सत्यमेव जयते

जीएसटीऔरकेंद्रीयकरआयुक्तकाकार्यालयअपील-(II)हैदराबादकमिश्नरेट
सातवातल, जी.एस.टीभवन, एल.बी.स्टेडियमरोड, बशीरबाग, हैदराबाद,पिन – ५०००0४
OFFICE OF THE COMMISSIONER OF GST &CENTRAL TAX
APPEALS-II HYDERABAD COMMISSIONERATE
7th Floor, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad, PIN-500004, T.S.
Ph: 040-23234219/ e-Mail: cgst.hydappeals2@gov.in

MODI PROPERTIES PVT. LTD. SEC'BAD INWARD No. 35 Date 21/5/24 Sign 3

Appeal No. 30/2024(SC)DGST /160 Date: 14.05.2024

To
The Assistant Commissioner of Central Tax
Secunderabad GST Division, Salika Senate, D.No.2-4-416 & 417
Ramgopalpet, M.G.Road, Secunderabad-500003

Sub: GST (Appeal) – Appeal filed by The Assistant Commissioner, Secunderabad GST Division. M/s. Villa Orchids LLP, – **Memorandum of Cross Objections called for** – Regarding.

* * * *

The receipt of your appeal against OIO No. 33/2023-2024-SEC-ADJN-ADC (GST) dated. 01.11.2023 passed by The Additional Commissioner, Secunderabad Commissionerate in this office on 24.04.2024 is hereby acknowledged. The said Appeal has been assigned Appeal No. **30/2024(SC)DGST**.Please cite/quote the above Appeal number, for any future correspondence/references.

2. I am directed to intimate that the appeal is posted for personal hearing before the Commissioner (Appeals-II),7th Floor, GST Bhavan, Basheerbagh, Hyderabad-500004 on **21.05.2024 at 11:30 Hrs.**

4. It is also requested to submit soft copy of statement of facts and Grounds of Appeal (in word format) to this office **e-mail id:hydappeals.two@gmail.com.**

Yours faithfully,

SUPERINTENDENT

The Additional Commissioner of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, LB Stadium Road, Basheerbagh, Hyderabad

Copy to:
M/s Villa Orchids LLP, 2nd Floor, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad, Telangana-500003 (alongwith duplicate copy of the appeal)– You are requested to submit a memorandum of Cross Objections if any, verified in the prescribed manner. Otherwise, it would be presumed that the respondent does not have any comments to offer and the matter will be decided based on the material/evidence available on records.

30/2024 (SC) D

केन्द्रीय कर सहायक कार्यालय,सिकंदराबाद माल एवम सेवाकर मण्डल,
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
Phone 7901243130 **E-mail- cgst.secdiv@gov.in**

I.C. No: 928

O.C. No.: 268/2024 **दिनांक Dated:** 23-04-2024

To
The Commissioner of Central Tax (Appeals-II),
GST Bhavan, L.B. Stadium Road, Basheerbagh,
Hyderabad – 500 004. // Attn: Supdt (Appeals-II)//

Sir,

Sub:- GST – Department Appeal against Order-in-Original No. 33/2023-24-SEC-ADJN-ADC(GST) dated 01.11.2023 passed by the Additional Commissioner of Central Tax, Secunderabad GST Commissionerate, in the case of M/s. VILLA ORCHIDS LLP – Regarding.

****

I have been authorized by the Commissioner of Central Tax, Secunderabad GST Commissionerate under Section 107(2) of the CGST Act, 2017 to file an appeal before The Commissioner of Central Tax (Appeals-II), Hyderabad against Order-in-Original 33/2023-24-SEC-ADJN-ADC(GST) dated 01.11.2023 passed by the Additional Commissioner of Central Tax, Secunderabad GST Division in the case of M/s. VILLA ORCHIDS LLP –2nd Floor, 5-4-187/3 And 4, Soham Mansion, M.G Road, Secunderabad, Rangareddy, Telangana, 500003.

2. In view of the above, I am enclosing herewith Appeal in Form APL-03, Statement of Facts, Grounds of Appeal along with a copy of Review order/Authorisation letter bearing No. **REVIEW ORDER NO. 08/2024-25-GST(OIO), dated 19.04.2024** passed by the Commissioner of Central Tax, Secunderabad GST Commissionerate, Hyderabad, Copy of the Order-in-Original No.33/2023-24-SEC-ADJN-ADC(GST) dated 01.11.2023 passed by the Additional Commissioner of Central Tax, Secunderabad GST Division, along with all the relevant documents in duplicate.

