



H N A & Co LLP
Chartered Accountants

(Formerly known as Hiregange & Associates LLP)

Date: 26.08.2024

To

**The Additional/ Joint Commissioner (Appeals-II) of Central Tax,
Hqrs Office, 7th Floor, L.B. stadium,
Basheerbagh, Hyderabad-500004.**

Dear Sir,

Sub: Filing of appeal against the Order dated 19.04.2024.

Ref:

- i. Order issued vide Reference No. 23/2024-25 (GST-Adjn) dated 19.04.2024 pertaining to **M/s. Nilgiri Estates**
 - ii. GSTIN: 36AAHFN0766F1ZA
1. With reference to the above, we have been authorized by M/s. **Nilgiri Estates** to submit an appeal against the above-referred Order Dated 19.04.2024 but received on 24.04.2024 to represent before your good office and to do necessary correspondences in the above referred matter. A copy of the authorization along with proof of receipt of order is attached to the appeal.
 2. In this regard, we are herewith submitting the Appeal against the above referred order in Form APL-01 along with Authorization and annexures. Therefore, request you to take the same on record and admit the appeal.

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

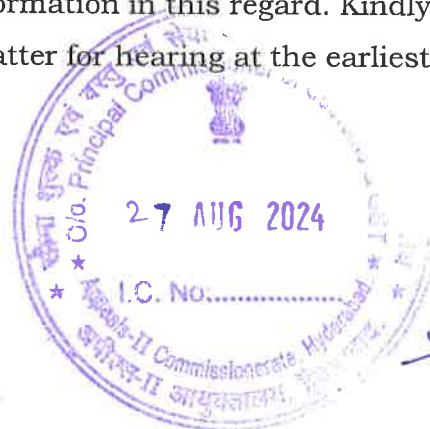
Thanking You,

Yours truly

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

Chartered Accountants


CA K. Lakshman Kumar
Partner



4th Floor, West Block, Srida Anushka Pride, R.No. 12, Banjara Hills, Hyderabad,
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7.	Proof of Receipt of Order		

Dated : 26.08.2024

To,
The Additional/Joint Commissioner (Appeals –II) Of Central Tax,
Hqrs Office, 7th Floor, L.B. Stadium,
Basheerbagh, Hyderabad – 500004.

Dear Sir,

Sub: Application for condonation of delay in filing the Appeal

Ref: Appeal against Order In Original No. 23/2024-25 (GST-Adjn) dated 19.04.2024
pertaining to M/s Nilgiri Estates.

1. As per Section 107 of the CGST Act, 2017, an appeal against the order of the adjudicating authority shall be filed within 3 months from the date of receipt of the order. In the instant case, the order was received on 24.04.2024, thereby, the due date for filing the appeal falls on 24.07.2024.
2. In this regard, we would like to submit that present appeal is related to the Interest and penalty amount related to FY 2018-19. Govenment has proposed in the 53rd council meeting about waiver of interest and penalty related FY 2017-18 to 2019-20 if tax was paid and subsequently government has introduced a new section 128A through The Finance (No. 2) Bill, 2024 dated:23.07.2024. However such insertion of section or further amendments were not given effect in the Goods and service tax act 2017. Considering the due date and condonation period we are filing the appeal against present order in original.
3. As explained in the above paragraphs, the delay is unintentional, and we have made sincere efforts to file the appeal within the time limit. Hence, we humbly request your good self to consider the same and allow the application for condonation of delay.

We sincerely regret the inconvenience caused in this regard. Kindly acknowledge receipt of this letter and do the needful.

Thanking You,

Yours faithfully,

For M/s Nilgiri Estates

Authorized Signatory





EMS SPEED POST



Office of the
Secretary to the Government of India
Ministry of Information & Public Relations
New Delhi 110 001
For the purpose of the
Registration of the
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TO

CHANDRA MOHTA & SONS PVT. LTD.

M/S. NILGIRI ESTATES
2ND FLOOR, 5-4-187/3 AND 4
SOTTAM MANSION, MG ROAD
SECUNDERABAD - 500003



Form GST APL - 01

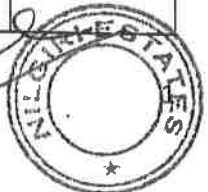
Form of Appeal to Appellate Authority

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

[See rule 108(1)]

**BEFORE THE ADDITIONAL/JOINT COMMISSIONER (APPEALS - II) OF
CENTRAL TAX, HQRS OFFICE, 7TH FLOOR, L.B. STADIUM, BASHEERBAGH,
HYDERABAD - 500004**

