

FORM GST DRC – 06*[See rule 142(4)]***Reply to the Show Cause Notice**

1.GSTIN	36AABCM4761E1ZM	
2.Name	M/s. Modi Properties Private Limited	
3.Details of Show Cause Notice	ZD360524064504E	Date of issue: 31-05-2024
4.Financial Year	2019-2020	
5.Reply		
Given as Annexure A		
6.Documents uploaded I. Reply to Notice.		
7.Option for personal hearing	Yes- Required	No ☐

8.Verification –

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

M/s. Modi Properties Private Limited

Partner

Reply to the Notice:

M/s. Modi Properties Private Limited (hereinafter referred as "noticee") is engaged in provision of construction and administrative services. They are registered with goods and services tax department vide GSTIN NO: 36AABCM4761E1ZM. Noticee herein makes the below submissions

Submissions

1. Noticee submits that they deny all the allegations made in Show Cause Notice (SCN) as they are not factually/legally correct.
2. Noticee 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 TGST Act, 2017. Similarly, the provisions of CGST Act, 2017 are adopted by IGST Act, 2017 thereby the reference to CGST provisions be considered for IGST purpose also, wherever arises.
3. Noticee submits that the Show cause Notice dated 22-05-2024 points out to difference in turnover as per audited financials and turnover as per GSTR 9 as reported in GSTR 9C Statement of the financial year 2019-20.

Para No.	Particulars	Amount
1	The tax on outward supplies under declared on reconciliation of data in GSTR-09	Rs.1,07,402/-
2	Under declaration of Ineligible ITC	Rs.1,57,622/-

Para 1 - The tax on outward supplies under declared on reconciliation of data in GSTR-09

4. This para alleges that the noticee has short paid taxes on outward liability declared in GSTR 9.

S.No	Issue	Table No. in GSTR- 09	SGST	CGST	IGST	CESS	Total
1	2	3	4	5	6	7	8
1	Tax on taxable supplies as declared in GSTR-09	4N	5817210.00	5817210.00	0.00	0.00	11634420.00
2	Add net increase due to amendments(Increase in amendments (-) decrease in amendments)	10 (-) 11	0.00	0.00	0.00	0.00	0.00
3	Add tax on deemed supplies	16B	0.00	0.00	0.00	0.00	0.00
4	Add tax on unreturned goods	16C	0.00	0.00	0.00	0.00	0.00
5	Pending demands	15G	0.00	0.00	0.00	0.00	0.00
6	Total output tax liability as per the above in GSTR-09(S.NO 1+2+3+4+5)		5817210.00	5817210.00	0.00	0.00	11634420.00
7	Less Total tax paid in cash	9	5431615.00	5431615.00	0.00	0.00	10863230.00
8	Less Tax paid by adjustment of ITC	9	331894.00	331894.00	0.00	0.00	663788.00
9	Less differential tax paid on amendments	14	0.00	0.00	0.00	0.00	0.00
10	Add differential tax paid on amendments related to previous year in current year	(14) of previous FY GSTR-09	0.00	0.00	0.00	0.00	0.00
11	Net tax payable (S.NO 6-7-8-9+10)		53701.00	53701.00	0.00	0.00	107402.00

5. It is submitted that the Noticee, due to an inadvertent oversight, failed to declare its Reverse Charge Mechanism (RCM) liability as per Section 9 (3) of CGST Act,2017 in its monthly returns. However, the said RCM liability was subsequently reported in the GSTR 9 annual return, and the corresponding taxes amounting to Rs.1,07,397/- (CGST - Rs.53,697/- and SGST - Rs.53,697/-) were paid through Form DRC-03 dated 30-11-2021, bearing ARN: AD361121036030Z. An extract of DRC-03 is provided below, and the DRC-03 is annexed hereto as **Annexure 1**, for ready reference. Further, Extract of Table 4 of GSTR 9 Annual return for the financial year 2018-19 is provided hereunder.

