



केन्द्रीयकरसहायक आयुक्त कार्यालय,सिकंदराबादमालएवमसेवाकरमण्डल,
सिकंदराबाद।
OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL TAX
:: SECUNDERABAD GST DIVISION::SECUNDERABAD:
SALIKE SENATE ::D.No: 2-4-416 & 417 :: RAMGOPALPET ::
M.G. ROAD :: SECUNDERABAD- 500 003
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GEXCOM/ADJN/GST/1468/2024-CGST-
DIV-SNBD-COMMRTE-SECUNDERABAD

दिनांक/Date: 29.08.2024

DIN: 20240856YO0000426944

ORDER-IN-ORIGINAL No.46/2024-25 (GST-Adjn)

(Passed by Shri R.Satyanarayana, I.R.S., Assistant Commissioner of Central Tax,

Secunderabad GST Division)

PREAMBLE

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

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

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

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

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

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

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

अपीलकाआधारऔरफॉर्मकेसत्यापनकेरूपमेंफॉर्मजीएसटीएपीएल01 मेंनिहितहै, केंद्रीयसामानऔरसेवाकर नियम, 2017 केनियम26 मेंनिर्दिष्टतरीकेसेहस्ताक्षरकिएजाएंगे।

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.

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.

केंद्रीयवस्तु एवम सेवाकरअधिनियम, 2017 की धारा 107 (6) केअनुसार, अपीलकर्तनेकेंद्रीयवस्तु एवम सेवाकरअधिनियम, 2017कीधारा 107 (1) केतहतकोईअपीलदायरनहींकीजाएगी, जबतककिअपीलकर्तनेभुगताननही:



Sub: Short /Non/Short-payment of GST- Excess availment of ITC- Non payment of Interest / late fee on delayed payment of GST Returns -Non-Reversal of ITC M/s.Villa Orchids LLP, GSTIN: 36AANFG4817C1ZH – Issuance of OIO – Reg.

M/s.Villa Orchids LLP (here-in-after referred to as "Taxpayer"), situated at 2nd Floor, 5-4-187/3&4, Soham Mansion, M.G Road, Secunderabad, Telangana-500003, are engaged in Service Provision, Works Contract Services, Construction services of single dwelling or multi dwelling or multi-storied residential buildings, Real Estate Agents, Construction of Res. Complex, falling under the HSN 995411, 00440104, 00440334 and 00440410. The taxpayer is registered with the Central GST Department with GSTIN: 36AANFG4817C1ZH for the purpose of payment of GST and falls under the jurisdiction of Ramgopalpet-III CGST Range, Secunderabad GST Division, Secunderabad GST Commissionerate.

2. On scrutiny of the returns filed by M/s. VILLA ORCHIDS LLP. for the FY 2019-20, certain discrepancies were noticed. The intimation of the same was given to the tax payer by issuance of FORM GST-ASMT-10 vide Reference No. ZU360523050702D dated 27.02.2024 and issuance of DRC-01A vide DIN: 2024056YO000052045A dated. 02.04.2024. The details of the discrepancies are as follows:

- (i) Excess availment of ITC in GSTR-3B on comparison with credit available in GSTR-2A for FY 2019-20
- (ii) Short payment of GST on comparison of tax liability declared in GSTR-9 & GSTR-3B for FY 2019-20.
- (iii) Non-payment of interest on delayed filing of GSTR-3B Returns for FY 2019-20
- (iv) Non-payment of Late Fee on delayed filing of GSTR-1 and GSTR-3B for FY 2019-20
- (v) Non reversal of ITC in accordance with provisions of Rule 42 and Rule 43 of CGST Rules, 2017 for FY 2019-20.

Basing on above observations a Show cause notice Ref. No. GEXCOM/ADJN/GST/1468/2024-CGST-DIV-SNBD-COMMRTE-SEC'BAD dt.16.05.2024 was issued by the Jurisdictional Assistant Commissioner demanding the short paid / Non-paid Taxes and penalty, Late fee to be paid in terms of legal provisions laid down under law.

3.1 (ISSUE No: 1): Excess availment of ITC of Rs.44,61,441/- (IGST: 4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs. 19,81,843/-) noticed in GSTR-3B on comparison with credit available in GSTR-2A for the FY 2019-20.

The said ITC was irregular in terms of sub-section (2)© of Section 16 of the CGST Act, 2017. The details of are furnished hereunder: -

(Amount in Rs.)

Excess availment of ITC as per the comparison between credit available in GTR-2A and credit availed in GSTR-3B for the FY 2019-20									
FY	ITC availed per GSTR-3B for FY 2019-20			ITC available per GSTR-2A for FY 2019-20			Excess availed ITC		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
2019-20	708305	7219001	7219001	210550	5237158	5237158	497755	1981843	1981843

From the above it appears that, excess availed ITC of Rs.44,61,441/- (IGST: 4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs. 19,81,843/-) in the FY 2019-20 which is not available in GSTR-2A returns is inadmissible as per Section 16 and 41 of CGST Act, 2017 and liable to be recovered interms of the provisions of Section 73 of CGST Act, 2017 along with applicable interest u/s Section 50(3) of CGST Act, 2017. Further, it

appears that are liable for penal action in terms of Section 73(9) of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017, SGST Act, 2017 read with Section 20 of IGST Act, 2017.

3.2: ISSUE-2: Short payment of GST on comparison of tax liability declared in GSTR-9 & GSTR-3B for FY 2019-20.