(1) GSTIN/ Temporary ID/UIN-	36AAHFN0766F1ZA						
(2) Legal Name of the Appellant	M/s. Nilgiri Estates						
(3) Trade name, if any-	M/s. Nilgiri Estates						
(4) Address	2 nd floor, 5-4-187/3 and 4, Soham Mansion, MG Road, Secunderabad, Ranaga Reddy, Hyderabad-500003.						
(5) Order No.	23/2024-25 (GST-Adjn)	Order Date	19.04.2024				
(6) Designation and address of the officer passing the order appealed against	Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad Salike senate, D. No: 2-4-416 & 417, Ramgopal pet, MG Road, Secunderabad.						
(7) Date of communication of the order appealed against	24.04.2024						
(8) Name of the authorized representative	CA. Lakshman Kumar K, C/o: H N A & Co. LLP, Chartered Accountants, 4 th Floor, West Block, Srida Anushka Pride, Above Lawrence and Mayo, Road No. 12, Banjara Hills, Hyderabad-500034. Email: laxman@hanindia.com Mob: +91 8978114334						
							
				(9) Details of the case under dispute			
				i. Brief issue of the case under dispute	Interest as per Sec50 of CGST Act, 2017 and penalty demanded as per Sec73(9) of CGST Act, 2017.		
				ii. Description and classification of goods/services in dispute	NA		
				iii. Period of dispute	April 2018 to March 2019		
iv. Amount under dispute							
Description	Central tax	State/UT tax	Integrated tax	Cess			
a. Tax/Cess	NA	NA	NA	NA			
b. Interest	u/s 50	u/s 50	u/s 50	NA			
c. Penalty	u/s 73(9)	u/s 73(9)	u/s 73(9)	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
(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	Ces s	Total amount
	Amount of demand created (A)	a) Tax/Ces s b) Interest c) Penalty d) Fees e) other charges	NA u/s 50 u/s 73(9) NA NA	NA u/s 50 u/s 73(9) NA NA	NA u/s 50 u/s 73(9) NA NA	NA NA NA NA NA	NA u/s 50 u/s 73(9) NA NA
	Amount of demand admitted (B)	a) Tax/Ces s	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 (C)	a) Tax/Ces s	NA	NA	NA	NA	NA
		b) Interest	u/s 50	u/s 50	u/s 50	NA	u/s 50
		c) Penalty	u/s 73(9)	u/s 73(9)	u/s 73(9)	NA	u/s 73(9)
		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: -

a) Details of payment required

Particulars		Central tax	State/U T tax	Integrated tax	Ces s	Total
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	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	NA	NA	NA	NA	NA

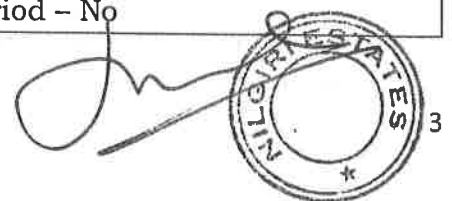
b) Details of payment of admitted amount and pre-deposit (pre-deposit 10% of the disputed tax and cess)

Sr. No.	Description	Tax payable	Paid through cash/credit ledger	Debit entry No.	Amount of tax paid			
1	2	3	4	5	6	7	8	9
1	Integrated tax	NA	Cash Ledger	NA				
		NA	Credit Ledger	NA	NA	NA	NA	NA
2	Central tax	NA	Cash Ledger	NA	NA	NA	NA	NA
		NA	Credit Ledger	NA	NA	NA	NA	NA
3	State/UT tax	NA	Cash Ledger	NA	NA	NA	NA	NA
		NA	Credit Ledger	NA	NA	NA	NA	NA
4	Cess	NA	Cash Ledger	NA	NA	NA	NA	NA
		NA	Credit Ledger	NA	NA	NA	NA	NA

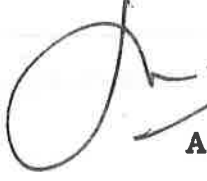
c) Interest, Penalty, Late fee, and any other amount payable and paid

S.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
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 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
(19)						