Yours faithfully/ आपका आभारी,

Encl: As above

आर. सत्यनारायण
23/04/2024

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

आर. सत्यनारायण
R. SATYANARAYANA
सहायक आयुक्त/Assistant Commissioner
केन्द्रीय कर/Central Tax
सिकंदराबाद जी एस टी मंडल
Secunderabad GST Division
हैदराबाद/Hyderabad

Copy submitted to:

1. The Commissioner of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad. // Attn: Supdt (Review)//

2. The Additional Commissioner(Adjudication) of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad. // By Name: Supdt (Adjudicatrion) //

Copy to:

1. The Superintendent, Ramgopalpet -I Range, Secunderabad GST Division – for information.

Office Copy.

BEFORE THE COMMISSIONER OF CENTRAL TAX,
(APPEALS-II) COMMISSIONERATE, HYDERABAD

Assistant/Deputy Commissioner of Central Tax,
Secunderabad Division, Salike Senate,
1st Floor, D. No. 2-4-416 & 417,
Ramgopalpet, MG Road, Secunderabad 500003 .... Appellant

Vs

M/s.VILLA ORCHIDS LLP,
2nd Floor, 5-4-187/3 and 4, Soham Mansion, M.G Road,
Secunderabad, Telangana, 500003 .... Respondent

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(1)

GST APL-03			
[SEE RULE 109 OF CGST RULES 2017]			
Application to the Appellate Authority under Sub-Section (2) of Section 107 of CGST Act, 2017			
1	Name and designation of the appellant	:	Name: R.SATYANARAYANA Designation: Assistant Commissioner of Central Tax, Secunderabad GST Division. Jurisdiction: Secunderabad GST Division, Secunderabad GST Commissionerate. State/ Center: Center Name of the State: Telanganga
2	GSTIN/ Temporary ID/UIN	:	----
3	Order No. & Date	:	Order-in-Original No.33/2023-24-ADJN (GST-Adjn.) dated 01.11.2023.
4	Designation and adress of the officer passing the order appealed against	:	Additional Commissioner of Central Tax Secunderabad GST Commissionerate, GST Bhavan, LB Stadium Road, Basheerbagh, Hyderabad - 500 004
5	Date of Communication of the order appealed against	:	01.11.2023
6	Details of the case under dispute		Order-in-Original No.33/2023-24-ADJN (GST-Adjn.) dated 01.11.2023.
	(i) Brief issue of the case under dispute	:	(i) Non payment of GST under RCM on Brokerage/Commission paid on unregistered persons; (ii) Interest on delayed filing of GSTR-3B returns for the months of Jul-2017,Aug-2017 and Oct-2017; (iii) Non-payment of GST on advances received in FY 2017-18 and 2018-19; (iv) Ineligible ITC availed during the FY 2018-19.
	(ii) Description and classification of goods or services in dispute	:	Construction services of single dwelling or multi dwelling or multi-storied residential building; Construction of Res. Complex; Works Contract Services
	(iii) Period of dispute:	:	Jul-2017 to March-2019
	(iv) Amount under dispute	:	Penalty upto Rs. 25,000/- under Section 125 of the CGST Act, 2017 in respect of interest on delayed filing of GSTR-3B Returns for the months of Jul-2017,Aug-2017 and Oct-2017
7	Statement of facts	:	Enclosed
8	Grounds of Appeal	:	Enclosed
9	Prayer	:	Enclosed
10	Amount of demand in dispute, if any	:	Penalty upto Rs. 25,000/- under Section 125 of the CGST Act, 2017 in respect of interest on delayed filing of GSTR-3B Returns for the months of Jul-2017,Aug-2017 and Oct-2017

24 APR 2024
I.C. No: 928

PLACE: HYDERABAD
DATE: 23.04.2024

SIGNATURE:

आर. सत्यनारायण
23/04/24

(R.SATYANARAYANA)
Assistant Commissioner of Central Tax
Secunderabad GST Division

आर. सत्यनारायण
R. SATYANARAYANA
सहायक आयुक्त/Assistant Commissioner
केन्द्रीय कर/Central Tax
सिकंदराबाद जी एस टी मंडल
Secunderabad GST Division
हैदराबाद/Hyderabad

2

STATEMENT OF FACTS

M/s. VILLA ORCHIDS LLP, 2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, M.G ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003 (hereinafter referred to as "the taxpayer") having GST Registration No. 36AANFG4817C1ZH in business supply of construction of residential complex service falling under SAC 995411 of GST Tariff.