3.2.1 it is observed there is a short payment of tax due differential liability declared in GSTR-9 and GSTR-3B for the FY 2019-20 to the tune of Rs.48,874/- (CGST: Rs.24,437/- & SGST: Rs.24,437/-). The details of short payment are mentioned hereunder: -

(Amt.in Rs.)

Short payment of GST on comparison of tax liability declared in GSTR-9 and GSTR-3B for FY 2019-20					
Tax liability as declared in table 4 of GSTR-9		Tax paid in GSTR-3B		Difference	
CGST: Rs. 9845849/-	SGST: Rs. 9845849/-	CGST: Rs.9821413/-	SGST: Rs. 9821413/-	CGST: Rs.24437/-	SGST: Rs.24437/-

3.2.2. In view of the above, it appears that the taxpayer has not followed the procedure prescribed in Section 37, Section 39, Section,44 and Section 59 of CGST Act, 2017. Therefore, it appears that the taxpayer is liable to pay GST of Rs.48,874/- (CGST: Rs.24,437/- & SGST: Rs.24,437/-) along with applicable interest under Section 50 of CGST Act, 2017 and penalty under Section 122(2)(a) read with Section 73 of CGST Act, 2017/SGST Act, 2017 read with Section 20 of IGST Act, 2017.

3.3. (ISSUE No.3) Non-payment of interest on delayed filing of GSTR-3B returns:

3.3.1. During the course of scrutiny of returns, it was noticed that the taxpayer had filed the GSTR-3B returns for the following months belatedly. The taxpayer has paid the tax amount and filed the returns but not paid the interest on cash portion of tax paid under Section 50 of CGST Act, 2017. The details of delayed filing of GSTR-3B returns and non-payment of interest are given below: (Amount in Rs.)

GSTR-3B Month	Due date of filing	Actual date of filing	No of days delayed	Amt paid in cash	Rate of interest	Amt of Interest liability
October-2019	20-11-2019	25-01-2020	66	6,34,224	18%	20,643
March-2019	05-05-2020	16-07-2020	72	2,41,156	18%	8,563
Total						29,206/-
Interest Already paid						6162/-
Interest amount to be paid						23044/-

3.3.2. Legal provisions

i). Section 50 (1) of CGST Act 2017:-

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said

period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

provisions of section 10 or section 51 or section 52 shall, for every calendar month or part CHAPTER IX RETURNS 70 thereof, furnish, a return, electronically, of inward and outward supplies of goods

3.3.3. In view of the above, the taxpayer is liable to pay interest in cash of Rs.23,044/- (CGST: Rs.11,180/- & SGST: Rs.11,180/-) under section 50 as applicable under the provisions of CGST Act, 2017.

3.4 (ISSUE No.4). Non payment of Late Fee on delayed filing of GSTR-1 and GSTR-3B for FY 2019-20:

3.4.1. During the course of scrutiny of returns, it was noticed that the taxpayer had not paid late fee for delayed filing of GSTR-I and GSTR-3B returns. The details of delayed filing of GSTR-3B, GSTR-1 returns and non-payment of late fee are given below:

GSTR -1 late filing details

	Due date of filling	Actual date of filling	No of days delayed	Late fee liability
Apr-19	11-05-2019	20-05-2019	70	3500
May-19	11-06-2019	10-06-2019	39	1950
Jun-19	11-07-2019	09-07-2019	9	450
Jul-19	11-08-2019	12-08-2019	80	4000
Aug-19	11-09-2019	10-09-2019	87	4350
Sep-19	11-10-2019	07-10-2019	83	4150
Oct-19	11-11-2019	12-11-2019	30	1500
Nov-19	11-12-2019	25-01-2020	43	2150
Dec-19	11-01-2020	27-02-2020	31	1550
Jan-20	11-02-2020	24-06-2020	0	0
Feb-20	11-03-2020	24-06-2020	2	100
Mar-20	11-04-2020	25-08-2020	136	6800
	Total			21650

GSTR -3B late filing details

	Due date of filling	Actual date of filling	No of days delayed	Late fee liability
Apr-19	20-05-2019	20-05-2019	70	3500
May-19	20-06-2019	20-06-2019	39	1950
Jun-19	20-07-2019	20-07-2019	9	450
Jul-19	22-08-2019	27-08-2019	80	4000
Aug-19	20-09-2019	18-09-2019	87	4350
Sep-19	20-10-2019	21-10-2019	83	4150
Oct-19	20-11-2019	25-01-2020	30	1500
Nov-19	23-12-2019	28-01-2020	43	2150
Dec-19	20-01-2020	04-03-2020	31	1550
Jan-20	22-02-2020	24-06-2020	0	0
Feb-20	22-03-2020	24-06-2020	2	100
Mar-20	22-04-2020	16-07-2020	136	6800
	Total			22700

	Total	CGST	SGST
Total late fee payable	44350	22175	22175
Late fee paid	10150	5075	5075
Balance Late fee Payable	34200	17100	17100

3.4.2: Legal provisions:

Section 47. Levy of late fee.— (1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees. (2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory

3.4.3. In view of the above, the taxpayer is liable to pay latefee in cash of **Rs.34,200/-** (CGST: Rs. 17,100/-, SGST: Rs. 17,100/-) under section 47 as applicable under the provisions of CGST Act, 2017 read with Section 37 and Section 39 of CGST Act, 2017 and SGST Act, 2017.

3.5 (Issue No.5). Non reversal of ITC in accordance with provisions of Rule 42 and Rule 43 of CGST Rules, 2017 for FY 2019-20.

