



కస్టమర్స్ మరియు సెంట్రల్ ట్యాక్స్ మిషన్ రాజ్యాలయం) అప్పీల్స్-II)
7వ అంతస్తు, GST భవన్ : LB స్టేడియం రోడ్, బషీర్ బాగ్, హైదరాబాద్, పిన్-500004
सीमाशुल्कवकेन्द्रीयकर(अपील्स) आयुक्तकाकार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS & CENTRAL TAX (APPEALS-II)
सातवाँतल, केन्द्रीयशुल्कभवन 7th Floor, Kendriya Shulk Bhavan,
एलबीस्टेडियम रोड के सामने, बशीरबाग, हैदराबाद - 500 004
opp. L.B. Stadium, Basheerbagh, Hyderabad-500 004
Tel No. 040-23234219 / e-Mail: cgst.hydappeals2@gov.in

अपीलसं: Appeal No. 15/2024(SC)GST 665
OIO No. 28/2023-24-SEC-ADJN-ADC(GST) dated 12.10.2023
DIN: 20240856DN0000777DFF

अपील आदेश ORDER-IN-APPEAL No.HYD-GST-SC-AP2-291-2024-25

तारीख Date. 19.08.2024

जारीकर्ता: श्रीराघवेंद्र, आईआरएस, संयुक्त आयुक्त, केन्द्रीय कर वजी.एस.टी. (अपील्स-II)
Passed by: Sri. P DEVARAJ, IRS, Commissioner of Central Tax & GST (Appeals-II)

उद्देशिका / PREAMBLE

- जिस व्यक्ति को यह प्रति जारी की जाती है, उस व्यक्ति के निजी उपयोग के लिए निशुल्क दी जाती है।
This copy is granted free of cost for the private use of the person to whom it is issued.
- इस आदेश से व्यक्तित कोई भी व्यक्ति, वस्तु एवं सेवा कर नियम 2017, के नियम 110 के साथ पठित केंद्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा (1) 112 के तहत इलेक्ट्रॉनिक या अन्य माध्यम से, केन्द्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 109 के तहत गठित उपयुक्त अपीलीय न्यायाधिकरण के राज्य / क्षेत्र के क्षेत्राधिकार के खंड पीठ में उन मामलों में, जिनमें 'आपूर्ति की जगह', विवाद-ग्रस्त विषयों में से एक न हो, अपील दायर कर सकता है। जहां 'आपूर्ति की जगह' विवादित मामलों में से एक है, अपील, उपरोक्त धारा 109 के तहत गठित राष्ट्रीय / क्षेत्रीय खंड पीठ के समक्ष दायर की जाए। जिस आदेश के विरुद्ध अपील दायर की जा रही है उसे अपील कर्ता को संप्रेषित करने की तिथि से) 3 तीन (माह के अंदर अपील जीएसटी एपीएल 05-फॉर्म में दायर की जानी चाहिए। आदेश की एक प्रमाणित प्रति, यदि लागू हो तो नियम (5) 110 के अंतर्गत विहित शुल्क तथा अन्य संगत दस्तावेज संलग्न करते हुए, अपील पर नियम 26 के तहत विनिर्दिष्ट तरीके से हस्ताक्षर किए जाएंगे।
Any person aggrieved by this order, may under Section 112(1) of the Central Goods and Services Tax (CGST) Act 2017, read with Rule 110 of the CGST Rules, 2017; file an appeal electronically or otherwise, to the appropriate State / Area Bench of the Appellate Tribunal constituted under Sec 109 of the CGST Act 2017 in cases not involving 'place of supply' as one of the disputed issues. Where the 'place of supply' is one of the disputed issues, the appeal shall be filed with the National / Regional bench constituted under the said Sec 109. The appeal should be filed in Form GST APL-05 within 3(three) months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal. The appeal shall be signed in the manner specified under Rule 26, enclosing a certified copy of the order, the prescribed fee under Rule 110(5) if applicable, and any other relevant documents.
- वस्तु एवं सेवा कर नियम 2017, के नियम 111 के साथ पठित केंद्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा (3) 112 के तहत आयुक्त द्वारा प्राधिकृत अधिकारी इलेक्ट्रॉनिक या अन्य माध्यम से, केन्द्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 109 के तहत गठित अपीलीय न्यायाधिकरण के राज्य / क्षेत्र के क्षेत्राधिकार के खंड पीठ में उन मामलों में, जिनमें 'आपूर्ति की जगह' विवाद-ग्रस्त विषयों में से एक न हो, अपील दायर कर सकता है। जहां 'आपूर्ति की जगह' विवादित मामलों में से एक है, अपील, उपरोक्त धारा 109 के तहत गठित राष्ट्रीय / क्षेत्रीय खंड पीठ के समक्ष दायर की जाए। जिस आदेश के विरुद्ध अपील दायर की जा रही है उसे जारी करने की तिथि से) 6 छः (माह के अंदर अपील जीएसटी एपीएल 07- फॉर्म में दायर की जानी चाहिए। अपील के साथ आदेश की प्रमाणित प्रति एवं अन्य संगत दस्तावेज संलग्न हों। विभागीय अपील के प्रत्याक्षेप, वस्तु एवं सेवा कर अधिनियम 2017 की धारा (5) 112 के साथ पठित नियम (2) 110 के अनुसार जीएसटी एपीएल 06- फॉर्म में इसके सम्प्रेषण के 45 दिनों के अंदर दायर किए जाएंगे और इस पर नियम 26 में विनिर्दिष्ट तरीके से हस्ताक्षर किए जाएंगे।