2. GST Audit was conducted on the records of the tax payer for the period July, 2017 to March, 2019 and certain discrepancies were noticed as below:

(i) Non-payment of GST under RCM on Brokerage/Commission paid on unregistered persons;

(ii) Interest on delayed filing of GSTR-3B returns for the months of July, 2017, August, 2017 and October, 2017;

(iii) Non-payment of GST on advances received in FY 2017-18 and 2018-19;

(iv) Ineligible ITC availed during the FY 2018-19

2.1. Therefore, a Show Cause Notice vide SCN vide C. No. V/01/GST/78/2020-GR.12/CIR-I dated 05.01.2022 was issued proposing the following demands:

(i) Demand of Rs. 3,060/- under the provisions of Section 74(1) of the CGST/TGST Act,2017 along with Interest u/s 50(3) of the CGST/TGST Act, 2017 and Penalty in terms of Section 122(2)(b) read with Section 74(1) of the CGST/TGST Act,2017;

(ii) Interest of Rs.827/- u/s 50 of the CGST Act, 2017;

(iii) Penalty u/s 125(5) of the CGST Act, 2017;

(iv) Demand of Rs.3,19,85,690/- under the provisions of Section 74(1) of the CGST/TGST Act,2017 along with Interest u/s 50 of the CGST/TGST Act, 2017 and Penalty in terms of Section 122(2)(b) read with Section 74(1) of the CGST/TGST Act,2017;

(v) Demand of Rs.44,51,756/- under the provisions of Section 74(1) of the CGST/TGST Act,2017 along with Interest u/s 50 of the CGST/TGST Act, 2017 and Penalty in terms of Section 122(2)(b) read with Section 74(1) of the CGST/TGST Act,2017

2.2. The Adjudicating Authority vide the impugned Order-in-Original discussed each issue separately. The observations of Adjudicating Authority in respect of each issue are briefed as under:

i. Non-payment of GST under RCM on Brokerage/Commission paid on unregistered persons:

The Adjudicating Authority confirmed demand of Rs.3,060/- under the provisions of Section 74 of the *CGST/ TGST Act,2017* and ordered for appropriation of Rs.3,060/- paid by taxpayer vide DRC-03. The adjudicating authority also confirmed Interest u/s 50 of CGST/TGST Act, 2017 and Imposed penalty of Rs.3,060/- in terms of Section 122(2)(b) read with Section 74 of the *CGST/ TGST Act,2017.*

ii. Interest on delayed filing of GSTR-3B returns for the months of July, 2017, August, 2017 and October, 2017:

The adjudicating authority dropped the demand of Interest of Rs.827/- u/s 50 of the CGST Act, 2017 as the same was paid by taxpayer vide DRC-03 dated 19.12.2022 and also dropped penalty proposed u/s 125 of the CGST Act, 2017.

iii. Non-payment of GST on advances received in FY 2017-18 & 2018-19:

The Adjudicating Authority confirmed demand of Rs.3,19,85,690/- under the provisions of Section 74 of the *CGST/ TGST Act,2017.* The adjudicating authority also confirmed Interest u/s 50 of the CGST/TGST Act, 2017 and imposed Penalty of Rs.3,19,85,690/- in terms of Section 122(2)(b) read with Section 74 of the *CGST/ TGST Act,2017.*

iv. Ineligible ITC availed during the FY 2017-18:

The adjudicating authority confirmed demand of Rs.44,51,756/- under the provisions of Section 74 of the *CGST/ TGST Act,2017.* The adjudicating authority confirmed Interest u/s 50 of CGST/TGST Act, 2017 and imposed Penalty of Rs. 44,51,756/- in terms of Section 122(2)(b) read with Section 74(1) of the *CGST/ TGST Act,2017.*

2.3. The impugned Order-in-Original appears to be not legal and proper to the extent of dropping the Interest demand of Rs.827/- and dropping the penalty proposed u/s 125 of the CGST/TGST Act, 2017.

