



Proceedings of Assistant Commissioner (State Taxes)

Ramgopalpet-Ranigunj-II Circle

BEGUMPET DIVISION

PRESENT: Sri M. UPENDER

(U/s 73 of the TGST & CGST Acts, 2017)

DIN	GST/36ACVFS7909P1ZV/20/1
Office details Designation of the assessing officer Unit Division	ASSISTANT COMMISSIONER (ST) RAMGOPALPET-RANIGUNJ BEGUMPET
Details of the Tax payer Name Legal Name GSTIN	SERENE CONSTRUCTIONS LLP SERENE CONSTRUCTIONS LLP 36ACVFS7909P1ZV
Financial Year	2019-20

- Ref: 1. These offices Show Cause notice vide ARN: **AD3605240326651** dated: 30/05/2024.
2. This office Reminders dated: 20/07/2024, 31/07/2024 & 07/08/2024.
3. Tax Payers reply dated: 24-08-2024.

You have filed annual return in GSTR-09 for the financial year 2019-20.

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.**465722.00**

CGST Rs.**465722.00**

IGST Rs.**0.00**

CESS Rs.**0.00**

Total Rs.**931444.00**

The details of the above tax liability are as follows:

1.Under declaration of output tax:

- **The tax on outward supplies under declared on reconciliation of data in GSTR-09:**

It is observed that the tax payer has not correctly declared tax on his outward supplies on reconciliation of turnovers in GSTR-09.

S.No	Issue	Table No. in GSTR-09	SGST	CGST	IGST	CESS	Total
1	2	3	4	5	6	7	8
1	Tax on taxable supplies as declared in GSTR-09	4N	2707916.00	2707916.00	0.00	0.00	5415832.00
2	Add net increase due to amendments (Increase in amendments (-) decrease in amendments)	10 (-) 11	0.00	0.00	0.00	0.00	0.00
3	Add tax on deemed supplies	16B	0.00	0.00	0.00	0.00	0.00
4	Add tax on unreturned goods	16C	0.00	0.00	0.00	0.00	0.00
5	Pending demands	15G	0.00	0.00	0.00	0.00	0.00
6	Total output tax liability as per the above in GSTR-09 (S.NO 1+2+3+4+5)		2707916.00	2707916.00	0.00	0.00	5415832.00
7	Less Total tax paid in cash	9	131176.00	55777.00	0.00	0.00	186953.00
8	Less Tax paid by adjustment of ITC	9	2545240.00	2620639.00	0.00	0.00	5165879.00
9	Less differential tax paid on amendments	14	0.00	0.00	0.00	0.00	0.00
10	Add differential tax paid on amendments related to previous year in current year	(14) of previous FY GSTR-09	0.00	0.00	0.00	0.00	0.00
11	Net tax payable (S.NO 6-7-8-9+10)		31500.00	31500.00	0.00	0.00	63000.00

Response of the taxpayer:

1. Notice in this regard, submits that, CGST of Rs 31,500 and SGST of Rs 31,500 is excess paid in the GSTR-3B of March-2019 and thus the same has been reduced from GST liability of July-2019.
2. Extract of GSTR-3B and GSTR 1 for F.Y. 2018-19 and F.Y. 2019-20 is provided below:

Tax Period	Tax liability declared in GSTR-3B during the month [as per table 3.1(a)]				Tax liability declared in GSTR-1 (other than reverse charge supply) during the month [as per table 4A, 4C, 5, 6C, 7, 9A, 9B, 9C, 10, 11]				Shortfall (-)/ Excess (+) in liability (GSTR-3B - GSTR-1)			
	IGST	CGST	SGST/UTGST	CESS	IGST	CGST	SGST/UTGST	CESS	IGST	CGST	SGST/UTGST	CESS
1	2	3	4	5	6	7	8	9	10	11	12	13
Apr-18	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
May-18	0.00	0.00	0.00	0.00	0.00	31,500.00	31,500.00	0.00	0.00	-31,500.00	-31,500.00	0.00
Jun-18	0.00	54,900.00	54,900.00	0.00	0.00	54,900.00	54,900.00	0.00	0.00	0.00	0.00	0.00
Jul-18	0.00	3,63,600.00	3,63,600.00	0.00	0.00	3,63,600.00	3,63,600.00	0.00	0.00	0.00	0.00	0.00
Aug-18	0.00	1,33,200.00	1,33,200.00	0.00	0.00	1,33,200.00	1,33,200.00	0.00	0.00	0.00	0.00	0.00
Sep-18	0.00	3,37,500.00	3,37,500.00	0.00	0.00	2,20,500.00	2,20,500.00	0.00	0.00	1,17,000.00	1,17,000.00	0.00
Oct-18	0.00	1,98,000.00	1,98,000.00	0.00	0.00	1,98,000.00	1,98,000.00	0.00	0.00	0.00	0.00	0.00
Nov-18	0.00	76,500.00	76,500.00	0.00	0.00	76,500.00	76,500.00	0.00	0.00	0.00	0.00	0.00
Dec-18	0.00	90,000.00	90,000.00	0.00	0.00	90,000.00	90,000.00	0.00	0.00	0.00	0.00	0.00
Jan-19	0.00	4,44,425.00	4,44,425.00	0.00	0.00	4,44,425.31	4,44,425.31	0.00	0.00	-0.31	-0.31	0.00
Feb-19	0.00	4,38,300.00	4,38,300.00	0.00	0.00	4,38,300.00	4,38,300.00	0.00	0.00	0.00	0.00	0.00
Mar-19	0.00	4,72,500.00	4,72,500.00	0.00	0.00	4,02,075.00	4,02,075.00	0.00	0.00	70,425.00	70,425.00	0.00
Total	0.00	26,08,925.00	26,08,925.00	0.00	0.00	24,53,000.31	24,53,000.31	0.00	0.00	1,55,924.69	1,55,924.69	0.00

Difference in GSTR 1 and GSTR 3B of 18-19	1,55,924	1,55,924
Less: Taxes of 17-18 paid in 18-19	1,17,000	1,17,000
Taxes excess paid in 18-19	38,924	38,924

3. Taxes of CGST Rs 38,924 and SGST Rs 38,924 excess paid in F.Y. 18-19 is adjusted in F.Y. 19-20 as provided in the table below:

Tax Period	Tax liability declared in GSTR-3B during the month [as per table 3.1(a)]				Tax liability declared in GSTR-1 (other than reverse charge supply) during the month [as per table 4A, 4C, 5, 6C, 7, 9A, 9B, 9C, 10, 11]				Shortfall (-)/ Excess (+) in liability (GSTR-3B - GSTR-1)			
	IGST	CGST	SGST/UTGST	CESS	IGST	CGST	SGST/UTGST	CESS	IGST	CGST	SGST/UTGST	CESS
1	2	3	4	5	6	7	8	9	10	11	12	13
Apr-19	0.00	2,16,000.00	2,16,000.00	0.00	0.00	2,16,000.00	2,16,000.00	0.00	0.00	0.00	0.00	0.00
May-19	0.00	1,35,000.00	1,35,000.00	0.00	0.00	1,35,000.00	1,35,000.00	0.00	0.00	0.00	0.00	0.00
Jun-19	0.00	1,35,000.00	1,35,000.00	0.00	0.00	1,35,000.00	1,35,000.00	0.00	0.00	0.00	0.00	0.00
Jul-19	0.00	2,56,500.00	2,56,500.00	0.00	0.00	2,88,000.00	2,88,000.00	0.00	0.00	-31,500.00	-31,500.00	0.00
Aug-19	0.00	3,10,500.00	3,10,500.00	0.00	0.00	3,10,500.00	3,10,500.00	0.00	0.00	0.00	0.00	0.00
Sep-19	0.00	2,65,500.00	2,65,500.00	0.00	0.00	2,72,925.00	2,72,925.00	0.00	0.00	-7,425.00	-7,425.00	0.00
Oct-19	0.00	1,80,000.00	1,80,000.00	0.00	0.00	1,80,000.00	1,80,000.00	0.00	0.00	0.00	0.00	0.00
Nov-19	0.00	3,60,000.00	3,60,000.00	0.00	0.00	3,60,000.00	3,60,000.00	0.00	0.00	0.00	0.00	0.00
Dec-19	0.00	1,57,500.00	1,57,500.00	0.00	0.00	1,57,500.00	1,57,500.00	0.00	0.00	0.00	0.00	0.00
Jan-20	0.00	1,12,500.00	1,12,500.00	0.00	0.00	1,12,500.00	1,12,500.00	0.00	0.00	0.00	0.00	0.00
Feb-20	0.00	4,95,000.00	4,95,000.00	0.00	0.00	4,95,000.00	4,95,000.00	0.00	0.00	0.00	0.00	0.00
Mar-20	0.00	52,916.00	52,916.00	0.00	0.00	52,915.68	52,915.68	0.00	0.00	0.32	0.32	0.00
Total	0.00	26,76,416.00	26,76,416.00	0.00	0.00	27,15,340.68	27,15,340.68	0.00	0.00	-38,924.68	-38,924.68	0.00

4. Therefore, it is evident that there has been no short payment of tax. In lieu of above submissions, it is established that there has been no short payment of tax and hence the proposed demand to the extent of CGST Rs 31,500/- and SGST Rs 31,500/- be dropped.