OIA No.HYD-GST-SC-AP2-291-2024-25 Date. 19.08.2024

The officer authorized by the Commissioner under Sec 112(3) of the CGST Act 2017, read with Rule 111 of the CGST Rules, 2017; file an appeal electronically or otherwise, to the State / Area Bench of the Appellate Tribunal constituted under Sec 109 of the CGST Act 2017 in cases not involving 'place of supply' as one of the disputed issues. Where the 'place of supply' is one of the disputed issues, the appeal shall be filed with the National / Regional bench constituted under the said Sec 109. The appeal should be filed in Form GST APL-07 within 6 (six) months of the date of issuance of the disputed order. The appeal shall enclose a certified copy of the order, and any other relevant documents. The cross objections to the departmental appeal shall be filed within 45 days of communicating it, in Form GST APL-06 in terms of Rule 110(2) read with Sec 112(5) of the CGST Act 2017 and signed in the manner specified in Rule 26.

(ii) The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.

राजस्व अधिकरण के मामले में मद्रास उच्च न्यायालय के आदेश के मद देनजर अपील न्यायाधिकरण का गठन नहीं किया गया है। iv। भारत संघ और इस लिए अपील उस तारीख से तीन महीने के भीतर दायर नहीं की जा सकती, जिस दिन के खिलाफ अपील करने का आदेश दिया गया है। अधिनियम के उपर्युक्त प्रावधान को प्रभावी करने में उत्पन्न होने वाली कठिनाई को दूर करने के लिए, सरकार ने परिषद की सिफारिशों पर केंद्रीय वस्तु एवं सेवा कर (कठिनाईयों का नौवां निष्कासन) आदेश, 2019 दिनांक 03.12.2019 जारी किया है। यह उक्त आदेश के माध्यम से प्रदान किया गया है कि ट्रिब्यूनल के पास अपील तीन महीने के भीतर (सरकार द्वारा अपील के मामले में छह महीने) आदेश या तिथि के संचार की तारीख से राष्ट्रपति या राज्य अध्यक्ष के रूप में की जा सकती है। मामला, अपील न्यायाधिकरण के कार्यालय में प्रवेश कर सकता है, जो भी बाद में हो।

4. धारा 112 (8) के अनुसार, धारा 112 (1) के तहत तब तक कोई अपील दायर नहीं की जाएगी जब तक अपीलकर्ता ने (ए) आक्षेपित आदेश से उत्पन्न कर, ब्याज, फाइन, शुल्क व जुर्माना के उस अंश का, जो उस के द्वारा स्वीकार किया गया है तथा (बी) उक्त आदेश, जिस के संबंध में अपील दायर की गई है, से उत्पन्न धारा 107(6) के अंतर्गत प्रदत्त राशिके अतिरिक्त, विवादित कर की शेष राशिके 20% का पूर्ण भुगतान नहीं किया हो।

In terms of Sec 112(8), no appeal shall be filed under Sec 112(1) 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 20% of the remaining amount of tax in dispute, in addition to the amount paid under Sec 107(6), arising from the said order, in relation to which the appeal has been filed.