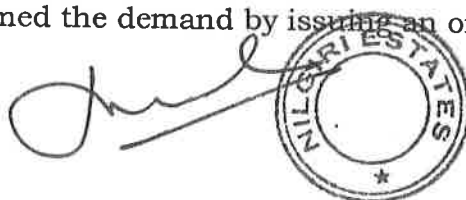


Appellant

ANNEXURE-A

STATEMENT OF FACTS

- A. M/s. Nilgiri Estates (hereinafter referred to as "Appellant") having its Principal Place of Business at the 2nd floor, 5-4-187/3 and 4, Soham Mansion, MG Road, Secunderabad, Ranga Reddy, Hyderabad-500003 and is engaged in business of construction & sale of villas and are registered with the GST department vide GSTIN: 36AAHFN0766F1ZA
- B. Appellant has been receiving various Input goods and services during the normal course of business on which ITC is being availed for the GST charged on them. The appellant has been filing the GST returns by claiming the ITC on all its inwards supplies through GSTR – 3B.
- C. On verification of records by the Telangana state GST Authorities few discrepancies were found and the same is communicated through issuance of DRC-01A vide DIN: 20231256YO0000888A4D dated 19.12.2023
- D. Subsequently, the Appellant is in receipt of the present Show Cause Notice for the period 2018-19 asking to show cause as to why ()
- An amount of Rs.27,66,974/- (Rupees twenty-seven lakhs sixty-six thousand nine hundred and seventy-four only) towards under declaration of output tax should not be demanded from them under Section 73 of the CGST Act, 2017/TGST Act, 2017 read with section 20 of IGST Act 2017;
 - an amount of Rs. 20,63,272/- (Rupees twenty lakhs sixty-three thousand two hundred and seventy-two) being excess ITC availed on account of non-reconciliation of information should not be demanded from them under Section 73 of the CGST Act,2017/TGST Act, 2017 read with section 20 of IGST Act 2017;
 - Interest on the amounts at Sl.No. (i) (ii) should not be recovered from them under Section 50 of the CGST Act,2017/TGST Act 2017 read with Section 20 of IGST Act,2017
 - Penalty should not be imposed on Sl.No. (i) (ii) under Section 122(2)(a) of the CGST Act,2017/TGST Act 2017 read with section 73(9) of CGST Act 2017/TGST Act 2017 read with Section 20 of IGST Act,2017
- E. Appellant has filed a reply to the above show cause notice on 16.02.2024 ()
- F. The learned Adjudicating authority considering the submissions made by the Appellant have confirmed the demand by issuing an order in Original though OIO:

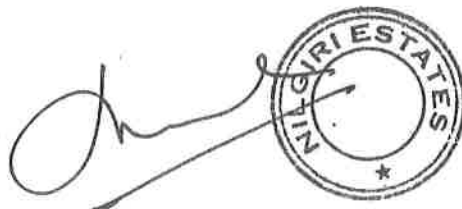
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23/2024-25 (GST-Adjn) dated 19.04.2024 by confirming the demand of Interest and Penalty. (A copy of the Order in Original is enclosed as **Annexure - I**).

ORDER

- (i) *I drop the proceedings initiated in the show cause under Issue-1 in view of the discussions and findings in Para 9 above.*
- (ii) *I drop the proceedings initiated in the show cause under Issue-2 in view of the discussions and findings in Para 10 above.*
- (iii) *I confirm the demand of Rs. 4,56,318/- (CGST: Rs.2,28,159/- SGST: Rs.2,28,159/-) (Rupees Four Lakh Fifty Six Thousand Three Hundred and Eighteen Only), in respect of Issue-3, as discussed supra in Para 11 under Section 73(9) of the COST ACL 2017 and similar provisions as laid down in the TGST Act, 2017 read with Section 20 of IGST Act, 2017*
- (iv) *I appropriate the amount of Rs. 4,56,318/- (CGST: Rs.2,28,159/- SGST: Rs.2,28,159/-) (Rupees Four Lakh Fifty Six Thousand Three Hundred and Eighteen Only) which was already paid by them vide DRC dated 07 01 2020 under Debit Entry No. D13601200012760 and DRC dated 16 10.2020 under debit entry no D13610200050832 towards duty confirmed at Sl.No. (i) above, under Section. 73(9) of the CGST Act, 2017 and similar provisions as laid down in the TGST Act, 2017 read with Section 20 of IGST Act, 2017*
- (v) *I confirm the demand of interest at the applicable rate from them on tax demanded at (ii) above under Section 50 of CGST Act, 2017 read with Section 20 of IGST Act and similar provisions under TGST Act 2017*
- (vi) *I confirm the demand of penalty from them on the demand at (above under Section 73(9) of CGST Act, 2017 read with Section [22(2)(a) of CGST Act, 2017 and Section 20 of IGST Act, 2017 and similar provisions under TGST Act, 2017*

To the extent 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.

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ANNEXURE-B

GROUND 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 Telangana GST 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: Penalties and interest are not payable/imposable:

3. The present Order-in-original No. 23/2024-25 (GST-Adjn) dated 19.04.2024 has been issued under section 73 of CGST Act, 2017 for the FY 2018-19 confirming interest and penalty on the ITC amount which is reversed through DRC-03.