3.5.1. During the course of scrutiny of returns, it was noticed that the taxpayer had not reversed ITC proportionately as per Section 17(2) of CGST Act, 2017 read with Rule 42 of CGST Rules, 2017 as detailed below:

1. Taxable Value as per Table 3.1 (c) of GSTR-3B	49636965
2. Taxable Value as per Table 3.1 (Total) of GSTR-3B	159072319
3. ITC as per Table 4A of GSTR-3B or 6A of GSTR-9	15201809
4. Amount to be reversed $\{(1/2)*3\}$	4743576.167
Liability	Rs.47,43,576/- (IGST: Rs.2,21,020/-, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-)

3.5.2. Legal provisions:**i). Section 17 - Apportionment of credit and blocked credits: -**

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

ii). Rule 42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof. -

(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the total input tax involved on inputs and input services in a tax period, be denoted as T ;

(b) the amount of input tax, out of T' , attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as $T1'$

(c) the amount of input tax, out of T' , attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as $T2'$;

(d) the amount of input tax, out of T' , in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as $T3'$;

(e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as $C1'$ and calculated as

$$C1 = T - (T1 + T2 + T3);$$

(f) the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as $T4'$;

[Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of $T4$ shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.]

(g) $T1'$, $T2'$, $T3'$ and $T4'$ shall be determined and declared by the registered person at the invoice level in FORM GSTR-2 [and at summary level in FORM GSTR-3B];

(h) input tax credit left after attribution of input tax credit under clause [(f)] 75 shall be called common credit, be denoted as $C2'$ and calculated as

$$C2 = C1 - T4;$$

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as $D1'$ and calculated as

$$D1 = (E \div F) \times C2$$

where, E

E' is the aggregate value of exempt supplies during the tax period, and E

F' is the total turnover in the State of the registered person during the tax period:

[Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under:-

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F = aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier;

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR

number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of *'E'* in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended.]

[Provided further]⁷⁷ that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of *'E/F'* shall be calculated by taking values of *'E'* and *'F'* of the last tax period for which the details of such turnover are available, previous to the month during which the said value of *'E/F'* is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A]⁷⁸ of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as *'D2'*, and shall be equal to five per cent. of C2; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as *'C3'*, where,-

$$C3 = C2 - (D1 + D2);$$

[(l) the amount *'C3'*, *'D1'* and *'D2'* shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03;]

(m) the amount equal to aggregate of *'D1'* and *'D2'* shall be [reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03;]

Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in *'T1'* and *'T2'* respectively, and the remaining amount of credit on such inputs or input services shall be included in *'T4'*.

3.5.3. In view of the above, the taxpayer is liable to pay reverse the ITC of Rs.47,43,576/- (IGST: Rs.2,21,020, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-) along with applicable interest under Section 50 of CGST Act, 2017 and penalty under Section 122(2)(a) read with Section 73 of CGST Act, 2017 & SGST Act, 2017 read with Section 20 of IGST Act, 2017.

4. For the administration and collection of State Goods and Services tax in respect of Telangana State, an Act was in operation in respect of Jurisdiction of Telangana state. This Act is titled as "The Telangana Goods and Services Act, 2017" (for short here in after referred to as "the TGST Act, 2017") and it contains the provisions exactly similar to the CGST Act, 2017 as referred above. Since, it is only repetition; the provisions of the TGST Act, 2017 are not reproduced in this notice.

4.1. Further, as per Section 6(1) of the TSGST Act, 2017, the Officers appointed under CGST Act, 2017 are authorized to be proper officers for the purposes of the said Act.

4.2. For the administration and collection of the Integrated Goods and Services Tax (IGST), an Act was in operation which is titled as "The Integrated Goods and Services

Tax Act,2017" (for short here in after referred to as "the IGST Act,2017"). As per the provisions of Section 20 of the IGST Act, 2017, the provisions of CGST Act, 2017 relating to interalia Input tax credit, Registration, tax invoice, account and records, payment of tax, inspection, search, seizure and arrest, Demands and recovery, offences and penalties etc shall, mutatis mutandis, apply, so far as may be, in relation to Integrated tax as they apply in relation to Central tax as if they are enacted under the IGST Act,2017. Accordingly, in respect of any recovery, penalty and other demands related to IGST, the provisions of CGST Act, 2017 will be applicable.

5. Therefore, M/s.Villa Orchids LLP, situated at 2nd Floor, 5-4-187/3&4, Soham Mansion, M.G Road, Secunderabad, Telangana-500003, are required to Show Cause 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 Rs.44,61,441/- (IGST: Rs.4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs.19,81,843/-) for irregular availment of input tax credit in GSTR-3B on comparison with ITC available in GSTR-2A for the FY 2019-20 as discussed in Para 2.1, should not be demanded from them under the provisions of Sub-Section (1) of Section 73 of the CGST Act, 2017 and SGST Act,2017 read with Section 20 of IGST Act, 2017;
- ii) an amount of Rs.48,874/-(CGST: Rs.24,437/- &SGST: Rs.24,437/-) for short payment GST on comparison of liability declared in GSTR-9 and tax paid in GSTR-3B for FY 2019-20 as discussed in Para 2.2, should not be demanded from them under the provisions of Section 73(1) of the CGST Act, 2017 & TSGST Act, 2017;
- iii) an amount of Rs.23,044/-(CGST: Rs.11,180/- & SGST:Rs.11,864/-) for interest on delayed filing of GSTR-3B returns during the FY 2019-20 as discussed in Para 2.3, should not be demanded from them under the Section of 50(1) of CGST Act, 2017/SGST Act, 2017;
- iv) an amount of Rs.34,200/- (CGST: Rs.17,100/-, SGST: Rs.17,100/-) for late fee on delayed filing of GSTR-1 and GSTR-3B returns during FY 2019-20 as discussed in para 2.4, should not be demanded from them under the Section of 47 of CGST Act, 2017/SGST Act, 2017;
- v) an amount Rs.47,43,576/- (IGST: Rs.2,21,020, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-) for non-reversal of ITC for the FY 2019-20 as discussed in Para 2.5, should not be demanded from them under the provisions of sub section (1) of Section 73 of the CGST Act, 2017 & SGST Act, 2017 read with Section 20 of IGST Act, 2017;
- vi) Interest should not be demanded on the demand amounts mentioned at Sl.No.(i), (ii) & (v) under Section 50 of the CGST Act, 2017 / TSGST Act, 2017 read with Section 20 of IGST Act, 2017;
- vii) Penalty should not be imposed on the demand amounts mentioned at Sl.No.(i), (ii) & (v) in terms of provisions of Section 73(1) of CGST Act, 2017 / TSGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and also read with Section 20 of IGST Act, 2017;