- 5.(i) धारा (1) 112 के तहत आवेदन पत्र के साथ रुपए 5 मूल्य केवल पांच रुपये (का गैर न्यायिक न्यायालय शुल्क टिकट हो। नियम (5) 110 के साथ पठित धारा (10) 112 के अनुसार अपील न्यायाधिकरण के समक्ष अपील / अपील प्रत्यावर्तन हेतु प्रस्तुत आवेदन के साथ अधिकतम रु. पच्चीस हजार रुपये के अधधीनकर / इनपुट टैक्स क्रेडिट के प्रति एक लाख रुपये के लिए एक हजार का शुल्क या कर या इनपुट टैक्स क्रेडिट में अंतर या जिस आदेश के विरुद्ध अपील की जा रही है उसमें निर्धारित फाइन, शुल्क या जुर्माना लगाया जाए। The application under Sec 112(1) shall bear a non-judicial court fee stamp of value Rs.5 (Rupees Five only). In terms of Sec 112(10) read with Rule 110(5), an application for appeal / restoration of appeal before the Appellate Tribunal shall be accompanied by a fee of One thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of twenty five thousand rupees

- 5.(ii) उपरोक्त धारा 112 की उपधारा 5 (में संदर्भित कुल प्रत्याक्षेपों के ज्ञापन के संबंध में कोई शुल्क देय नहीं होगा।

No fee is payable in respect of the Memorandum of Cross Objections referred to in sub-sec (5) of Sec 112 ibid.

- 5.(iii) धारा 112(3) के अंतर्गत, आयुक्त द्वारा अधिकृत अधिकारी द्वारा दायर किए जाने वाले आवेदन के मामले में कोई शुल्क देय नहीं होगा।

No fee is payable in case of an application filed by the officer authorized by the Commissioner to file an appeal under Sec 112(3).

6. केंद्रीय वस्तु एवं सेवा कर अधिनियम, 2017 में निहित उक्त एवं अन्य संबंधित मामलों को नियंत्रित करने वाले प्रावधानों और इनके तहत बनाए गए नियम / जारी की गई अधिसूचनाओं की ओर ध्यान आकर्षित किया जाता है।

Attention is invited to the provisions governing these and other related matters, contained in the Central Goods & Services Act, 2017 and the rules made / notifications issued thereunder, for compliance.

BEFORE THE COMMISSIONER OF CENTRAL TAX, APPEALS-II), HYDERABAD
APPEAL No. 15/2024(SC)GST

M/ Nilgiri Estates,
 5-4-187/3, 2nd Floor, Soham Mansion,
 M.G. Road, Secunderabad,
 Telangana – 500 003.

-Appellant

Vs.

The Additional Commissioner of Central Tax,
 Secunderabadl GST Commissionerate,
 Lakdi-ka-pul, Hyderabad

-Respondent

This proceeding arise out of an appeal filed by M/s. Nilgiri Estates, 5-4-187/3, 2nd Floor, Soham Mansion, M.G. Road, Secunderabad, Telangana – 500 003, (hereinafter referred to as “Appellant”) against Order in Original No. 28/2023-24-SEC-ADJN-ADC(GST) dated 12.10.2023, (hereinafter referred to as “Impugned Order”) issued by Additional Commissioner of Central Tax, Secunderabad GST Commissionerate, Hyderabad (hereinafter referred to as respondent).