53rd Council meeting

4. The GST council has recommended the waiver of interest and penalty for demand notices issued under Section 73 of GST Act. To facilitate this initiative, the council has proposed the insertion of a new section, Section 128A, into the CGST Act and the extract of the same is as follows:

"Insertion of Section 128A in CGST Act, to provide for conditional waiver of interest or penalty or both, relating to demands raised under Section 73, for FY 2017-18 to FY 2019- 20: Considering the difficulties faced by the taxpayers, during the initial years of implementation of GST, the GST Council recommended, waiving interest and penalties for demand notices issued under Section 73 of the CGST Act for the fiscal years 2017-18, 2018-19 and 2019-20, in cases where the taxpayer pays the full amount of tax demanded in the notice up to 31.03.2025. The waiver does not cover the demand of erroneous refunds. To implement this, the GST Council has recommended the insertion of Section 128A in CGST Act, 2017."

From the above submissions, it is clear that if the taxpayer has paid the tax liability before 31.03.2025 then interest and penalty related to the said tax amount which was paid earlier need not be paid and hence in the present case the Appellant has paid tax liability already and demanding of the same is not valid.

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5. As per 53rd GST council meeting, no interest and penalty should be demanded as the full amount of tax demanded in the notice paid by March 31st, 2025. Hence, Impugned order needs to be set aside.

Insertion of Section-128A of CGST Act, 2017:-

6. As discussed earlier, the Appellant would like to provide an extract of newly inserted section for your ease reference below:

"128A. Waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods:

(1) Notwithstanding anything to the contrary contained in this Act, where any amount of tax is payable by a person chargeable with tax in accordance with, —

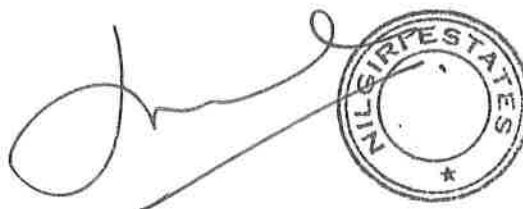
(a) a notice issued under sub-section (1) of section 73 or a statement issued under sub-section (3) of section 73, and where no order under sub-section (9) of section 73 has been issued; or

(b) an order passed under sub-section (9) of section 73, and where no order under sub-section (11) of section 107 or sub-section (1) of section 108 has been passed; or

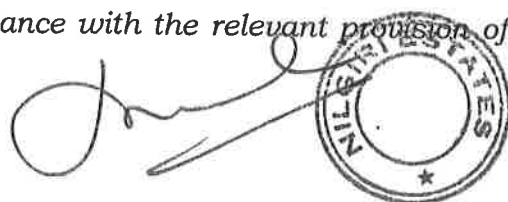
(c) order passed under sub-section (11) of section 107 or sub-section (1) of section 108, and where no order under sub-section (1) of section 113 has been passed,

*pertaining to the **period from 1st July, 2017 to 31st March, 2020, or a part thereof**, and the said person pays the full amount of tax payable as per the notice or statement or the order referred to in clause (a), clause (b) or clause (c), as the case may be, on or before the date, as may be notified by the Government on the recommendations of the Council, no interest under section 50 and penalty under this Act, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, subject to such conditions as may be prescribed:*

7. From the above extraction, it is evident that the Appellant has paid the full amount before the due date notified by the government. Therefore, the Appellant submits that the Appellant has already discharged the tax amount through DRC-03 Dated 16.10.2024 vide No.DI3610200050832 and confirming demand of interest and penalty is not correct. Hence, Further proceedings in this regard need to be dropped.

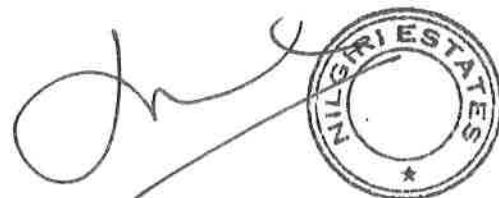


8. The Appellant submits that the impugned order confirmed that the Appellant is liable to interest under Section 50 of the CGST Act, 2017. In this regard, it is pertinent to examine Section 50 of CGST Act, 2017 which is extracted below for ready reference
- (1) 'Every person who is liable to pay tax in accordance with the provisions of this Act or the Rules made thereunder, but failed 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'*
- (2) the interest under sub-section(1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid*
- (3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.*
9. The Appellant submits that the impugned order has demanded that interest rate prescribed under Section 50 is applicable. In this regard, The Appellant submits that the confirmation of the impugned order is not at all tenable in as much as it has not given any reason for such understanding.
10. The Appellant submits that Section 50(3) of GST Act, 2017 creates interest liability only when the Appellant has claimed undue or excess input tax credit under sub-section (10) of Section 42 or undue or excess reduction in output tax liability under sub-section (10) of Section 43. This shows that the interest under Section 50(3) will arise only in above referred two instances and will not arise in any other case.
11. Judicially, it was consistently held that the imposition of interest on unutilized ITC is not correct. 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 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 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. Girijapathi Reddy & Company v. Commissioner — 2016 (344) E.L.T. 923 (Tri-Hyd);
- d. Ganta Ramanaiah 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.);

