as follows

"20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars."

29. Appellant submits that from all the above submissions, it is clear that imposition of penalties is not warranted therefore the impugned order needs to be dropped.

<u>The impugned order is time barred and Notification No. 56/2023-CT dated 28.12.2023 is bad in law for the FY 2018-19:</u>

30. Appellant submits that the impugned order was issued under section 73 of CGST Act, 2017 which provides for adjudication of demand within 3 years from the due date of the annual return of the corresponding FY. For FY 2018-19, the annual return due date falls on 31.12.2020 and the 3-year time limit expires by 31.12.2023 however citing the difficulties caused due to Covid-19, the Government

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has extended the time limit from 31.12.2023 to 31.03.2024 by exercising the powers u/s. 168A, ibid the time was further extended to 31.03.2024 by the Notification No. 09/2023 dated 31.03.2023 (second extension) and further extended to 31.04.2024 vide Notification No. 56/2023-CT dated 28.12.2023. In this regard, it is submitted that an 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' is as defined u/s. 168A, ibid was never occurred from 2022 till the expiry of the extended due date of 31.03.2024. Hence, the second extension of time runs beyond the mandate of Section 168A and is not sustained in the law. Accordingly, the demand for FY 2018-19 deserves to be dropped as the Show Cause Notice in the instant case is not issued prior to 30.09.2023 as envisaged under Section 73 of CGST Act, 2017.

31. Appellant craves leave to alter, add to, and/or amend the aforesaid grounds.

32. Appellant would also like to be heard in personal, before any order being passed in this regard.

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Signature of Appellant

PRAYER

Therefore, it is prayed that

a. To set aside the impugned order to the extent aggrieved.
b. To hold that order is passed in gross violation of principles of natural justice.
c. To hold that ITC cannot be denied merely due to non-reflection of invoices in GSTR-2A.
d. To hold that no interest and penalty is leviable.
e. To provide any other consequential relief.

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Appellant

VERIFICATION

I, ____________________,____________________, Authorized representative of M/s. Silver oak Reality, Appellant herein do hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

SILVER OAK REALTY SEC'BAD

Place: Hyderabad

Date:

Appellant

Office of : Assistant Commissioner
Jurisdiction : M.G.ROAD - S.D.ROAD:Begumpet:Telangana, State/UT : Telangana

Reference No. : ZD3604240584872 Date : 25/04/2024

To

GSTIN/ID : 36ACXFS3783R2ZO
Name : SILVER OAK REALTY
Address : 5-4-187/3 AND 4, 2ND FLOOR, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003

SCN/Statement Reference No. : ZD360522015337M Date : 29/05/2022

Tax Period : APR 2018 - MAR 2019 F.Y. : 2018-2019

Act/ Rules Provisions :
GST ACT

Order under section 73

A show cause notice/statement referred to above was issued to you u/s 73 of the Act for reasons stated therein. Since, no payment has been made within 30 days of the issue of the notice by you; therefore, on the basis of documents available with the department and information furnished by you, if any, demand is created for the reasons and other details attached in annexure

Please note that interest, if any, has been levied up to the date of issue of the order. While making payment, interest for the intervening period between date of order and date of payment, shall also be worked out and paid along with the dues stated in the order.

In case any refund is arising as per the above order, please claim the same by filing application in the prescribed form.

Demand Details :-

(Amount in Rs.)

Sr. No.	Tax Rate (%)	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
1	0	0.00	APR 2018	MAR 2019	CGST	NA	46,066.00	33,758.00	10,000.00	0.00	0.00	89,824.00
2	0	0.00	APR 2018	MAR 2019	SGST	NA	46,066.00	33,758.00	10,000.00	0.00	0.00	89,824.00
Total							92,132.00	67,516.00	20,000.00	0.00	0.00	1,79,648.00

You are hereby directed to make the payment by 25/05/2024 failing which proceedings shall be initiated against you to recover the outstanding dues.

Signature
Name : UPENDER REDDY BOPPIDI
Designation : Assistant Commissioner
Jurisdiction : M.G.ROAD - S.D.ROAD:Begumpet:Telangana

Copy to -

FORM GST DRC - 07
[See rule 142(5)]
Summary of the order

Reference No. : ZD3604240584872

Date : 25/04/2024

1. Tax Period :- APR 2018 - MAR 2019

2. Issues involved :- Excess ITC claimed

3. Description of goods / services :-

Sr. No	HSN	Description
-	-	-

4. Details of demand :-

(Amount in Rs.)