2. The accounts of the taxpayer were audited by the Audit II Commissionerate and raised demand notice vide dated 19.05.2023. After following due course of law, the respondent vide the impugned order No. 28/2023-24-SEC-ADJN-ADC(GST) dated 12.10.2023, confirmed the following demands along with other demands under section 73 of the CGST Act, 2017 / TSGST Act, 2017, along with interest under Section 50 of the CGST Act, 2017 / TSGST Act, 2017.

- i. Short payment of GST by adopting wrong method of valuation;
- ii. Short payment of tax due to difference in tax rate;
- iii. Short payment of GST on comparison of tax liabilities declared in GSTR 1 vs GSTR 3B;
- iv. Excess availment of input tax credit compared with GSTR 2A; and
- v. Irregular availment of input tax credit on blocked credits.

3. Aggrieved by the decision of the respondent on the above demands, applicant filed the present appeal on the following grounds.

- i. They are entered into two separate agreements, one for sale of land and one for constructions of villa on such sold land. Hence the valuation adopted by the department is not correct;
- ii. Short payment of tax is not correct in as much as they have issued debit note and also paid part of the tax under DRC-03;
- iii. Respondent has not considered the excess paid tax in previous tax periods and considered negative entries only;
- iv. Respondent has not considered the tax periods where input tax credit is availed less than amount available under GSTR 2A; and
- v. The reversal of blocked credit made by them through DRC-03 is not considered by the respondent.

4. The authorised representative of the taxpayer respondent appeared for personal hearing and submitted that the actual land value has to be adopted for valuation. The department in the differences in negative are considered and ignored the positive differences i.r.o., GSTR 1 vs. 3B and GSTR 2A vs., 3B on wrong adoption of rate of tax, they have paid Rs.9.98 Lakhs instead of Rs.19.82 Lakhs.

5. I have gone through the facts of the case, the statement of facts, ground of appeal filed by the appellant and submissions made during personal hearing held in the case. I find the issues to be decided as under;

- (a) Whether the method of valuation adopted by the appellant is correct;
- (b) Whether the differential tax on account of difference in rate of tax confirmed is correct and legal;
- (c) Whether the differential tax arrived on account of difference in GSTR 1 and GSTR 3B correct;
- (d) Whether the confirming the demand of input tax credit availed in excess of GSTR 2A and Blocked Credits is correct and legal;

6. The applicant is a developer and is into construction of villas. Demand of short payment of GST was raised by the department on the method of valuation adopted by the appellant is not in conformity with Sl. No.2 of the Notification No.11/2017 (Central Tax (Rate) dated 28th June, 2017. It is noticed from the sample sale deed and agreement of construction submitted by the appellant (Sl. No.6 of Annexure-I i.e., Mr. P.V. Subramanyam) that the appellant is entering into two different deeds one for sale of plot and the other for construction of villa on such sold land. By entering into the sale deed for plot the taxpayer is transferring the title of the plot to the prospective buyer, and as per the agreement of construction the appellant is constructing villa on such sold plot.

7. The respondent considered both the transactions together and adopted the valuation as provided under Notification No.11/2017– Central Tax (Rate) dated 28th June, 2017, as amended. Sl. No.2 of the Notification, which provides valuation of 'Construction Service' as under;

"2. In case of supply of service specified in column (3) of the entry at item (i) against serial no. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. –For the purposes of paragraph 2, "total amount" means the sum total of, –(a) consideration charged for aforesaid service; and (b) amount charged for transfer of land or undivided share of land, as the case may be"

8. The valuation is provided in case of supply of construction service 'involving transfer of property in land or undivided share of land', and in the present case no such activity is being undertaken by the appellant as per the agreement for construction. The construction service agreed to be provided under 'agreement of construction' is not

transferring any land to the prospective customers. The transaction of land is separate from the transaction of construction of villa. Hence, the method provided under Sl.No.2 to the Notification No.11/2-17-Central Tax (Rate) dated 28th June, 2017, as amended, cannot be applied to the present case and therefore, the impugned order to that extent is not correct.