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

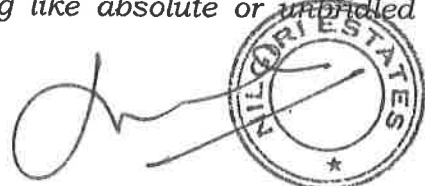
13. Without prejudice to the above, the Appellant would like to submit the definition of the word penalty is not defined under the GST Act, 2017. But the penalty indicates that it is a punishment that is imposed for any offence that is made. Hence, a penalty by nature is an imposition against any offence that is done. An offence is generally intentional or an act of purposeful deceiving. Hence, the allegation that “mens rea” is not essential to impose penalty is not correct is itself imposed to curtail the intentional errors made. The same is evident from Section 73(9) which states as follows:

“(9) The **proper officer shall**, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.”.

14. From the above, it can be understood that the proper officer at his discretion can either impose a penalty or just propose to demand interest and tax as the same pertain to penalty provisions. Further, Appellant submits that the sense and tone of the word “shall” in the legislature is litigative in nature. But the real meaning of shall always defined an intention of applicability of “may” as the penalty itself is discretionary in nature. In this regard, Appellant reliance on the decision of *Shivjee Singh vs. Nagendra Tiwary*, **AIR 2010 (SC) 2261 at 2263 (2010 (7) TMI 954 - SUPREME COURT)** wherein it was held that, “*The provisions contained therein are required to be interpreted keeping in view the well-recognized rule of construction that procedural prescriptions are meant for doing substantial justice. If violation of the procedural provision does not result in denial of fair hearing or causes prejudice*

to the parties, the same has to be treated as directory notwithstanding the use of word 'shall'."

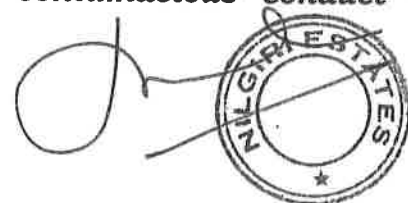
15. Without prejudice to the above, Appellant wishes to place reliance on the judgement in the case of Assistant Commercial Taxes Officer, Ward I, Sirohi Versus Shri Vajaram [1998] 111 STC 1 (Raj[TT]) 1997 (10) TMI 372 - RAJASTHAN TAXATION TRIBUNAL, wherein it was held that "...Whether penalty should 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 (emphasis* supplied). 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."
16. In the present case, Appellant has no intention to evade tax or to avail irregular credit and such penalties are statutory in nature. Thus, the penalty shall be waived off and the impugned order needs to be set aside.
17. Further, 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 there is no delay in payment of tax and short payment of tax, 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 set a side.
18. 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 the 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

A handwritten signature in black ink is written over a circular official stamp. The stamp contains the text "RAJASTHAN HIGH COURT" around the perimeter and a small star at the bottom center.

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."

19. 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 a penalty was made out.***

20. 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 there is a clear finding by the authorities below that this case does not warrant the imposition of a 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, a Penalty cannot be imposed in the absence of deliberate defiance of law even if the statute provides for a penalty.

21. 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.”

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

23. Appellant wishes to be heard in person before passing any order in this regard.

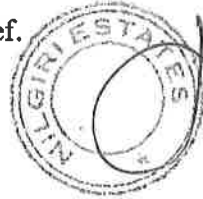
For M/s. Nilgiri Estates

Authorized Signatory


PRAYER

Therefore, it is prayed that

- a) To set aside the impugned order to the extent aggrieved;
- b) To hold that there is violation of principles of natural justice
- c) To hold that there is no liability to pay the interest and penalty.
- d) To provide any other consequential relief.



Signature

VERIFICATION

I, SOHAM MODI, S/o SATISH MODI, PARTNER Authorized Signatory of M/s. Nilgiri Estates 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.

Place: Hyderabad

Date: _____



Signature

**BEFORE THE ADDITIONAL COMMISSIONER / JOINT COMMISSIONER
(APPEALS -II) OF CENTRAL TAX, HQRS OFFICE, 7TH FLOOR, L.B. STADIUM,
BASHEERBAGH, HYDERABAD - 500004.**

Sub: Filing of Appeal against Order-in-Original vide OIO: 23/2024-25 (GST-Adjn) dated 19.04.2024 in the case of M/s. Nilgiri Estates.