Extract of Table 4 of GSTR 9

Details of advances, inward and outward supplies made during the financial year on which tax is payable						Help
Note: The fields, where the system computed values would be modified by more/less than 20%, shall be highlighted in 'Red' for reference and attention.						
Nature of Supplies	Taxable value (₹)	Integrated Tax (₹)	Central Tax (₹)	State/UT Tax (₹)	CESS (₹)	
(A) Supplies made to unregistered persons (B2C)	₹14,59,20,679.00	₹0.00	₹36,77,285.00	₹36,77,285.00	₹0.00	
(B) Supplies made to registered person (B2B)	₹8,33,83,215.61	₹0.00	₹22,64,675.99	₹22,64,675.99	₹0.00	
(C) Zero rated supply (Export) on payment of tax (Except supplies to SEZ)	₹0.00	₹0.00			₹0.00	
(D) Supplies to SEZ on payment of tax	₹0.00	₹0.00			₹0.00	
(E) Deemed Exports	₹0.00	₹0.00	₹0.00	₹0.00	₹0.00	
(F) Advances on which tax has been paid but invoice has not been issued (not covered under (A) to (E) above)	₹0.00	₹0.00	₹0.00	₹0.00	₹0.00	
(G) Inward supplies on which tax is to be paid on the reverse charge basis	₹5,96,635.00	₹0.00	₹53,697.00	₹53,697.00	₹0.00	
(H) Sub total (A to G above)	₹22,99,00,529.61	₹0.00	₹59,95,657.99	₹59,95,657.99	₹0.00	

Extract of DRC-03

FORM GST DRC - 03

[See rule 142(1)&142(3)]

Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement

ARN :AD361121016030Z

Date :30/11/2021

1.	GSTIN						36AABCM4761E1ZM						
2.	Name						MODI PROPERTIES PRIVATE LIMITED						
3.	Cause of Payment						Annual return						
4.	Section under which voluntary payment is made						73(5)						
5.	Details of show cause notice, if payment is made within 30 days of its issue						Reference No:NA				Date Of issue:NA		
6.	Financial Year						2019-2020						
7.	Details of payment made including interest and penalty, if applicable (Amount in Rs.)												
Sr No	Tax Period	Act	Place of supply	Tax/Cess	Interest	Penalty, if applicable	Fee	Others	Total	Ledger utilised (Cash/credit)	Debit entry no.	Date of debit entry	
1.	MAR 2020-MAR 2020	CGST	Telangana	53,697.00	0.00	0.00	0.00	0.00	53,697.00	Cash	DC3611210160836	30/11/2021	
2.	MAR 2020-MAR 2020	SGST	Telangana	53,697.00	0.00	0.00	0.00	0.00	53,697.00	Cash	DC3611210160836	30/11/2021	

8. Reason, if any:-

GST payable on account of RCM

6. Noticee has discharged its tax liability against all its outwards tax liability declared in GSTR-09 Annual returns. Hence, it is requested to drop all further proceedings in this regard.

