

Date: 19-12-2024

To,
The Assistant Commissioner of Central Tax,
Begumpet CGST Division,
Secunderabad CGST Commissionerate,
Unit No. 3A & 3B, 3rd floor, Queen's Plaza,
S.P. Road, Begumpet, Secunderabad – 500003.

Dear Sir/Madam,

Sub: Intimation regarding the filing of the appeal before the GST Appellate Tribunal under GST Law.

Ref:

- a. Order-in-Appeal vide OIA No. HYD-GST-SC-AP2-291-2024-25, dated 19-08-2024.
 - b. Form APL-01 filed physically on 16-01-2024.
 - c. Order-in-Original vide OIO No. 28/2023-24-SEC-ADJN-ADC(GST) dated 12.10.2023 pertaining to Nilgiri Estates.
 - d. GSTN: 36AAHFN0766F1ZA
1. With reference to the above subject, we would like to bring to your notice the fact that we are in receipt of Order-in-Appeal vide OIA No. HYD-GST-SC-AP2-291-2024-25 dated 19-08-2024 stating that the Appeal filed as referred above on 16-01-2024, is dismissed by upholding the demand confirmed in the Order-in-Original.
 2. We wish to inform your good office that we would prefer an appeal before the Hon'ble GST Appellate Tribunal under Section 112 of CGST Act, 2017 against the above-referred Order-in-Appeal and request you good self to not to initiate any coercive proceedings in this regard.
 3. We understand that the GST Appellate Tribunal has not been constituted yet and the time limit was extended to till the date of 3 months from the date of President of the Tribunal enters the office vide Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 and clarified by CBIC Circular No. 132/2/2020 – GST dated 18.03.2020. We further understand that recovery or any other coercive action shall not be initiated till the date of expiry of filing appeal. For your ready reference, the relevant extract of the circular is reproduced below:
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.

4.3 Hence, as of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office. The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal”

4. Hence, we request your good self to keep the proceedings in abeyance till the constitution of the GST Tribunal and not to initiate any coercive action to recover the demands confirmed in the above-referred order.

We shall be glad to provide any further information or explanation in this regard. Kindly, acknowledge the receipt and please do the needful.

Thanking You,

Yours Truly,

For M/s. Nilgiri Estates

Authorized Signatory

A handwritten signature in black ink is written over a circular purple stamp. The stamp contains the text "NILGIRI ESTATES" around the perimeter and a small star at the bottom. The signature is a cursive, flowing line that starts with a large loop and ends with a sharp hook.



కస్టమర్స్ రియూసెంట్రల్ కస్టమీషనర్యాఝ్యాలయం) 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, KendriyaShulkBhavan,
एलबीस्टेडियमरोडकेसामने, 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 व जी.एस.टी. (अपील्स-II)
Passed by: Sri. P DEVARAJ, IRS, Commissioner of Central Tax & GST (Appeals-II)

उद्देशिका / P R E A M B L E

1. 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.
2. इस आदेश से व्यक्त कोई भी व्यक्ति, वस्तुएं व सेवाएं नियम 2017, के नियम 110 के साथ पठित केंद्रीय वस्तु एवं सेवाएं अधिनियम 2017 की धारा (1) 112 के तहत इलेक्ट्रॉनिक या अन्य माध्यम से, केन्द्रीय वस्तु एवं सेवाएं अधिनियम 2017 की धारा 109 के तहत गठित उपयुक्त अपील न्यायाधिकरण के राज्य / क्षेत्र के क्षेत्राधिकार के खंडपीठ में उन मामलों में, जिनमें अपूर्ति की जगह, विवाद-ग्रस्त विषयों में से एक न हो, अपील दायर कर सकता है। जहां अपूर्ति की जगह विवादित मामलों में से एक है, अपील, उपरोक्त धारा 109 के तहत गठित राष्ट्रीय / क्षेत्रीय खंडपीठ 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 जाएं।
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.
3. वस्तु एवं सेवाएं नियम 2017, के नियम 111 के साथ पठित केंद्रीय वस्तु एवं सेवाएं अधिनियम 2017 की धारा (3) 112 के तहत आयुक्त द्वारा प्राधिकृत अधिकारी इलेक्ट्रॉनिक या अन्य माध्यम से, केन्द्रीय वस्तु एवं सेवाएं अधिनियम 2017 की धारा 109 के तहत गठित अपील न्यायाधिकरण के राज्य / क्षेत्र के क्षेत्राधिकार के खंडपीठ में उन मामलों में, जिनमें अपूर्ति की जगह विवाद-ग्रस्त विषयों में से एक न हो, अपील दायर कर सकता है। जहां अपूर्ति की जगह विवादित मामलों में से एक है, अपील, उपरोक्त धारा 109 के तहत गठित राष्ट्रीय / क्षेत्रीय खंडपीठ 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 सेवाएं अधिनियम 2017 की धारा (5) 112 के साथ पठित नियम (2) 110 के अनुसार जीएसटी एपीएल 06- फॉर्म में इसके संप्रेषण के 45 दिनों के अंदर दायर किए जाएं और इस पर नियम 26 में विनिर्दिष्ट तरीके से हस्ताक्षर किए जाएं।

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

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,
 Secunderabad 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.

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 1 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 avilment 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 avilment 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;

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