9. It is noticed by the audit that the appellant has paid GST @12% as against the tax rate of @18% on the construction services provided by them and differential tax of Rs.19,82,815/- was demanded. Instead of debating the applicability of rate of tax the appellant has made submissions with regard to the tax liability declared in GSTR I and actual tax payment made in GSTR 3B. Hence, the contentions of the taxpayer are out of place and cannot be considered. I am in agreement with the decision of the respondent to that extent.

10. Difference in tax liability declared in GSTR 1 and actual payment of tax made during the tax periods June, 2018 and March, 2019 was noticed and demand notice was issued for Rs.27,16,554/-. Respondent has confirmed without considering the submissions made by the appellant. The appellant has submitted the difference of tax liability declared in GSTR 1 and actual amount of tax paid in GSTR 3B for the period of audit. In certain months the appellant has paid more than what they have declared in GSTR 1 and in certain tax periods they have paid less than what they have declared in GSTR 1. Respondent without considering the excess payments made in earlier tax periods and has confirmed the demand. Board has categorically clarified vide para 4 of the Circular 26/26/2017- GST dated 29th December, 2017 that the excess paid tax in a particular tax period can be adjusted to the tax liability of subsequent tax periods. After adjusting such excess paid tax prior to June, 2018 and March, 2019 against the short payment of tax noticed for the said particular tax periods, the differential tax liability works out to Rs.5,15,478/- (Rs.2,57,739/- SGST of Rs.2,57,739/-). I, therefore, reduce the demand to Rs.5,15,478/-.

10.1. Appellant submitted that they have paid said differential tax vide DRC-03 dated 9th August, 2019, whereas it is noticed from the subject DRC-03 that the tax liability pertains to the tax period December, 2018, hence the same cannot be considered as payment towards the differential tax of Rs.5,15,478/-.

11. As regards to excess availment of input tax credit over and above GSTR 2A the appellant submitted that the impugned order has considered only those tax periods where there is less reflection of input tax credit in GSTR 2A and ignored where there is excess reflection of input tax credit. The appellant has recalculated the irregular input tax credit and arrived at Rs.17,78,059/- considering the input tax credit availed in excess and less over GSTR2A, for the period covered by the audit, i.e., 2017-18 to 2019-20. The contention of the taxpayer cannot be considered in as much as –

- the availment of credit has to be compared on financial year basis;
- the time lines have been prescribed under Sec.16 of the CGST Act, 2017 in order to avail the input tax credit of particular financial year in subsequent financial year and which cannot be verified with the information submitted by the appellant;

11.2. Appellant further contended that GSTR 2A cannot be taken as a basis to deny the input tax credit during the prevailing period. Before availing the input tax credit, the appellants are required to make sure that the conditions prescribed under Sec.16 of the CGST Act, 2017 are fulfilled, and one of the conditions prescribed under sub section (c) is that the tax charged in respect of such supply has been actually paid to the Government. Mere possession of invoice and receipt of goods is not sufficient to avail the input tax credit by the appellant. They have to make sure that the tax charged has been paid by the supplier or otherwise. The details of outward supplies declared by the suppliers and their GSTR3B return filing status is made available to all the taxpayers in the common portal in the form of GSTR2A. The purpose of making such statement available to the taxpayers is to facilitate the taxpayers in taking reasonable steps before availing the input tax credit charged by their suppliers. If any invoice is reflecting in the GSTR 2A and the filing status of GSTR3B is positive it can be construed that the supplier has paid the tax charged in respect of such invoices, vis versa, wherever the invoices are not reflected in the GSTR2A or the supplier's filing status of GSTR3B is negative, such credit is considered as ineligible in as much as the same is not credited to the Government. Therefore, the field formations are using GSTR 2A as a tool to verify the eligibility of input tax credit availed by the taxpayers.

11.3. Instead of disputing the legality of comparing with GSTR 2A the appellant would have come up with detailed statement of invoices against which they have availed the input tax credit, matching with their GSTR3Bs, and would have explained the eligibility of excess input tax credit. To deal with the differences in input tax credit availed in GSTR 3B returns compared to GSTR 2A statement Board has issued circulars 183/15/2022-GST 27th December, 2022 and 193/05/2023-GST dated 17th July, 2023. The appellant would have made use of such circulars and come up with a proof to consider the eligibility of differential input tax credit confirmed in the impugned order. In the absence of which I agree with the confirmation of demand by the respondent. Appellant cannot ignore that the burden of proof of eligibility of input tax credit lies with them, as stipulated under Sec.155 of the CGST Act, 2017.