Sr. No	Tax Rate (%)	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
1	0	0.00	APR 2018	MAR 2019	CGST	NA	46,066.00	33,758.00	10,000.00	0.00	0.00	89,824.00
2	0	0.00	APR 2018	MAR 2019	SGST	NA	46,066.00	33,758.00	10,000.00	0.00	0.00	89,824.00
Total							92,132.00	67,516.00	20,000.00	0.00	0.00	1,79,648.00

You are hereby directed to make the payment by 25/05/2024 failing which proceedings shall be initiated against you to recover the outstanding dues.

Signature

Name :	UPENDER REDDY BOPPIDI
Designation :	Assistant Commissioner
Jurisdiction :	M.G.ROAD - S.D.ROAD:Begumpet:Telangana

Copy to -

Signature Not Verified

Digitally signed by BOPPIDI UPENDER REDDY
Date: 2024.04.25 18:32:38 IST

GOVERNMENT OF TELANGANA
COMMERCIAL TAX DEPARTMENT

DRC-07

[u/Sec 73 of TGST & CGSTAct 2017]

Date: 25-04-2024

DIN	GST/36ACXFS3783R2ZO/19
Office details Designation of the assessing officer Unit Division	 ASSISTANT COMMISSIONER (ST) M.G.ROAD-S.D.ROAD BEGUMPET
Details of the Tax payer Name Legal Name GSTIN	 M/s SILVER OAK REALTY SILVER OAK REALTY 36ACXFS3783R2ZO
Financial Year	2018-19

Ref: 1) SCN ARN No: **AD360522015225I,** Date: **29.05.2022.**

You have not filed annual return in GSTR-09 for the financial year 2018-19.

On examination of the information furnished in this return under various heads and also the information furnished in TRAN-1, GSTR-01, GSTR-2A,GSTR-3B, EWB and other records available in this office it is found that you have not declared your correct tax liability while filing the annual returns of GSTR-09. The summary of under declared tax is as follows:

SGST Rs.**819979.93**
CGST Rs.**819979.93**
Total Rs.**1639959.86**

The liabilities are discussed item wise along with the conclusions of the assessing authority as under:

1. **Excess claim of ITC:**

   a. **Excess ITC claimed in GSTR-3B compared to the tax on inward supplies declared by:** You have claimed excess ITC in GSTR-3B as compared to the tax declared by your suppliers on the supplies made to you.

S.No	Description	Table No. in GSTR-3B	SGST	CGST	Total
1	ITC claimed in GSTR-3B	4(A)(5) + 4 (D)(1)	1116726.19	1116726.19	2233452.38
2	Tax declared by the suppliers on the supplies made to you.	Cumulative figures of GSTR-01 filed by suppliers	323018.25	323018.25	646036.50
3	Excess ITC availed	S.No.1 (-) S. No.2	793707.94	793707.94	1587415.88

Observations and conclusion of the assessing authority:

i. ITC claimed by the tax payer in GSTR-3B is as follows after Net reversals:
SGST: Rs.369084.10 **CGST:** Rs.369084.10
ITC available in GSTR-2A:
SGST: Rs.323018.25 **CGST:** Rs.323018.25
Hence tax liability is confirmed as below:
SGST: Rs.46065.85 **CGST:** Rs.46065.85

b. **Under declaration of Ineligible ITC:**

Under Sec 17(5) of the SGST 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 code	Table no. in GSTR-3B	SGST	CGST	Total
1	Works contractors	9954;		26271.99	26271.99	52543.98
A	Total ineligible ITC u/s 17(5)	-		26271.99	26271.99	52543.98
B	Ineligible ITC declared in GSTR-3B	-	4D.(1)	0.000	0.000	0.000
C	Difference/excess ITC claimed	-		26271.99	26271.99	52543.98

Observations and conclusion of the assessing authority

i. ITC is used in furtherance of business; the dealer is in business of Works contract. Hence the liability proposed under this head is herby dropped.

Summary:

Annexure with details for the above proposals are already sent with show cause notice.