6. Reply to SCN and Personal Hearing:

Tax payer have uploaded reply vide DRC-06 dt. 09.08.2024 in GST portal. Even the Tax payer have opted for Personal hearing vide DRC-06, they did not attend to Personal hearing posted on 27.06.2024, 05.08.2024 and 09.8.2024.

7. Discussions & Findings :

I have gone through the Show Cause Notice issued dated 16.05.2024 and Tax payer's reply (DRC 06) and merits on record. I have propose to adjudicate the case under the provisions of Section 73 CGST Act, 2017 and relevant provisions of SGST and IGST Act, 2017.

The issues to be taken up for discussion in this order is as follows:

- (i) Excess availment of ITC in GSTR-3B on comparison with credit available in GSTR-2A for FY 2019-20
- (ii) Short payment of GST on comparison of tax liability declared in GSTR-9 & GSTR-3B for FY 2019-20.
- (iii) Non-payment of interest on delayed filing of GSTR-3B Returns for FY 2019-20
- (iv) Nonpayment of Late Fee on delayed filing of GSTR-1 and GSTR-3B for FY 2019-20
- (v) Non reversal of ITC in accordance with provisions of Rule 42 and Rule 43 of CGST Rules, 2017 for FY 2019-20.

8.1: Excess availment of ITC in GSTR-3B on comparison with credit available in GSTR-2A for FY 2019-20 :

8.1.1 Show cause notice alleged that excess availment of ITC of Rs.44,61,441/- (IGST: Rs.4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs.19,81,843/-) was noticed on comparison of the Input Tax Credit availed in GSTR-3B and the ITC available in GSTR-2A for the period FY 2019-20. The details are furnished hereunder: -

(Amount in Rs.)

Excess availment of ITC as per the comparison between credit available in GTR-2A and credit availed in GSTR-3B for the FY 2019-20									
FY	ITC availed per GSTR-3B for FY 2019-20			ITC available per GSTR-2A for FY 2019-20			Excess availed ITC		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
2019-20	708305	7219001	7219001	210550	5237158	5237158	497755	1981843	1981843

8.1.2 The said excess availment of ITC was irregular in terms of sub-section (2) (c) of Section 16 of the CGST Act, 2017, as the taxpayer has failed to ensure that the tax charged in respect of their input supplies has duly been credited to the Government by the suppliers. In view of the above, the excess availed ITC of Rs.44,61,441/- (IGST: Rs.4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs.19,81,843/-) which is not available in GSTR-2A returns is inadmissible interms of Section 16 and 41 of CGST Act, 2017

8.1.3 LEGAL PROVISIONS:

i) Section 16 of CGST Act 2017: —

*“Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him **which are used or intended to be used** in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

[Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

*© subject to the provisions of section 41, the tax charged in respect of such **supply has been actually paid to the Government**, either in cash or through utilization of input tax credit admissible in respect of the said supply; and*

(d) he has furnished the return under section 39;”

ii) Section 41 of CGST Act, 2017: -**Claim of input tax credit and provisional acceptance thereof**

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

iii) Rule-36 of CGST Rules, 2017: -

“(1) the input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely, -

- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
- (b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;**
- (c) a debit note issued by a supplier in accordance with the provisions of section 34;
- (d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
- (e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person

iv) Section 59 of CGST Act, 2017:

59. Self-assessment. — 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.

v) Section 73(1) of CGST Act, 2017: -

In terms of sub-section (1) of Section 73, Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

vi). Section 50 of CGST Act 2017: -

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

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

(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.

vii). Section 122(2)(a) of CGST Act 2017: -

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised, —

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

." Other Legal Provisions are discussed supra.

8.1.4. DISCUSSIONS AND FINDINGS: The tax payer has in their reply at para 6(i) & 6(j) stated that there is no requirement to reconcile the invoices reflected in GSTR-2A with GSTR-3B due to amended Section 16 of CGST Act, 2017 vide section 100 of Finance Act, 2021 hence, there is no legal requirement to reverse the ITC during subject period. Further, stated that the mandate conditions of reflection of vendor invoices in GSTR-2A inserted vide Rule 36(4) is with effective from 09.10.2019 only and the deny is in correct for the subject period of demand.