Para 2. Under declaration of Ineligible ITC

7. This para of the notice alleges that noticee has under declared blocked ITC under section 17(5) of CGST Act, 2017.

Details of Ineligible ITC 17 (5) Date: 07-02-2024						Amount in Rupees		
GSTIN : 36AABCM4761E1ZM Name : MODI PROPERTIES PRIVATE LIMITED FY : 2019-20						R1 to this dealer		
S.No.	Seller Name	Seller GSTIN	Commodity / Service	HSN code	Month	SGST CGST	IGST CESS	Total
1	2	3	4	5	6	7a	7b	7c
1	Future Generali India Insurance Company Limited	36AABCF0191R1ZA	Motor Vehicle Insurance	997134	Apr 2019	324.00 324.00	0.00 0.00	648.00
2	TATA AIG GENERAL INSURANCE CO LTD	36AABCT3518Q1ZX	Motor Vehicle Insurance	997134	May 2019	45340.00 45340.00	0.00 0.00	90680.00
3	M/S SREE KRISHNA AUTOMOTIVES HYDERABAD PVT LTD	36AAKCS5353H1Z3	Motor Vehicles	8702, 8703, 8711	May 2019	1877.00 1877.00	0.00 0.00	3754.00
4	FORTUNE AUTOMOBILES INDIA PRIVATE LIMITED	36AACCF1887F1ZL	Motor Vehicles	8702, 8703, 8711	May 2019	680.00 680.00	0.00 0.00	1360.00
5	M/S SREE KRISHNA AUTOMOTIVES HYDERABAD PVT LTD	36AAKCS5353H1Z3	Motor Vehicles	8702, 8703, 8711	Jul 2019	5310.00 5310.00	0.00 0.00	10620.00
6	ROYAL SUNDARAM GENERAL INSURANCE CO LIMITED	36AABCR7106G1ZK	Motor Vehicle Insurance	997134	Aug 2019	8403.00 8403.00	0.00 0.00	16806.00
7	M/S SPICEJET LIMITED	36AACCR1459F1ZH	Airlines Travel	998425, 998426	Aug 2019	200.00 200.00	0.00 0.00	400.00
8	ADISHWAR AUTO DIAGNOSTICS PVT LTD MAHAVIR MOTORS	36AABCA9925C1ZU	Motor Vehicles	8702, 8703, 8711	Sep 2019	2531.00 2531.00	0.00 0.00	5062.00
9	ROYAL SUNDARAM GENERAL INSURANCE CO LIMITED	36AABCR7106G1ZK	Motor Vehicle Insurance	997134	Oct 2019	2145.00 2145.00	0.00 0.00	4290.00
10	ADISHWAR AUTO DIAGNOSTICS PVT LTD MAHAVIR MOTORS	36AABCA9925C1ZU	Motor Vehicles	8702, 8703, 8711	Oct 2019	706.00 706.00	0.00 0.00	1416.00
11	ROYAL SUNDARAM GENERAL INSURANCE CO LIMITED	36AABCR7106G1ZK	Motor Vehicle Insurance	997134	Dec 2019	8827.00 8827.00	0.00 0.00	17654.00
12	M/S SREE KRISHNA AUTOMOTIVES HYDERABAD PVT LTD	36AAKCS5353H1Z3	Motor Vehicles	8702, 8703, 8711	Jan 2020	2466.00 2466.00	0.00 0.00	4932.00
	Total					78811.00 78811.00	0.00 0.00	157622.00

8. It is submitted that noticee has never utilised such blocked credits under section 17(5) of CGST Act, 2017. In support of such non-utilisation, ITC available in GSTR 2A and ITC claimed in GSTR 3B comparison report as downloaded from the common portal is provided in Table 1 below.

Table 1

ITC Comparison Report

Amount in Rupees.

Tax Period	ITC claimed in GSTR-3B during the month [as per table 4A(4)+4A(5)-4B(1)-4B(2)] *		ITC auto-drafted in GSTR-2A during the month [as per PART-A, PART-B](Excluding RCM supplies)		Shortfall (-) / Excess (+) in ITC (GSTR-3B - GSTR-2A)	
	CGST	SGST/UTGST	CGST	SGST/UTGST	CGST	SGST/UTGST
Apr-19	61,349	61,349	1,87,686	1,87,686	-1,26,337	-1,26,337
May-19	2,52,381	2,52,381	6,44,559	6,44,559	-3,92,178	-3,92,178
Jun-19	5,40,370	5,40,370	3,20,977	3,20,977	2,19,393	2,19,393
Jul-19	12,16,910	12,16,910	1,77,566	1,77,566	10,39,344	10,39,344
Aug-19	6,926	6,926	2,29,621	2,29,621	-2,22,695	-2,22,695
Sep-19	13,394	13,394	4,72,188	4,72,188	-4,58,794	-4,58,794
Oct-19	23,363	23,363	4,35,747	4,35,747	-4,12,384	-4,12,384
Nov-19	15,680	15,680	6,49,064	6,49,064	-6,33,384	-6,33,384
Dec-19	14,185	14,185	8,21,468	8,21,468	-8,07,283	-8,07,283
Jan-20	86,662	86,662	11,18,754	11,18,754	-10,32,092	-10,32,092
Feb-20	9,547	9,547	9,14,542	9,14,542	-9,04,995	-9,04,995
Mar-20	4,270	4,270	12,60,360	12,60,360	-12,56,090	-12,56,090
Total	22,45,037	22,45,037	72,32,532	72,32,532	-49,87,495	-49,87,495

9. On examination of Table 1 above, it is evident that out of the surplus ITC available with the Noticee, amounting to CGST - Rs.49,87,495/- and SGST - Rs.49,87,495/-, a sum of CGST - Rs.78,811/- and SGST - Rs.78,811/-, pertaining to such blocked credits as per Section 17(5) of the CGST Act, 2017, was never availed by the Noticee. Consequently, no further reversal of ITC is required, as demanded in the notice. Therefore, it is respectfully prayed that all further proceedings under this paragraph be dropped.