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:

Statement of Computation of Liability					
S.No	Issue	Amt in SCN		Amt determined by AA	
		SGST	CGST	SGST	CGST
1	Excess claim of ITC	793707.94	793707.94	46065.85	46065.85
2	Under declaration of Ineligible ITC	26271.99	26271.99	0.00	0.00
	Total	819979.93	819979.93	46065.85	46065.85
Less Tax paid after issuing SCN but within (30) days				0.00	0.00
Less Tax paid after issuing SCN but after (30) days				0.00	0.00
Net liability				46065.85	46065.85
Interest				33758.06	33758.06
Penalty(u/Sec 73(9) of TGST & CGSTAct 2017)				10000.00	10000.00

The Total due determined by the Assessing authority tax of is SGST: Rs.46065.85 & CGST: Rs.46065.85, Interest of SGST: Rs.33758.06 & CGST: Rs.33758.06 and Penalty of SGST: Rs.10000.00 & CGST: Rs.10000.00. You are hereby directed to make the payment as above within (30) days of issue of this order, failing which proceedings shall be initiated against you to recover the outstanding dues.

Assistant Commissioner (ST)
M.G.Road - S.D.Road Circle,
Begumpet Division, Hyderabad.

Office of Assistant Commissioner

Jurisdiction: M.G.ROAD - S.D.ROAD:Begumpet:Telangana
State/UT: Telangana

Reference No : ZD360522015337M **Date: 29/05/2022**

To

GSTIN/ID: 36ACXFS3783R2ZO
Name: SILVER OAK REALTY
Address : 5-4-187/3 AND 4, 2ND FLOOR, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003

Tax Period : APR 2018 - MAR 2019 **F.Y. 2018-2019**

ARN- NA **Date- NA**
(Voluntary payment intimation details, if applicable)

Show Cause Notice under section 73

It has come to my notice that tax due has not been paid or short paid or refund has been released erroneously or input tax credit has been wrongly availed or utilized by you or the amount paid by you through the above referred application for intimation of voluntary payment for the reasons and other details mentioned in annexure for the aforesaid tax period

Therefore, you are directed to furnish a reply along with supporting documents as evidence in support of your claim by the date mentioned in table below.

You may appear before the undersigned for personnel hearing either in person or through authorized representative for representing your case on the date, time and venue, if mentioned in table below.

Please note that besides tax, you are also liable to pay interest and penalty in accordance with the provisions of the Act.

If you make payment of tax stated above along with up to date interest within 30 days of the issue of this notice with applicable penalty then proceeding may be deemed to have been concluded.

Details of personal hearing etc.

Sr. No.	Description	Particulars
1	Section under which show cause notice/ statement is issued	73
2	Date by which reply has to be submitted	14/06/2022
3	Date of personal hearing	06/06/2022
4	Time of personal hearing	12:30
5	Venue where personal hearing will be held	O/o. AC(ST), M.G.Road-S.D.Road Circle, F lat No. 409, 410, Pavani Prestige, Ameer pet, Hyderabad.

Demand Details-

(Amount in Rs.)

Sr. No.	Tax Rate(%)	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
1	0	0.00	APR 2018	MAR 2019	CGST	NA	8,19,979.93	0.00	0.00	0.00	0.00	8,19,979.93

2	0	0.00	APR 2018	MAR 2019	SGST	NA	8,19,979.93	0.00	0.00	0.00	0.00	8,19,979.93
Total							16,39,959.86	0.00	0.00	0.00	0.00	16,39,959.86

Signature
Name: GUGULOTH VIJAYA LAKSHMI
Designation: Assistant Commissioner
Jurisdiction: M.G.ROAD - S.D.ROAD:Begumpet:Telangana

FORM GST DRC - 01
[See rule 100(2) & 142(1)(a)]

Reference No. - ZD360522015337M

Date - 29/05/2022

To

GSTIN/ID: 36ACXFS3783R2ZO
Name: SILVER OAK REALTY
Address : 5-4-187/3 AND 4, 2ND FLOOR, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003

Tax Period : APR 2018 - MAR 2019

F.Y.- 2018-2019

SCN Reference No. ZD360522015337M

Date 29/05/2022

Section / sub-section under which SCN is being issued - 73

Summary of Show Cause Notice

(a) Brief Fact of the Case : Liability under GSTR 9 / Ineligible ITC / GSTR 1 / GSTR 2A

(b) Grounds : Under the Provisions of GST Act and Rules 2017

(c) Tax and other dues

(Amount in Rs.)