The taxpayer can ascertain electronically in common portal with Auto drafted GSTR-2A whether the suppliers had paid tax on the inward supplies. The details of outward supplies declared by the suppliers in their respective GSTR-1 returns are shared with the respective recipient of goods or services or both, electronically through common portal in the form GSTR-2A (Rule 60 of the CGST Rules, 2017), for respective tax periods. The GSTR-2A provides the details of invoices furnished by the suppliers and GSTR-3B return filing status of the suppliers. **The non-reflection of invoices in GSTR-2A indicates that the tax on the same has not been paid by the supplier. The conditions for availing input tax credit paid by the taxpayer have been prescribed under Section 16 of the CGST Act, 2017 and it is prescribed under Section 16(2)(C) of CGST Act, 2017 that before taking the input tax credit into the credit ledger, provisionally, as prescribed under Section 41 of the CGST Act, 2017, the taxpayer shall make sure that the tax amount mentioned in the tax invoice is actually been credited to the Government account.**

In terms of amended rule 36(4) of CGST Rules availment of ITC related to non-reflected invoices in GSTR-2A to the tune of 20%, 10% and 5%, as the case may be, during the period from 09.10.2019 onwards also, **subject to certain terms and conditions**, as per section 16(2)(c) of the CGST Act, 2017 in respect of invoices/supplies that were not reported by the concerned suppliers in their FORM GSTR-1

Therefore, in terms of the provisions of Section 16(2) (c) of CGST Act, 2017 and Rule 36(1)(b) of CGST Rules, 2017, to avail input tax credit against invoices being in possession of a recipient of supply, it is also mandatory that the tax mentioned in the said invoice therein is paid. Thus, the ITC availed by a recipient is subject to payment of tax by the supplier in terms of the provisions of Section 39 of CGST Act, 2017 read with Rule 61 of CGST Rules, 2017.

From the foregoing facts of the case and statutory provisions it appears that the taxpayer had failed to ensure that the tax charged in respect of their input supplies had duly been credited to the Government by their suppliers as envisaged in Section 16(2) (c) of CGST Act, 2017 either by way of getting the details of outward supplies uploaded

by their suppliers in their GSTR-1 returns which in turn would appear in the taxpayer's auto-populated GSTR-2A statement for the relevant period or by furnishing irrefutable evidence to the effect that the supplier had in fact paid the applicable taxes to the Government on the said input supplies by furnishing the suppliers' GSTR-3B returns for the relevant period. This had led to contravention of Section 41 of CGST Act, 2017 according to which the excess availed input tax credit on which tax has not been paid by the supplier liable to be recovered along with applicable interest.

In view of above, it appears that the taxpayer had availed excess ITC to the tune of Rs.44,61,441/- (IGST: Rs.4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs.19,81,843/-) for the period FY 2019-20 is in contravention of provisions of Section 16 and 41 of CGST Act, 2017 read with Rule 36 of CGST Rules, 2017.

Hence the wrongly availed ITC of Rs.44,61,441/- (IGST: Rs.4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs.19,81,843/-) against the provisions of Section 16 & 41 of CGST Act, 2017 read with Rule 36 of CGST Rules, 2017, is irregular and the same is required to be recovered in terms of Section 73(1) of CGST Act, 2017, along with interest under Section 50 (3) of CGST Act, 2017.

Further, it appears that the taxpayer has deliberately availed input tax credit during the F.Y. 2019-20 in contravention of the provisions of Section 16 (2) (c) 41 of CGST Act, 2017 read with Rule 36 of CGST Rules, 2017, and mis-stated the eligible input tax credit in their Electronic credit ledger and GSTR-3 B during the period F.Y. 2019-20 towards the above ineligible input tax credit on the said inputs/input services with intention to evade payment of GST in cash, it appears the tax payer is liable for penal action in terms of Section 73 (9) of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and SGST Act, 2017.

8.2. ISSUE-2: Short payment of GST on comparison of tax liability declared in GSTR-9 & GSTR-3B for FY 2019-20.

8.2.1 it is observed there is a short payment of tax due differential liability declared in GSTR-9 and GSTR-3B for the FY 2019-20 to the tune of Rs.48,874/- (CGST: Rs.24,437/- & SGST: Rs.24,437/-). The details of short payment are mentioned hereunder: -

Amt. in Rs.

Short payment of GST on comparison of tax liability declared in GSTR-9 and GSTR-3B for FY 2019-20					
Tax liability as declared in table 4 of GSTR-9		Tax paid in GSTR-3B		Difference	
CGST: Rs. 9845849/-	SGST: Rs. 9845849/-	CGST: Rs.9821413/-	SGST: Rs. 9821413/-	CGST: Rs.24437/-	SGST: Rs.24437/-

8.2.2. In view of the above, it appears that the taxpayer has not followed the procedure prescribed in Section 37, Section 39 and Section 59 of CGST Act, 2017 and failed to submitted details of nature of outward supplies towards the differential value of supplies. Therefore, it appears that the taxpayer is liable to pay GST of Rs.48,874/- (CGST: Rs.24,437/- & SGST: Rs.24,437/-) along with applicable interest under Section 50 (1) of CGST Act, 2017 and penalty under Section 122(2)(a) read with Section 73 (9) of CGST Act, 2017/SGST Act, 2017 read with Section 20 of IGST Act, 2017.

8.2.3: LEGAL PROVISIONS:**i) Section 39 of CGST Act, 2017:****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 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: Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein.