Show Cause Notice is un-signed.

10. Noticee further submits that for any impugned notice to be called as valid notice the proper officer issuing the notice has to affix the signature either through DSC or should sign manually. However, in the present case the notice is neither affixed by DSC or signed manually. Hence, the same cannot be considered as a proper notice. This can be validated with the decision in case of *Marg Erp Limited Vs Commissioner Of Delhi Goods And Service Tax, Delhi & Anr. 2023 (2) Tmi 395 - Delhi High Court* wherein it was held that

"11. Learned Counsel for the respondent states that, prior to the Show Cause Notice dated 06.02.2021, the concerned authority had issued a notice dated 01.01.2021, pointing out that there was some differences/ excess TTC and calling upon the petitioner to attend the office on 15.01.2021.

12. It is noted that this notice is also unsigned

13. According to the learned Counsel for the respondent, the Show Cause Notice is reliable to the details as provided in the notice dated 01.01.2021.

14. Concededly, the impugned notice cannot be sustained as it is unsigned. This issue is covered by the decision of a coordinate Bench of this Court in *Railsys Engineers Private Limited & Anr. v. The Additional Commissioner of Central Goods and Services Tax (Appeals-II) & Anr.*; W.P.(C) 4712/2022; decided on 21.07.2022.

15. An unsigned notice or an notice cannot be considered as an notice as has been held by the Bombay High Court in *Ramani Suchit Malushre v. Union of India and Ors.*; W.P.(C) 9331/2022; decided on 21.09.2022."

Notice is vague and is issued on pre-determined and pre-meditated conclusions

11. Noticee submits that the impugned notice is vague and lack details and it is settled law that once there is no specific allegation in the Show Cause Notice based on which the demand is proposed then the demand cannot be sustained as SCN is the basis/foundation for raising any demand. And also impugned SCN was issued with pre-determined and premeditated conclusions on various issues raised in the notice. The proposals made in the notice are concluded before even extracting the statutory provisions which shows that the conclusions have been arrived with pre-determined mind and pre-meditated conclusions. In quasi-judicial proceedings the Justice is not only to do it but should appear as well. The appearance of justice is not available for the given set of facts of the proceedings. That being the case, issuance of SCN in this manner is bad in law and requires to be dropped. In this regard, reliance is placed on **Oryx Fisheries Pvt. Ltd. v. Union of India — 2011 (266) E.L.T. 422 (S.C.)**. In **CCE v. Brindavan Beverages (2007) 213 ELT 487(SC)** the Hon'ble Supreme Court held that *"The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice."*

The impugned order is time barred and Notification No. 56/2023-CT dated 28.12.2023. is bad in law for the FY 2019-20:

12. Noticee submits that the impugned SCN was issued under section 73 of CGST Act, 2017 which provides for adjudication of demand within 3 years from the due date of the annual return of the corresponding FY. For FY 2019-20, the annual return due date falls on 31.03.2021 and the 3-year time limit expires by 31.03.2024 however citing the difficulties caused due to Covid-19, the Government has extended the time limit from 31.03.2024 to 30.06.2024 by exercising the powers u/s. 168A by the Notification No. 09/2023 dated 31.03.2023. However, again exercising the powers u/s. 168A, ibid the time limit was further extended to 31.08.2024 by the Notification No. 56/2023-C.T dated 28.12.2023 (second extension). In this regard, it is submitted that an extension of the period prescribed for issuance of show cause notice under Section 73 (10) of the Goods and Service Tax Act, 2017 is not sustainable in law, in as much as COVID restrictions were uplifted long back in the year 2022 and the revenue had sufficient time to complete the scrutiny and audit process. Further, the 'force majeure' is as defined u/s. 168A, ibid was never occurred from 2022 till the expiry of the extended due date of 30.06.2024. Hence, the second extension of time runs beyond the mandate of Section 168A and is not sustained in the law. Accordingly, the demand for FY 2019-20 deserves to be dropped as the Show Cause Notice in the instant case is not issued prior to 31.12.2023 (i.e original due date to issue notice without considering extensions) as envisaged under Section 73 of CGST Act, 2017.

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

For M/s. M/s. Modi Properties Private Limited

Authorised Signatory