Sr. No.	Tax Rate(%)	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
1	0	0.00	APR	MAR	CGST	NA	8,19,979.93	0.00	0.00	0.00	0.00	8,19,979.93

			2018	2019								
2	0	0.00	APR 2018	MAR 2019	SGST	NA	8,19,979.93	0.00	0.00	0.00	0.00	8,19,979.93
Total							16,39,959.86	0.00	0.00	0.00	0.00	16,39,959.86

Signature
Name: GUGULOTH VIJAYA LAKSHMI
Designation: Assistant Commissioner
Jurisdiction: M.G.ROAD - S.D.ROAD:Begumpet:Telangana

GOVERNMENT OF TELANGANA
COMMERCIAL TAX DEPARTMENT

Attachment to Show Cause Notice in Form DRC-01

DIN	GST/36ACXFS3783R2ZO/19
Office details Designation of the assessing officer Unit Division	ASSISTANT COMMISSIONER (ST) M.G.ROAD-S.D.ROAD BEGUMPET
Details of the Tax payer Name Legal Name GSTIN	M/S SILVER OAK REALTY SILVER OAK REALTY 36ACXFS3783R2ZO
Financial Year	2018-19

Take notice that you have not filed annual return in GSTR-09 for the financial year 2018-19.

On examination of the information furnished to this office in GSTR-3B TRAN-1, GSTR-01, GSTR-2A, EWB and other records available in this office it is found that you have not declared your correct tax liability while filing GSTR-3B. The summary of under declared tax is as follows:

SGST Rs.**819979.93**
CGST Rs.**819979.93**
Total Rs.**1639959.86**

The details of the above tax liability are as follows:

1. Excess claim of ITC:

- **Excess ITC claimed in GSTR-3B compared to the tax on inward supplies declared by**

You have claimed excess ITC in GSTR-3B as compared to the tax declared by your suppliers on the supplies made to you.

S.No	Description	Table No. in GSTR-3B	SGST	CGST	Total
1	2	3	4	5	6
1	ITC claimed in GSTR-3B	4(A)(5) + 4 (D)(1)	1116726.19	1116726.19	2233452.38
2	Tax declared by the suppliers on the supplies made to you.	Cumulative figures of GSTR-01 filed by suppliers	323018.25	323018.25	646036.50
3	Excess ITC availed	S.No.1 (-) S. No.2	793707.94	793707.94	1587415.88

• **Under declaration of Ineligible ITC:**

Under Sec 17(5) of the SGST 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-3B 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 code	Table no. in GSTR-3B	SGST	CGST	Total
1	2	3	4	5	6	7
1	Works contractors	9954;		26271.99	26271.99	52543.98
A	Total ineligible ITC u/s 17(5)	-		26271.99	26271.99	52543.98
B	Ineligible ITC declared in GSTR-3B	-	4D.(1)	0.000	0.000	0.000
C	Difference/excess ITC claimed	-		26271.99	26271.99	52543.98

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:

S.No	Issue	SGST	CGST	Total
1	2	3	4	5
1	Total tax due in (1) above	819979.93	819979.93	1639959.86

(The detailed workings of the above in tabular form are attached as Annexures)

Therefore it is proposed to assess the registered tax payer for the net tax payable indicated above under Section 73 of the SGST/CGST Act. The registered tax payer may therefore pay the tax along with interest in DRC-03. However, If the registered tax payer is not agreeing with the proposals in this notice they may file their objections in DRC-06 within (15) days from the date of receipt of this notice. A draft standard format is also attached for filing your response along with your detailed reply.

ASSISTANT COMMISSIONER (ST)

To download response pdf Click Here

Details of ITC claimed in GSTR-3B Vs ITC from GSTR-01 Suppliers **Date: 28-05-2022** **Rs in Rupees**

GSTIN : 36ACXFS3783R2ZO **Name : M/S SILVER OAK REALTY** **FY : 2018-19**

S.No.	Month	GSTR-3B ITC			ITC from GSTR-01 Suppliers			Difference		
		SGST	CGST	Total	SGST	CGST	Total	SGST	CGST	Total
1	2	3a	3b	3c	4a	4b	4c	5a	5b	5c
1	Apr, 2018	17552.00	17552.00	35104.00	10066.59	10066.59	20133.18	7485.41	7485.41	14970.82
2	May, 2018	19206.25	19206.25	38412.50	17718.41	17718.41	35436.82	1487.84	1487.84	2975.68
3	Jun, 2018	12164.00	12164.00	24328.00	36357.06	36357.06	72714.12	-24193.06	-24193.06	-48386.12
4	Jul, 2018	3825.38	3825.38	7650.76	72525.77	72525.77	145051.54	-68700.39	-68700.39	-137400.78
5	Aug, 2018	13935.88	13935.88	27871.76	67831.62	67831.62	135663.24	-53895.74	-53895.74	-107791.48
6	Sep, 2018	5065.36	5065.36	10130.72	17631.73	17631.73	35263.46	-12566.37	-12566.37	-25132.74
7	Oct, 2018	607.39	607.39	1214.78	12578.65	12578.65	25157.30	-11971.26	-11971.26	-23942.52
8	Nov, 2018	9232.74	9232.74	18465.48	26721.77	26721.77	53443.54	-17489.03	-17489.03	-34978.06
9	Dec, 2018	197.49	197.49	394.98	38655.66	38655.66	77311.32	-38458.17	-38458.17	-76916.34
10	Jan, 2019	766938.78	766938.78	1533877.56	8687.28	8687.28	17374.56	758251.50	758251.50	1516503.00
11	Feb, 2019	0.00	0.00	0.00	13839.04	13839.04	27678.08	-13839.04	-13839.04	-27678.08
12	Mar, 2019	268000.92	268000.92	536001.84	404.67	404.67	809.34	267596.25	267596.25	535192.50
	TOTAL	1116726.19	1116726.19	2233452.38	323018.25	323018.25	646036.50	793707.94	793707.94	1587415.88