(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, 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:

ii) Section 44 of CGST Act, 2017:**Annual return.**

Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:

iii) Section 59 of CGST Act, 2017:

59. Self-assessment. — 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.

8.2.4. Other Legal Provisions

i) **Section 73(1) of CGST Act, 2017:** -In terms of sub-section (1) of Section 73, Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

ii). Section 50 of CGST Act, 2017: -

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

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

(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.

iii). Section 122(2)(a) of CGST Act 2017: -

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised, —

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

8.2.5. DISCUSSIONS AND FINDINGS: The tax payer has in their reply at para 8 & 9 furnished break up of short liability on reconciliation arrived is due to

i) short payment of tax Rs. 18,274/-(CGST:9137/-+ SGST:9137/-) and

ii) interest amount of Rs. 48,874 (CGST: 24437/- + SGST: 24437/-).

However the taxpayer have not produced any proof for discharge such short liability declared and not produced any evidence towards the Interest amount received. Hence the submissions made by the Tax payer are not acceptable.

In view of the above legal position prescribed in Section 37, Section 39 and Section 59 of CGST Act, 2017 the taxpayer has not followed the procedure and failed to submit the evidence and details of nature of supplies towards the differential value of supplies. Therefore, it appears that the liable tax of GST of Rs.48,874/- (CGST: Rs.24,437/- & SGST: Rs.24,437/-) is recoverable under Section 73(1) of CGST Act, 2017 along with applicable interest under Section 50(1) of CGST Act, 2017 and penalty under Section 122(2)(a) read with Section 73(9) of CGST Act, 2017/SGST Act, 2017 read with Section 20 of IGST Act, 2017.

8.3. Non-payment of interest on delayed filing of GSTR-3B returns:

8.3.1. Show cause notice alleged that the taxpayer had filed GSTR-3B returns belatedly for the month of October, 2019 and March, 2019, but the taxpayer has short paid interest on cash portion of tax paid which arose out of late filing of GSTR-3B. The details of delayed filing of GSTR-3B returns and interest payable are given below:

(Amount in Rs.)

GSTR-3B Month	Due date of filing	Actual date of filing	No of days delayed	Amt paid in cash	Rate of interest	Amt of Interest liability
October-2019	20-11-2019	25-01-2020	66	6,34,224	18%	20,643
March-2019	05-05-2020	16-07-2020	72	2,41,156	18%	8,563
Total						29,206/-
Interest Already paid						6162/-
Interest amount to be paid						23044/-

8.3.2. Legal provisions**i). Section 50 (1) of CGST Act 2017:-**

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said

period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

ii). Whereas in terms of Section 39(1) of CGST Act, 2017 “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 CHAPTER IX RETURNS 70 thereof, furnish, 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.”

iii). Further, in terms of Section 39(7) of CGST Act, 2017 “Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, 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. In terms of Section 59 of 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”.

8.3.3. DISCUSSIONS AND FINDINGS: Tax payer in their reply at para 11, furnished that

i) the demand of Interest for the month of March, 2019 is not sustainable since the said period does not cover under notice period i.e F.Y. 2019-20.

ii) and they are not liable to pay the balance demand amount of Rs. 14,381/-

with reference to point no (i) above, it is pertinent to mention that the Period of demand is a typographical error. Instead of March, 2020 it was typed as March, 2019. It is my be observed that demand issuing authority have correctly mentioned the due date of filing of GSTR-3B for the month of March, 2020 as 05.05.2020. Hence the demand is within the limitations of notice period.

with reference to point no (ii) the tax payer have not furnished valid reason for their non-liability of payment of interest demanded.

8.3.4. From the above clarification and in view of the legal provisions , the taxpayer has contravened the provisions of Section 39 of CGST Act, by not paying the liable interest in cash of Rs.23,044/- (CGST: Rs.11,180/- & SGST: Rs.11,864/-) under section 50 of CGST Act, 2017. Hence the same is required to be recovered from the taxpayer in terms of Section 50 of CGST Act, 2017.

8.4. Non payment of Late Fee on delayed filing of GSTR-1 and GSTR-3B for FY 2019-20:

8.4.1. Show cause notice alleged that the taxpayer had short paid late fee for delayed filing of GSTR-I and GSTR-3B returns. The details are furnished below:

GSTR -1 late filing details

	Due date of filing	Actual date of	No of days delayed	Late fee liability
Apr-19	11-05-	20-05-	9	450
May-19	11-06-	10-06-	0	0
Jun-19	11-07-	09-07-	0	0
Jul-19	11-08-	12-08-	1	50
Aug-19	11-09-	10-09-	0	0
Sep-19	11-10-	07-10-	0	0
Oct-19	11-11-	12-11-	1	50
Nov-19	11-12-	25-01-	0	0
Dec-19	11-01-	27-02-	47	2350
Jan-20	11-02-	24-06-	134	6700
Feb-20	11-03-	24-06-	105	5250
Mar-20	11-04-	25-08-	136	6800
	Total			21650

GSTR -3B late filing details

	Due date of filling	Actual date of filling	No of days delayed	Late fee liability
Apr-19	20-05-2019	20-05-2019	0	0
May-19	20-06-2019	20-06-2019	0	0
Jun-19	20-07-2019	20-07-2019	0	0
Jul-19	22-08-2019	27-08-2019	5	250
Aug-19	20-09-2019	18-09-2019	0	0
Sep-19	20-10-2019	21-10-2019	1	50
Oct-19	20-11-2019	25-01-2020	66	3300
Nov-19	23-12-2019	28-01-2020	36	1800
Dec-19	20-01-2020	04-03-2020	44	2200
Jan-20	22-02-2020	24-06-2020	123	6150
Feb-20	22-03-2020	24-06-2020	94	4700
Mar-20	22-04-2020	16-07-2020	85	4250
	Total			22700
		Total	CGST	SGST
Total late fee payable		44350	22175	22175
Late fee paid		10150	5075	5075
Balance Late fee Payable		34200	17100	17100

8.4.2. Legal provisions

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, 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 shall be communicated to the recipient of the said supplies 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

Sections 47. Levy of late fee.— (1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees. (2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory

8.4.3. DISCUSSIONS AND FINDINGS; Tax payer at para 13 of their reply has submitted that they are not liable to pay the demand late fee and not provided any reasons or legal authority to substantiate their reply.