GROUNDS OF APPEAL

3.1. The impugned Order-in-Original No.33/2023-24-SEC-ADJN-ADC(GST) dated 01.11.2023 passed by the Adjudicating Authority to the extent of dropping the demand of interest of Rs. 827/- and dropping the penalty proposed u/s 125 of the CGST/TGST Act, 2017 does not appear to be legal and proper for the following reasons:

3.2 *Interest on delayed filing of GSTR-3B returns for the months of July, 2017, August, 2017 and October, 2017:*

3.2.1 The impugned Show Cause Notice proposed for demand of interest of Rs.827/- on tax (cash) paid belatedly due to delayed filing of GSTR-3B returns for the months of July, 2017, August, 2017 and Oct., 2017. Vide the impugned Order-In-Original, the Adjudicating Authority found that the taxpayer has paid the said interest of Rs.827/- vide DRC-03 dated 19.12.2022. However, the Adjudicating Authority dropped the demand of interest of Rs.827/- without confirming the demand as proposed in the impugned Show Cause Notice and thereby appropriating the interest paid by the taxpayer vide DRC-03 dated 19.12.2022 towards the said interest, which appears to be not legal and proper.

3.3 *Penalty proposed u/s 125 of the CGST Act, 2017:*

3.3.1 Whereas the adjudicating authority dropped penalty proposed in the impugned Show Cause Notice under Section 125 of the CGST Act, 2017 holding that the taxpayer was already been penalized under Section 74 of the CGST Act, 2017 and the grounds of imposition of said penalty were not mentioned in the impugned Show Cause Notice. However, Para 2(ii) of Page-5 of the impugned Order-In-Original is reproduced below:

> *"Rate of Interest prescribed @18% for Sub-Section (1) of Section 50 of the CGST Act, 2017 vide Notification No. 13/2017- Central Tax, dated the 28th June, 2017. The taxpayer is liable to pay interest amount of Rs.827/- under Section 50 along with applicable penalty under Section 125(5) of the CGST Act, 2017."*

3.3.2 Whereas it appears from Para 2(ii) of Page-5 of the impugned Order-In-Original that the penalty is related to non-payment of interest on belated payment of tax (cash) due to delayed filing of GSTR-3B returns.

3.3.3. Whereas penalty under Section 74 of the CGST Act, 2017 was imposed by the Adjudicating Authority on issues namely *Non-payment of GST under RCM on Brokerage/Commission paid on unregistered persons, Non-payment of GST on advances received in FY 2017-18 and 2018-19, Ineligible ITC availed during the FY 2018-19,* which appears to be not related to the issue on which penalty under Section 125 of the CGST Act, 2017 was proposed. Hence, it appears that the adjudicating authority had erred to the extent of dropping the penalty under Section 125 of the CGST Act, 2017. To this extent also the impugned Order-In-Original appears to be not legal and proper.

3.4 In view of the above, an appeal against the impugned Order-in-Original is required to be preferred with the Commissioner (Appeals-II), Office of the Commissioner of Central Tax (Appeals-II) Hyderabad for the reasons detailed in the Grounds of Appeal herein above.

PRAYER

Based on the above grounds, the Appellant prays that the Appellate Authority may be pleased to decide:

i. set aside the impugned Order-In-Original to the extent of dropping the demand of Interest of Rs.827 /- under Section 50 of the CGST Act, 2017 and dropping the penalty proposed under Section 125 of the CGST Act,2017, in view of the reasons cited supra;

ii. confirm the demand of Rs.827/- under Section 50 of the CGST/TGST Act, 2017 as proposed in the Show Cause Notice and appropriate the same already paid the taxpayer;

iii. impose the penalty under Section 125 of the CGST/TGST Act, 2017, as proposed in the impugned Show Cause Notice for non-payment of interest on belated payment of tax (cash) due to delayed filing of GST-3B returns, in view of the reasons cited supra;

or

iv. Pass any such other orders as deemed fit.

आर- सत्यनारायण
23/04/24

Signature of the Appellant

आर. सत्यनारायण
R. SATYANARAYANA
सहायक आयुक्त/Assistant Commissioner
केन्द्रीय कर/Central Tax
सिकंदराबाद जी एस टी मंडल
Secunderabad GST Division
हैदराबाद/Hyderabad

VERIFICATION

I, R.SATYANARAYANA, the Appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the 23rd day of April, 2024

Place: Hyderabad.