Note:
The value in GSTR 1 is considered upto 2019-10-20 as per under Sec 16(4) SGST : 0.00

SGST Tax = All other SGST ITC {4(A)(5)} + 4(D)(1) from GSTR-3B - [SGST ITC from GSTR-01 suppliers - SGST ITC from Invalid ITC under Sec 16(4)]

= 1116726.19 - [323018.25 - 0.00]

= 793707.94

The value in GSTR 1 is considered upto 2019-10-20 as per under Sec 16(4) SGST : 0.00

CGST Tax = All other CGST ITC {4(A)(5)} + 4(D)(1) from GSTR-3B - [CGST ITC from GSTR-01 suppliers - CGST ITC from Invalid ITC under Sec 16(4)]

= 1116726.19 - [323018.25 - 0.00]

= 793707.94

Details of Ineligible ITC 17 (5) **Date: 28-05-2022** **Rs in Rupees**

GSTIN : 36ACXFS3783R2ZO
Name : M/S SILVER OAK REALTY **FY : 2018-19**

S.No.	Seller Name	Seller GSTIN	Commodity / Service	HSN code	Month	R1 to this dealer		
						SGST	CGST	Total
1	2	3	4	5	6	7a	7b	7c
1	SUMMIT SALES LLP	36ACQFS2044C1Z7	Works contractors	9954;	Apr, 2018	4329.30	4329.30	8658.60
2	SUMMIT SALES LLP	36ACQFS2044C1Z7	Works contractors	9954;	Jun, 2018	4385.12	4385.12	8770.24
3	SUMMIT SALES LLP	36ACQFS2044C1Z7	Works contractors	9954;	Jul, 2018	3462.18	3462.18	6924.36
4	SUMMIT SALES LLP	36ACQFS2044C1Z7	Works contractors	9954;	Aug, 2018	11170.16	11170.16	22340.32
5	SUMMIT SALES LLP	36ACQFS2044C1Z7	Works contractors	9954;	Sep, 2018	2053.71	2053.71	4107.42
6	SUMMIT SALES LLP	36ACQFS2044C1Z7	Works contractors	9954;	Oct, 2018	59.01	59.01	118.02
7	SUMMIT SALES LLP	36ACQFS2044C1Z7	Works contractors	9954;	Nov, 2018	753.75	753.75	1507.50
8	SUMMIT SALES LLP	36ACQFS2044C1Z7	Works contractors	9954;	Dec, 2018	8.49	8.49	16.98
9	SUMMIT SALES LLP	36ACQFS2044C1Z7	Works contractors	9954;	Feb, 2019	41.60	41.60	83.20
10	SUMMIT SALES LLP	36ACQFS2044C1Z7	Works contractors	9954;	Mar, 2019	8.67	8.67	17.34
	Total					26271.99	26271.99	52543.98

Note:

SGST Ineligible ITC = Lower of {(Total SGST ineligible ITC u/s 17(5) from GSTR-01 to this dealer - 4D(1) SGST of GSTR-3B) or Sum of 4C of all months GSTR 3B in FY}

= Lower of 26271.99 - 0.000 or 369084.10

= 26271.99

CGST Ineligible ITC = Lower of {(Total CGST ineligible ITC u/s 17(5) from GSTR-01 to this dealer - 4D(1) CGST of GSTR-3B) or Sum of 4C of all months GSTR 3B in FY}

= Lower of 26271.99 - 0.000 or 369084.10

= 26271.99