Therefore in view of the above legal provisions, the taxpayer is liable to pay latefee in cash for delayed filing of GSTR-1 and GSTR-3B for so much of time arrived in demand notice in terms of provisions of Section 47 of CGST Act, 2017 read with Section 37 and Section 39 of CGST Act, 2017 and SGST Act, 2017. However the late fee calculated in demand notice is erred by not applying condition under Section 47(1) i.e. “during which such failure continues subject to a maximum amount of five thousand rupees” Hence the liable late fee is re-calculated and arrived as follows:

Amt. In Rs.									
Late to be paid due to late filing of GSTR-1		Late to be paid due to late filing of GSTR-3B		Total of late due for payment		Late fee already paid during the period under consideration		Balance amount due for payment	
CGST	SGST	CGST	SGST	CGST	SGST	CGST	SGST	CGST	SGST
8950	8950	10775	10775	19725	19725	5275	5275	14450	14450

From the above table, the Tax payer is liable to pay the late fee of Rs. 28,900/- (CGST: 14450/- + SCGST: 14450/-) (as revised above) in terms of provisions of Section 47 of CGST Act, 2017 read with Section 37 and Section 39 of CGST Act, 2017 and SGST Act, 2017.

8.5. Non reversal of ITC in accordance with provisions of Rule 42 and Rule 43 of CGST Rules, 2017 for FY 2019-20.

8.5.1 Show cause notice alleged that the taxpayer has declared Nil rated /exempted supplies in GSTR-1 and GSTR-3B filed for FY 2019-20, but have not reversed proportionate ITC as per Section 17(2) of CGST Act, 2017 read with Rule 42 of CGST Rules, 2017 as detailed below:

1. Taxable Value as per Table 3.1 (c) of GSTR-3B	49636965
2. Taxable Value as per Table 3.1(Total) of GSTR-3B	159072319
3. ITC as per Table 4A of GSTR-3B or 6A of GSTR-9	15201809
4. Amount to be reversed $\{(1/2)*3\}$	4743576.167
Liability	Rs.47,43,576/- (IGST: Rs.2,21,020/-, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-)

8.5.2 In view of the above, it appears that the taxpayer is liable to reverse the ITC of Rs.47,43,576/- (IGST: Rs.2,21,020/-, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-) for the FY 2019-20 as per Section 17(2) of CGST Act, 2017 read with Rule 42 and Rule 43 of CGST Rules, 2017.

8.5.3. Legal provisions

i). Section 17 - Apportionment of credit and blocked credits: -

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

ii). Rule 42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof. -

(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the total input tax involved on inputs and input services in a tax period, be denoted as T ;

(b) the amount of input tax, out of T , attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as T_1 ;

(c) the amount of input tax, out of T , attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as T_2 ;

(d) the amount of input tax, out of T , in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as T_3 ;

(e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as C_1 and calculated as

$$C_1 = T - (T_1 + T_2 + T_3);$$

(f) the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as T_4 ;

[Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of T_4 shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.]

(g) T_1 , T_2 , T_3 and T_4 shall be determined and declared by the registered person at the invoice level in FORM GSTR-2[and at summary level in FORM GSTR-3B];

(h) input tax credit left after attribution of input tax credit under clause [(f)]75 shall be called common credit, be denoted as C_2 and calculated as

$$C2 = C1 - T4;$$

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as $_D1'$ and calculated as

$$D1 = (E \div F) \times C2$$

where, $_$

E' is the aggregate value of exempt supplies during the tax period, and $_$

F' is the total turnover in the State of the registered person during the tax period:

[Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of $_E/F'$ for a tax period shall be calculated for each project separately, taking value of E and F as under:-

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F = aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier;

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of $_E'$ in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended.]

[Provided further]⁷⁷ that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of $_E/F'$ shall be calculated by taking values of $_E'$ and $_F'$ of the last tax period for which the

details of such turnover are available, previous to the month during which the said value of $_E/F'$ is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A]⁷⁸ of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as $_D2'$, and shall be equal to five per cent. of $C2$; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as $_C3'$, where,-

$$C3 = C2 - (D1 + D2);$$

[(l) the amount _C3_, _D1' and _D2' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03;]

(m) the amount equal to aggregate of _D1' and _D2' shall be [reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03;]

Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in _T1' and _T2' respectively, and the remaining amount of credit on such inputs or input services shall be included in _T4'.

8.5.4. DISCUSSIONS AND FINDINGS: Tax payer, at para No. 14 of their reply mentioned that- rule 42 is not required for non-GST and exempt supplies and the notice is erroneous while examining the nature of supplies as declared in GSTR-3B for the purpose of reversal of proportionate ITC under Rule 42 and 43 of CGST Rules, 2017. However, the tax payer have failed to produce the relied proof of documents towards their nature of supplies as quantified at para 16 of their reply. Without concrete evidence the demand notice can't be judged as erroneous in quantifying the demand amount.