I, SOHAM MODI, PARTNER of M/s. Nilgiri Estates, hereby authorizes and appoint H N A & Co. 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: -

- 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 26.08.2024 at Hyderabad

Signature

I, the undersigned partner of M/s H N A & Co. 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 CGST 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: 26.08.2024

Address for service:

**H N A & Co. LLP
Chartered Accountants,
4th Floor, West Block, Anushka Pride,
above Lawrence & Mayo,
Road Number 12, Banjara Hills,
Hyderabad, Telangana 500034.**

**For HNA & Co. LLP
Chartered Accountants**

**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.

Sl No.	Name	Qualification	Mem. /Roll No.	Signature
1	Sudhir V S	CA	219109	
2	Venkata Prasad P	CA/LLB	AP/3511/2023	
3	Srimannarayana S	CA	261612	
4	Akash Heda	CA	269711	
5	P. Manikanta	CA	277705	



		
केन्द्रीयकरसहायक आयुक्त कार्यालय,सिकंदरावादमालएवमसेवाकरमण्डल, सिकंदरावाद।		
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/2916/2023-CGST-DIV-SNBD-COMMRTE-SECUNDERABAD

दिनांक/Date: 19.04.2024

DIN: 20240456YO000000E212

ORDER-IN-ORIGINAL No.23/2024-25 (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 विना 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 केन्द्रीयवस्तु 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.

केन्द्रीयवस्तु 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

अपीलकाआधारऔरफॉर्मकेसत्यापनकेरूपमेंफॉर्मजीएसटीएपीएल01 मेंनिहितहै, केन्द्रीयसामानऔरसेवाकर नियम, 2017 केनियम26 मेंनिर्दिष्टरीकेसेहस्ताक्षरकिजाएंगे।

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.

केन्द्रीयवस्तु 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

(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.

केन्द्रीयवस्तु एवम सेवाकरअधिनियम, 2017कीधारा 107 (6) केअनुसार, अपीलकर्तानिकेन्द्रीयवस्तु एवम सेवाकरअधिनियम, 2017कीधारा 107 (1) केतहतकोईअपीलदायरनहींकीजाएगी, जबतककिअपीलकर्तानेभुगताननहीकियाहो-

26/00
973/14



(ए) पूर्णरूपसे, लगाए गए आदेश से उत्पन्न कर, व्याज, जुर्माना, शुल्क और जुर्माना की राशि का ऐसा हिस्सा, जैसा कि उसके द्वारा स्वीकार किया गया है; तथा

(बी) दस प्रतिशत के बराबर राशि। उक्त आदेश से उत्पन्न विवाद में कर की शेष राशि, जिसके संबंध में अपील दायर की गई है।

Sub: GST-On account of discrepancies observed during verification of Returns filed by M/S NILGIRI ESTATES (GSTIN: 36AAHFN0766F1ZA) for the FY 2018-19- Order-in-Original – Regarding.

M/S NILGIRI ESTATES (here-in-after referred to as "Taxpayer"), situated at 2nd FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003, is registered with the Centre GST Department with (GSTIN: 36AAHFN0766F1ZA) for the purpose of payment of GST and falls under the jurisdiction of Ramgopalpet-II CGST Range, Secunderabad GST Division, Secunderabad GST Commissionerate. Their business activities are 'WORKS CONTRACT SERVICES (HSNs- 00440334, 00440410).

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

2.1. **ISSUE 1: Under declaration of output tax.** It is observed that, the taxpayer has not correctly declared tax on his outward supplies on reconciliation of turnover in GSTR-01, GSTR-3B and GSTR-9 for the financial year 2018-19.

2.2. The taxpayer has self-assessed the tax liability on outward supply and furnished the details of the same in returns specified under Section 37 of the CGST Act, 2017. In terms of provision of Section 59 of the CGST Act, 2017, 'every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39'. The taxpayer failed to discharge the self-assessed tax in the returns specified under Section 39 and the taxpayer was to pay taxes liable under Section 9 of the CGST Act, 2017 and therefore, the differential tax of **Rs 27,66,974/-** as detailed in table below, is liable for recovery under Section 73 of the CGST Act, 2017 along with applicable interest under Section 50 and penalty under Section 73 of the CGST Act, 2017 read with Section 122(2)(a) of the CGST Act, 2017.