Observations and conclusion of the assessing authority:

The taxpayer filed the reply and stated that short paid Taxes of CGST Rs 38,924 and SGST Rs 38,924 excess paid in F.Y. 18-19 is adjusted in F.Y. 19-20 and the same has been verified with reference to the GSTR01 & GSTR3B of FY2018-2019 and found in Order. Hence the proposed tax in the Show cause notice is hereby dropped.

2. Excess claim of ITC:

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

Under Sec 16(2)(c) 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	IGST	CESS	Total
1	2	3	4	5	6	7
1	ITC in the year as per Table 8A of GSTR-09	1894251.00	1894251.00	155415.00	0.00	3943917.00
2	ITC from ISD table 4A (4)	0.00	0.00	0.00	0.00	0.00
3	ITC from imports table 4A (1) +4A (2)	0.00	0.00	0.00	0.00	0.00
4	Inward Supplies liability to reverse charge 4A (3) (otherthan 4A (1) & 4A(2))	0.00	0.00	0.00	0.00	0.00
5	ITC brought forward from previous FYto currentFY,Table 8C of previous FY GSTR-09	0.00	0.00	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	0.00	0.00
7	Reversals in Table 4B of GSTR-3B	0.00	0.00	0.00	0.00	0.00
8	ITC Available for use in the same year (S.No1+2+3+4+5-6-7)	1894251.00	1894251.00	155415.00	0.00	3943917.00
9	ITC used in same year as per 4C of GSTR-3B	2327479.00	2327479.00	155415.00	0.00	4810373.00
10	Net excess used (S.No 9-8)	433228.00	433228.00	0.00	0.00	866456.00

Response of the taxpayer:

5. In this regard, noticee submits that the difference in CGST Rs 3,98,540 and SGST Rs 3,98,540/- is primarily on account of invoice issued by the supplier Pointec Associates, GSTIN: 36AAJFP7241H1Z2, dated 29-02-2020. Invoice Num: POINTEC/19-20/30. The dealer has reported the said invoice in their GSTR 1 of March-2020 and filed the same on 26-01-2021, which is beyond the cut-off date of 30-09-2020. Due to which ITC on the same is not auto populating in the GSTR 2A of the noticee. Screenshot from the GST portal of the said invoice is provided below.

GSTIN - 36ACVFS7909P1ZV

FY - 2019-20

Legal Name - SERENE CONSTRUCTIONS LLP

Return Period - March

Trade Name - SERENE CONSTRUCTIONS LLP

B2B Invoices - Supplier Details

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GSTIN of Supplier	Supplier Name	GSTR-1/5 Filing status	GSTR-1/5 Filing Date	GSTR-1/5 Filing Period	GSTR-3B filing status
36AEKPV0495G1Z2	VIDYA SHANKAR VISHWAKARMA	Y	15-Jul-20	Mar-20	Y
36ADQFS9120G1ZQ	SHIV SHAKTI MACHINE TOOLS HARDWARE AND ELECTRICALS	Y	09-May-20	Mar-20	Y
36AAJFP7241H1Z2	POINTEC ASSOCIATES	Y	26-Jan-21	Mar-20	Y
36AKGPR0150G1ZD	karunakarreddy veldi	Y	15-Jul-20	Mar-20	Y
36BBIPM8347N1ZW	SUDARSHAN MAHESHWARAM	Y	08-Jul-20	Mar-20	Y

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Invoice No.	Invoice Date	Invoice Type	Place Of Supply	Supply attract Reverse Charge	Total Invoice Value (₹)	Total Taxable Value (₹)	Integrated Tax (₹)	Central Tax (₹)	State/UT Tax (₹)	CESS (₹)	Soi
POINTEC/19-20/30	29-02-2020	R	Telangana	N	52,25,309.04	44,28,228.00	0.00	3,98,540.52	3,98,540.52	0.00	

6. Further, it is submitted that ITC amounting to CGST Rs 11,377/- and SGST Rs 11,377/- vide DRC -03 dated 26-11-2021, vide ARN No. AD3611210346397. The same is provided below for ready reference and attached as annexure.