In view of the above, it appears that the taxpayer has not followed the procedure prescribed in Section 17(2) of CGST Act, 2017 read with Rule 42 of CGST Rules, 2017. Therefore, tax payer has contravened the provision of Section 17(2) of CGST Act, 2017 read with Rule 42 of CGST Rules, 2017. Hence, the taxpayer is liable to reverse the ITC of Rs.47,43,576/- (IGST: Rs.2,21,020, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-) along with applicable interest under Section 50 of CGST Act, 2017. Since the tax payer has failed reverse the as much as of proportionate ITC as calculated under Rule 42 of CGST Rules, 2017 read with Section 17(2) the same is liable to be recovered under Section 73(1) of CGST Act, 2017 along with interest applicable under Section 50 (1) of CGST Act, 2017 and penalty under Section 122(2)(a) read with Section 73 (9) of CGST Act, 2017 & SGST Act, 2017 read with Section 20 of IGST Act, 2017.

9. For the administration and collection of State Goods and Services tax in respect of Telangana State, Act was in operation in respect of Jurisdiction of Telangana state. This Act is titled as "The Telangana Goods and Services Act, 2017" (for short here in after referred to as "the TGST Act, 2017") and it contains the provisions exactly similar to the CGST Act, 2017 as referred above. Since, it is only repetition; the provisions of the TGST Act, 2017 are not reproduced in this notice.

9.1. Further, as per Section 6(1) of the TSGST Act, 2017, the Officers appointed under CGST Act, 2017 are authorized to be proper officers for the purposes of the said Act.

9.2. For the administration and collection of the Integrated Goods and Services Tax (IGST), an Act was in operation which is titled as "The Integrated Goods and Services Tax Act, 2017" (for short here in after referred to as "the IGST Act, 2017"). As per the provisions of Section 20 of the IGST Act, 2017, the provisions of CGST Act, 2017 relating to inter alia Input tax credit, Registration, tax invoice, account and records, payment of tax, inspection, search, seizure and arrest, Demands and recovery, offences and penalties etc shall, mutatis mutandis, apply, so far as may be, in relation to Integrated tax as they apply in relation to Central tax as if they are enacted under the IGST Act, 2017. Accordingly, in respect of any recovery, penalty and other demands related to IGST, the provisions of CGST Act, 2017 will be applicable.

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

ORDER

- (i) I Confirm the demand of **Rs.44,61,441/- (IGST: Rs.4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs.19,81,843/-)** for irregular availment of input tax credit in GSTR-3B on comparison with ITC available in GSTR-2A for the FY 2019-20 as discussed in Para 8.1, under the provisions of sub section (1) of Section 73 of the CGST Act, 2017 and SGST Act, 2017 read with Section 20 of IGST Act, 2017;
- (ii) I Confirm the demand of **Rs.48,874/- (CGST: Rs.24,437/- & SGST: Rs.24,437/-)** for short payment GST on comparison of liability declared in GSTR-9 and tax paid in GSTR-3B for FY 2019-20 as discussed in Para 8.2, under the provisions of Section 73(9) of the CGST Act, 2017 & TSGST Act, 2017;
- (iii) I confirm the demand of **Rs.23,044/- (CGST: Rs.11,180/- & SGST: Rs.11,864/-)** towards interest on delayed filing of GSTR-3B returns during the FY 2019-20 as discussed in Para 8.3, under the Section of 50(1) of CGST Act, 2017/SGST Act, 2017 read with Section 20 of IGST Act, 2017;
- (iv) Ordered for payment of **Rs.28,900/- (CGST: Rs.14,450/-, SGST: Rs.14,450/-)** towards late fee (re-calculated) on delayed filing of GSTR-1 and GSTR-3B returns during FY 2019-20 as discussed in para 8.4, under the Section 47 of CGST Act, 2017/SGST Act, 2017;
- (v) I confirm the demand of **Rs.47,43,576/- (IGST: Rs.2,21,020, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-)** for non-reversal of ITC for the FY 2019-20 as discussed in Para 8.5, under the provisions of sub section (1) of Section 73 of the CGST Act, 2017 & SGST Act, 2017 read with Section 20 of IGST Act, 2017.
- (vi) Confirmed the interest on the demand amounts mentioned at Sl.No.(i), (ii) & (v) under Section 50 of the CGST Act, 2017/ TSGST Act, 2017 read with Section 20 of IGST Act, 2017;
- (vii) Imposed penalty on the demand amounts mentioned at Sl.No.(i), (ii) (iii) & (v) in terms of provisions of Section 73(1) of CGST Act, 2017 / TSGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and also read with Section 20 of IGST Act, 2017.

0210-513/2024

आ.स.सत्यनारायण
29.08.2024

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

To
M/S. VILLA ORCHIDS LLP,
36AANFG4817C1ZH,
2ND FLOOR, 5-4-187/3 & 4,
SOHAM MANSION, M.G ROAD, SECUNDERABAD,
RANGAREDDY, TELANGANA, 500003.

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

Copy to: The Superintendent of Central Tax, Ramgopalpet-III GST Range, Secunderabad
GST Division- For information please.

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Asst./Dy. Commissioner
केन्द्रीय कर/Central Tax
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Secunderabad Division
सिकन्दराबाद जी.डी. आयुक्तालय
Secunderabad G.D. Commissionerate
"सलीक सीनेट"/# 2-4-416 & 417
"SALIKE SENATE" # 2-4-416 & 417
रामगोपालपेट, एम.जी. रोड
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