Table-1

Amount: INR

S.No	issue	Table No. in GSTR-09	SGST	CGST	Total
1	2	3	4	5	6
1	Tax on taxable supplies as declared in GSTR-09	4N	6384137.00	6384137.00	12768274.00
2	Add net increase due to amendments (Increase in amendments (-) decrease in amendments)	10 (-) 11	0.00	0.00	0.00
3	Add tax on deemed supplies	16B	0.00	0.00	0.00

4	Add tax on unreturned goods	16C	0.00	0.00	0.00
5	Pending demands	15G	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)		6384137.00	6384137.00	12768274.00
7	Less Total tax paid in cash	9	0.00	0.00	0.00
8	Less Tax paid by adjustment of ITC	9	5000350.00	5000650.00	10001300.00
9	Less differential tax paid on amendments	14	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
11	Net tax payable (S.NO 6-7-8-9+10)		1383487.00	1383487.00	2766974.00

3. ISSUE 2: The excess input tax credit (ITC) claimed on account of non-reconciliation of information:

Under Section16(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:

Amt in Rs.

S.No	Description	SGST	CGST	Total
1	2	3	4	5
1	ITC in the year as per Table 8A of GSTR-09	6803981.00	6803981.00	13607962.00
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	0.00	0.00	0.00
8	ITC Available for use in the same year (S.No 1+2+3+4+5-6-7)	6803981.00	6803981.00	13607962.00
9	ITC used in same year as per 4C of GSTR-3B	7607458.00	7607458.00	15214916.00
10	Net excess used (S.No 9-8)	803477.00	803477.00	1606954.00

ISSUE 3.Scrutiny of ITC reversals:

S.No	Description	SGST	CGST	Total
1	2	3	4	5
1	ITC reversed in Table 4(B) of GSTR-3B	0.00	0.00	0.00
2	ITC reversed in Table 7(I) of GSTR-09	228159.00	228159.00	456318.00
3	Excess ITC reversal showing in GSTR-09 as completed the GSTR-3B (S.No 2-1)	228159.00	228159.00	456318.00

From the above taxpayer has declared excess ITC reversal in GSTR 9 compared to ITC reversed in table 4(B) of GSTR-3B as detailed in table above.

Therefore, excess ITC of Rs. 20,63,272/- availed is required to be recovered 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.

TOTAL TAX PAYABLE SUMMARY				
Sl. No.	Issue	SGST	CGST	Total
1	2	3	4	5
1	Total Tax due for issues 1 to 2.	2415123.00	2415123.00	4830246.00
2	Interest	In terms of Section 50 of the CGST Act, 2017		
3	Penalty	In terms of Section 73 of the CGST Act, 2017		

4. The DRC 01A vide DIN: 20231256YO0000888A4D dated 19.12.2023 issued to the taxpayer requesting to pay tax along with interest and applicable penalty. However the taxpayer neither paid dues nor submitted any reply.

5. In view of the above, **M/S NILGIRI ESTATES** (here-in-after referred to as "Taxpayer"), situated at 2nd FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003, was issued a Show Cause Notice answerable to the **Assistant/Deputy Commissioner of Central Tax, Secunderabad Division, Salike Senate, 1st Floor, D. No. 2-4-416 & 417, Ramgopalpet, MG Road, Secunderabad 500003** within thirty days (30) from the date of issue of this notice as to why: -

- (i) an amount of **Rs.27,66,974/- [Rs.13,83,487/-CGST and Rs13,83,487/-SGST] (Rupees Twenty Seven Lakhs Sixty Six Thousand Nine Hundred and Seventy Four only)**, as discussed supra in Para 2 should not be demanded from them under Section 73(1) of the CGST Act, 2017 and similar provisions as laid in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.
- (ii) an amount of **Rs. 20,63,272 /- [Rs.10,31,636/- CGST and Rs.10,31,636/- SGST] (Rupees Twenty Lakhs Sixty Three Thousand Two Hundred and Seventy Two only)**, as discussed supra in Para 3 should not be demanded from them under Section 73(1) of the CGST Act, 2017 and similar provisions as laid in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.
- (iii) interest at the applicable rate should not be demanded 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) penalty should not be imposed on them demands at (i) & (ii) above under Section 73 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

6. Reply to Show Cause Notice

The TP has submitted their reply to the SCN on 16.02.2024. The tax payer in his reply stated that in respect of:

6.1 Issue-1: Under declaration of output tax

The taxpayer Submitted that the alleged difference of output tax liability was factually incorrect and wherever there was short payment, it was paid voluntarily. The actual difference was quite less than the amount arrived in the impugned SCN. The detailed explanation was already made to the previous SCN which may be considered here also.

6.2. Issue-2: 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 to 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.

6.3. ISSUE-3: Scrutiny of ITC Reversals:

The tax payer submitted, they have reversed the said ITC of Rs. 4,56,318/- (CGST: Rs.2,28,159/- SGST: Rs.2,28,159/-) vide DRC dated 07.01.2020 under Debit Entry DI3601200012760 and DRC dated 16.10.2020 under debit entry DI3610200050832 and requested to drop further proceedings.