12. Coming to irregular availment of input tax credit of Rs.88,320/-, which was availed on the inputs that are blocked under Sec.17(5) of the CGST Act, 2017. The appellant is not disputing the fact availing such input tax credit, and are claiming that they have reversed such input tax credit under DRC-03 dated 7th January, 2020. The observations of the respondent are very much true and the said DRC-03 was pertaining to the specific tax period i.e., September, 2018 whereas the demand pertain to period 2017-18 to 2019-20. Hence the payment made under the subject DRC-03 cannot be considered as reversal of irregular input tax credit related to blocked credit of Rs.88,320/-. Hence the submissions of the appellant cannot be considered.

13. Appellant contended the confirmation of demands under Sec.74 of the CGST Act, 2017, and it is noticed that the same is invoked in cases of short payment of tax on account of wrong adoption of rate of tax and irregular availment of input tax credit on blocked credit. Appellant has not disputed both the demands on its merits, it implies that they are in agreement with the irregularity. In the era of self-assessment, the taxpayers are expected to take all reasonable steps in assessing the tax and eligible input tax credit, whereas the appellant has mis-declared the rate of tax as 12% as against 18% and blocked credit as eligible input tax credit. But for the auditing the accounts of the taxpayer the such discrepancies would have gone unnoticed causing loss to the exchequer. Hence the respondent is correct in applying the law.

14. Accordingly, I pass the following orders.

ORDER

The appeal is allowed partially to the extent of Rs.5,15,478/- being the tax adjusted and rest of the impugned order is upheld.

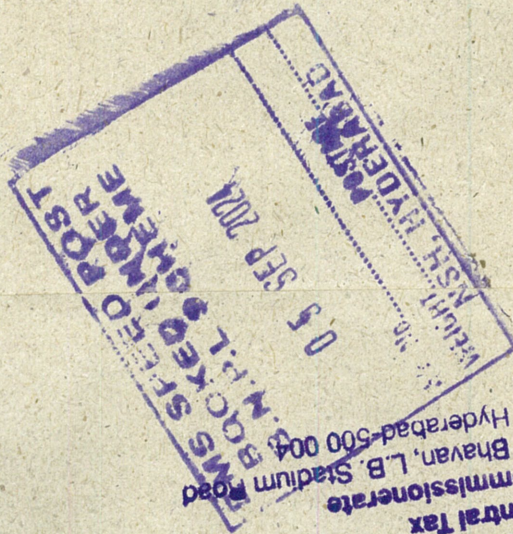


To,
M/s. Nilgiri Estates,
5-4-187/3, 2nd Floor, Soham Mansion,
M.G. Road, Secunderabad,
Telangana – 500 003.

Copy submitted to the Chief Commissioner of Customs & Central Tax, Hyderabad Zone, Hyderabad.

1. The Commissioner of Central Tax, Secunderabad CGST Commissionerate, Hyderabad.
2. The Additional Commissioner of Central Tax, Secunderabad CGST Commissionerate, Hyderabad.
3. Master Copy/Office Copy.

आयुक्त/COMMISSIONER



Office of the Commissioner of
Customs & Central Tax
Appeals-II Commissionerate
7th Floor, GST Bhavan, L.B. Stadium Road
Basheerbagh, Hyderabad-500 004.



EMS SPEED POST

A/c. No: 1742

Customer ID: 200 000 1681



JD413996656IN

केवल भा.स.से पर
ON I.G.S. Only

665

M/s Nilgiri Estates,
5-4-187/3, 2nd Floor
Soham Mansion, M.G. Road
Secunderabad,
Telangana - 500 004

Office of the Commissioner of
Customs & Central Tax
Appeals-II Commissionerate
7th Floor, GST Bhavan, L.B. Stadium Road
Basheerbagh, Hyderabad-500 004.