FORM GST DRC - 03
[See rule 142(2)&142(3)]
Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement

ARN :AD3611210346397

Date :26/11/2021

1.	GSTIN					36ACVFS7909P1ZV						
2.	Name					SERENE CONSTRUCTIONS LLP						
3.	Cause of Payment					Voluntary						
4.	Section under which voluntary payment is made					73(5)						
5.	Details of show cause notice, if payment is made within 30 days of its issue					Reference No:NA				Date Of issue:NA		
6.	Financial Year					2019-2020						
7.	Details of payment made including interest and penalty, if applicable (Amount in Rs.)											
Sr. No.	Tax Period	Act	Place of supply	Tax/Cess	Interest	Penalty,if applicable	Fee	Others	Total	Ledger utilised (Cash/credit)	Debit entry no.	Date of debit entry
1.	APR 2019-MAR 2020	CGST	Telangana	11,377.00	0.00	0.00	0.00	0.00	11,377.00	Cash	DC3611210137107	26/11/2021
2.	APR 2019-MAR 2020	SGST	Telangana	11,377.00	0.00	0.00	0.00	0.00	11,377.00	Cash	DC3611210137107	26/11/2021

8. Reasons, if any -
Excess ITC Claimed in GSTR 3B compared to GSTR 09 is being reversed.

9. 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 .

7. Upon reconciliation of ITC from GSTR 2A Vs. ITC claimed in GSTR 3B, it is noted that one of the supplier have not reported the invoice issued to Serene Constructions LLP, as result of which, credit from them is not reflecting in GSTR 2A of the noticee. List of these invoices is provided below

Invoice Num	Invoice Date	Gross Total Value	GST Rate	Taxable Value	CGST	SGST	Total Tax
013	10-09-2019	19,824	18%	16,800	1,512	1,512	3,024
012	20-08-2019	59,118	18%	50,100	4,509	4,509	9,018
011	20-08-2019	65,279	18%	55,321	4,979	4,979	9,958
010	25-06-2019	70,712	18%	59,926	5,393	5,393	10,787
014	19-09-2019	79,048	18%	66,990	6,029	6,029	12,058
		2,93,981		2,49,136	22,422	22,422	44,845

Notice, however, has obtained supplies from the said supplier against GST Invoice and have made due payments to the supplier as per the provisions of section 16 of the CGST Act, 2017.

Ledger of the said supplier in the Books of Accounts of the noticee is attached as annexure.

8. It is to be noted that, Under Section 16(2)(c) of CGST Act payment of tax to Government, is subject to the provisions of Section 41 read with Rules 69 and 71. However, the ITC matching, reversal mechanism laid down under Section 41 read with rules is kept in abeyance. Therefore, till the provisions in this respect are given effect, the recipients are entitled to claim the ITC on the basis of tax invoice issued by the vendor without any consideration that such tax invoice is being reflected in GSTR-2A or not.
9. As held by Hon'ble Supreme Court in Tata Chemicals Limited v Commissioner, 2015 (320) ELT 45 (SC) when the law requires a particular thing to be done in a particular manner, it must be done in that manner only or not done at all. Therefore, ideally, the recipient cannot be asked to comply with this condition and reverse ITC when he has no mechanism to ensure whether the supplier has paid tax to the government or not.
10. Circular No. 123/42/2019-GST [F. NO. CBEC-20/06/14/2019-GST], DATED 11-11-2019, provides clarification on restriction under Rule 36(4) of CGST Rules, 2017 in availment of Input Tax Credit in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under section 37(1) of the CGST Act, 2017. Such circular clearly addresses the current issue in question and is readily applicable in our case. The extract of Issue no.1 addressed in the circular is enumerated below:

Sno.	Issue	Clarification
1	What are the invoices/debit notes on which the restriction under rule 36(4) of the CGST Rules shall apply?	The restriction of availment of ITC is imposed only in respect of those invoices/debit notes, details of which are required to be uploaded by the suppliers under sub-section (1) of section 37 and which have not been uploaded. Therefore, taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are outside the ambit of sub-section (1) of section 37, provided that eligibility conditions for availment of ITC are met in respect of the same. The restriction of 36(4) will be applicable only on the invoices/debit notes on which credit is availed after 09.10.2019.