7. Personal Hearing:

7.1 A Personal Hearing was fixed on 25.01.2024, 13.02.2024 & 27.02.2024 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 16.02.2024 and requested to drop further proceedings.

8. Discussions & Findings :

I have carefully gone through the records of the case, Show Cause Notice, tax payer's reply dated 16.02.2024, 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 three issues before me to decide. I shall take up the aforesaid issues one by one for discussion.

9. Issue-1: Under declaration of output tax

Section 37. Furnishing details of outward supplies. -

(1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically ¹[subject to such conditions and restrictions and] in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details ²[shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed]

Section 39. Furnishing of returns.— *(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof. (2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter. (3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month. (4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month. (5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier. (6) The*

Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein: Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner. (7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return. CHAPTER IX RETURNS 71 (8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period. (9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or subsection (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act: Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier. (10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.

Section 49. Payment of tax, interest, penalty and other amounts.-

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:-

- (a) self-assessed tax, and other dues related to returns of previous tax periods;
- (b) self-assessed tax, and other dues related to the return of the current tax period;
- (c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.

9.1. In the instant case, a show cause notice was issued on the same issue, by the Additional Commissioner, Hyderabad Audit II Commissionerate vide Show Cause No. 06/23-24 dated 19.05.2023 under C.No.V/Audit-II/C-I/28/2021-22/Gr-15. The said Show Cause Notice was adjudicated by the Additional

Commissioner, Secunderabad GST Commissionerate vide OIO No. 28/2023-24 (Sec-Adjn-ADC)(GST) Dated 12.10.2023. In view of the above, it is proposed to drop the proceedings initiated in the show cause notice.

10. Issue-2: The excess input tax credit (ITC) claimed on account of non-reconciliation of information

In the instant case, a show cause notice was issued by the Hyderabad Audit II Commissionerate issued by the Additional Commissioner vide Show Cause Notice No. 06/23-24 dated 19.05.2023 under C.No.V/Audit-II/C-I/28/2021-22/Gr-15. The said Show Cause Notice was adjudicated by the Additional Commissioner, Secunderabad GST Commissionerate vide OIO No. 28/2023-24 (Sec-Adjn-ADC)(GST) Dated 12.10.2023.

10.1. In view of the above, it is proposed to drop the proceedings initiated in the show cause.

11. Issue-3: Scrutiny of ITC reversals:

In the instant case, the tax payer submitted that they have reversed the said ITC of **Rs. 4,56,318/- (CGST: Rs.2,28,159/- SGST: Rs.2,28,159/-)** vide DRC dated 07.01.2020 under Debit Entry DI3601200012760 and DRC dated 16.10.2020 under debit entry DI3610200050832 and requested to drop further proceedings. The same has to be appropriated. However, interest under Section 50 and Penalty under 73 read with Section 122(2)(a) of CGST Act, 2017 is recoverable.

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

13. 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 drop the proceedings initiated in the show cause under **Issue-1** in view of the discussions and findings in **Para 9** above.
- (ii) I drop the proceedings initiated in the show cause under **Issue-2** in view of the discussions and findings in **Para 10** above.
- (iii) I confirm the demand of **Rs. 4,56,318/- (CGST: Rs.2,28,159/- SGST: Rs.2,28,159/-) (Rupees Four Lakh Fifty Six Thousand Three Hundred and Eighteen Only)**, in respect of Issue-3, as

discussed supra in Para -11 under Section 73(9) of the CGST Act, 2017 and similar provisions as laid down in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.

- (iv) I appropriate the amount of Rs. 4,56,318/- (CGST: Rs.2,28,159/- SGST: Rs.2,28,159/-) (Rupees Four Lakh Fifty Six Thousand Three Hundred and Eighteen Only) which was already paid by them vide DRC dated 07.01.2020 under Debit Entry No. DI3601200012760 and DRC dated 16.10.2020 under debit entry no. DI3610200050832 towards duty confirmed at SL.No. (iii) above, under Section 73(9) of the CGST Act, 2017 and similar provisions as laid down in the TGST Act, 2017 read with Section 20 of IGST Act, 2017
- (v) I confirm the demand of interest at the applicable rate from them on tax demanded at (iii) above under Section 50 of CGST Act, 2017 read with Section 20 of IGST Act and similar provisions under TGST Act, 2017.
- (vi) I confirm the demand of penalty from them on the demand at (iii) 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

312.242101121201
19/04/2024

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

To

M/S NILGIRI ESTATES
2nd FLOOR, 5-4-187/3 AND 4,
SOHAM MANSION, MG ROAD, SECUNDERABAD.

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-II Range, Secunderabad GST Division - For information.

Office copy & Master file.