11. Summarising the submissions made above it can be established that the difference in GST ITC as per GSTR 2A and GSTR 3B is:

Particulars	Reference	SGST	CGST	IGST
ITC in the year as per Table 8A of GSTR -09	A	18,94,251	18,94,251	1,55,415
Add:				
ITC from Pointec Associates not auto populating due to delay in filing of GSTR 1 by the supplier	B	3,98,540	3,98,540	-
ITC AS PER CIRCULAR 183/193	C	22,422	22,422	-
Total ITC available	D = A+B+C	23,15,213	23,15,213	1,55,415
ITC Claimed in 3B	E	23,27,479	23,27,479	1,55,415
Difference (Credit Excess availed)	F = D-E	-12,266	-12,266	-
ITC reversed vide DRC-03	G	11,377	11,377	
Net Difference	H = F-G	-889	-889	-

Observations and conclusion of the assessing authority:

The taxpayer has filed the reply for SGST: 3, 98,540.00 CGST: 3, 98,540.00 and stated that Pointec Associates GSTIN 36AAJFP7241H1Z2 has uploaded invoices on 26-01-2021 in GST Portal where as the GSTR3B has filed GSTR3B on 24/09/2020 which is within due date and paid the taxes. The same has been verified with reference to the Documentary evidence and found to be in order. Hence the proposed tax is hereby withdrawn.

The taxpayer has produced the Certificate as per circular no.193/05/2023-GST DT: 17-07-2023 for excess claim of input (i.e. the seller has declared in B2C instead of B2B & Wrong GSTIN entered while filing the GSTR01) for SGST Rs. **22,422.00** CGST Rs. **22,422.00** and the same has been verified with reference to the Documentary evidence and found to be in order hence the proposed tax is hereby withdrawn.

The taxpayer filed the reply for excess ITC availed SGST: 11,377.00 CGST: 11,377.00 and stated that he has already paid through DRC-03 and the same has been verified with reference to documentary evidence and found in order, Hence the proposed tax in the Show cause notice is hereby dropped.

The Contention put forth by the taxpayer for the excess input tax credit (ITC) of amount Rs. 889.00 under SGST&CGST head is not accepted, hence the tax proposed on

the excess input tax credit (ITC) i.e. Rs. 889.00 under SGST&CGST head is confirmed herewith. -----→ (1)

• **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/SAC code	SGST	CGST	IGST	CESS	Total
1	2	3	4	5	6	7	8
1	Motor Vehicles	8702; 8703; 8711	994.00	994.00	0.00	0.00	1988.00

S. No	Issue	Table no. in GSTR-09	SGST	CGST	IGST	CESS	Total
1	2	3	4	5	6	7	8
A	Total ineligible ITC u/s 17(5)		994.00	994.00	0.00	0.00	1988.00
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	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)}"	994.00	994.00	0.00	0.00	1988.00

Response of the taxpayer:

In this regard, notice submits that notice has never utilised such blocked credits under section 17(5) of the CGST Act, 2017 and therefore, demand for proceedings under the said para be dropped.

The Noticee reserves the right to add, to withdraw, to correct, to change, to delete, and to modify any submissions at the time of Personal Hearing in the Principal of Natural Justice.

Observations and conclusion of the assessing authority:

The Contention put forth by the taxpayer for the Under declaration of Ineligible ITC of amount Rs. 994.00 under SGST&CGST head is not accepted, hence the tax proposed on the excess input tax credit (ITC) i.e. Rs. 994.00 under SGST&CGST head is confirmed herewith. -----→ (2)

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:

S.No	Issue	SGST	CGST	IGST	Total
1	2	3	4	5	6
1	Total tax due in (1) + (2) + (3) above	1883.00	1883.00	0	3766.00

Since the taxpayer has not paid the amounts within (30) days of issue of the show cause they are liable to pay penalty under Sec.122 of the CGST/SGST Act as applicable of SGST Rs.**0.00** and CGST Rs. **0.00**and IGST **Rs.0.00**.

This order is issued only to the extent of the discrepancies identified prima facie in the returns as mentioned in the Show cause notice mentioned above.

Note: An appeal against this order lies before the Appellate Joint Commissioner (ST) Punjagutta Division Hyderabad within (90) days from the date of receipt of this order.

Sd/-
Assistant Commissioner (ST)
Ramgopalpet-Ranigunj-II
Circle.