आर. सत्यनारायण
23/04/24

Signature of the Appellant

आर. सत्यनारायण
R. SATYANARAYANA
सहायक आयुक्त/Assistant Commissioner
केन्द्रीय कर/Central Tax
सिकंदराबाद जी एस टी मंडल
Secunderabad GST Division
हैदराबाद/Hyderabad

7

केन्द्रीयकर, केन्द्रीय उत्पादशुल्क एवं सेवाकर आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CENTRAL TAX & CENTRAL EXCISE
सिकंदराबादजीएसटीआयुक्तालय,जीएसटीभवन ,एलबीस्टेडियमरोड,
SECUNDERABAD GST COMMISSIONERATE, GST BHAWAN, L.B. STADIUM ROAD,
बशीरबाग,हैदराबाद BASHEERBAGH, HYDERABAD – 500 004.
Ph. No.: 040-23231486 Email id: cgst.seccommr@gov.in

GEXCOM/REV/GST/OIO/7593/2024-REV-O/o COMMR-CGST-SECUNDERABAD Dated: .04.2024

REVIEW ORDER NO.08/2024-25-GST (OIO)
(passed by the Commissioner of Central Tax, Central Excise and Service Tax, Secunderabad GST Commissionerate, Hyderabad)

Sub: Review of Order-in-Original No. 33/2023-24-SEC-ADJN-ADC(GST) dated 01.11.2023 passed by the Additional Commissioner of Central Tax, Secunderabad GST Division in the case of M/s. VILLA ORCHIDS LLP – Review Order under Section 107(2) of the CGST Act, 2017 – issued.

* * * *

Whereas, in exercise of the powers conferred under Section 107(2) of the CGST Act, 2017, I, the undersigned, have called for and examined the records relating to OIO No. 33/2023-24-SEC-ADJN-ADC(GST) dated 01.11.2023 passed by the Additional Commissioner of Central Tax, Secunderanad GST Commissionerate in the case of M/s. VILLA ORCHIDS LLP, 2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, M.G ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003 for the purpose of satisfying myself as to the legality and propriety of the said Order.

2. **BRIEF FACTS OF THE CASE:**

2.1. M/s. VILLA ORCHIDS LLP, 2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, M.G ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003 (hereinafter referred to as "the taxpayer") having GST Registration No. 36AANFG4817C1ZH in business supply of construction of residential complex service falling under SAC 995411 of GST Tariff.

2.2. GST Audit was conducted on the records of the tax payer for the period July, 2017 to March, 2019 and certain discrepancies were noticed as below:

i. Non-payment of GST under RCM on Brokerage/Commission paid on unregistered persons;
ii. Interest on delayed filing of GSTR-3B returns for the months of July, 2017, August, 2017 and October, 2017;

(8)

iii. Non-payment of GST on advances received in FY 2017-18 and 2018-19;
iv. Ineligible ITC availed during the FY 2018-19

2.3. Therefore, a Show Cause Notice vide SCN vide C. No. V/01/GST/78/2020-GR.12/CIR-I dated 05.01.2022 was issued proposing the following demands:

i. *Demand of Rs. 3,060/- under the provisions of Section 74(1) of the CGST/TGST Act,2017 along with Interest u/s 50(3) of the CGST/TGST Act, 2017 and Penalty in terms of Section 122(2)(b) read with Section 74(1) of the CGST/TGST Act,2017;*
ii. *Interest of Rs.827/- u/s 50 of the CGST Act, 2017;*
iii. *Penalty u/s 125(5) of the CGST Act, 2017;*
iv. *Demand of Rs.3,19,85,690/- under the provisions of Section 74(1) of the CGST/TGST Act,2017 along with Interest u/s 50 of theCGST/TGST Act, 2017 and Penalty in terms of Section 122(2)(b) read with Section 74(1) of the CGST/TGST Act,2017;*
v. *Demand of Rs.44,51,756/- under the provisions of Section 74(1) of the CGST/TGST Act,2017 along with Interest u/s 50 of the CGST/TGST Act, 2017 and Penalty in terms of Section 122(2)(b) read with Section 74(1) of the CGST/TGST Act,2017*

2.4. The Adjudicating Authority vide the impugned Order-in-Original discussed each issue separately. The observations of Adjudicating Authority in respect of each issue are briefed as under:

i. Non-payment of GST under RCM on Brokerage/Commission paid on unregistered persons:

The Adjudicating Authority confirmed demand of Rs.3,060/- under the provisions of Section 74 of the *CGST/TGST Act,2017* and ordered for appropriation of Rs.3,060/- paid by taxpayer vide DRC-03. The adjudicating authority also confirmed Interest u/s 50 of CGST/TGST Act, 2017 and Imposed penalty of Rs.3,060/- in terms of Section 122(2)(b) read with Section 74 of the *CGST/TGST Act,2017*.

ii. Interest on delayed filing of GSTR-3B returns for the months of July, 2017, August, 2017 and October, 2017:

The adjudicating authority dropped the demand of Interest of Rs.827/- u/s 50 of the CGST Act, 2017 as the same was paid by taxpayer vide DRC-03 dated 19.12.2022 and also dropped penalty proposed u/s 125 of the CGST Act, 2017.

iii. Non-payment of GST on advances received in FY 2017-18 & 2018-19:

The Adjudicating Authority confirmed demand of Rs.3,19,85,690/- under the provisions of Section 74 of the *CGST/TGST Act,2017*. The adjudicating authority also confirmed Interest u/s 50 of the CGST/TGST Act, 2017 and imposed Penalty of Rs.3,19,85,690/- in terms of Section 122(2)(b) read with Section 74 of the *CGST/TGST Act,2017*.

iv. Ineligible ITC availed during the FY 2017-18:

The adjudicating authority confirmed demand of Rs.44,51,756/- under the provisions of Section 74 of the *CGST/TGST Act,2017*. The adjudicating authority confirmed Interest u/s 50 of CGST/TGST Act, 2017 and imposed Penalty of Rs. 44,51,756/- in terms of Section 122(2)(b) read with Section 74(1) of the *CGST/TGST Act,2017*.

2.5. The impugned Order-in-Original appears to be not legal and proper to the extent of dropping the Interest demand of Rs.827/- and dropping the penalty proposed u/s 125 of the CGST/TGST Act, 2017.

3. **GROUNDS OF APPEAL:**

3.1. The impugned Order-in-Original No.33/2023-24-SEC-ADJN-ADC(GST) dated 01.11.2023 passed by the Adjudicating Authority to the extent of dropping the demand of interest of Rs. 827/- and dropping the penalty proposed u/s 125 of the CGST/TGST Act, 2017 does not appear to be legal and proper for the following reasons:

3 . 2 *Interest on delayed filing of GSTR-3B returns for the months of July, 2017, August, 2017 and October, 2017:*

3.2.1 The impugned Show Cause Notice proposed for demand of interest of Rs.827/- on tax (cash) paid belatedly due to delayed filing of GSTR-3B returns for the months of July, 2017, August, 2017 and Oct., 2017. Vide the impugned Order-In-Original, the Adjudicating Authority found that the taxpayer has paid the said interest of Rs.827/- vide DRC-03 dated 19.12.2022. However, the Adjudicating Authority dropped the demand of interest of Rs.827/- without confirming the demand as proposed in the impugned Show Cause Notice and thereby appropriating the interest paid by the taxpayer vide DRC-03 dated 19.12.2022 towards the said interest, which appears to be not legal and proper.

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3.3 *Penalty proposed u/s 125 of the CGST Act, 2017:*

3.3.1 Whereas the adjudicating authority dropped penalty proposed in the impugned Show Cause Notice under Section 125 of the CGST Act, 2017 holding that the taxpayer was already been penalized under Section 74 of the CGST Act, 2017 and the grounds of imposition of said penalty were not mentioned in the impugned Show Cause Notice. However, Para 2(ii) of Page-5 of the impugned Order-In-Original is reproduced below:

> *"Rate of Interest prescribed @18% for Sub-Section (1) of Section 50 of the CGST Act, 2017 vide Notification No. 13/2017- Central Tax, dated the 28th June, 2017. The taxpayer is liable to pay interest amount of Rs.827/- under Section 50 along with applicable penalty under Section 125(5) of the CGST Act, 2017."*

3.3.2 Whereas it appears from Para 2(ii) of Page-5 of the impugned Order-In-Original that the penalty is related to non-payment of interest on belated payment of tax (cash) due to delayed filing of GSTR-3B returns.

3.3.3. Whereas penalty under Section 74 of the CGST Act, 2017 was imposed by the Adjudicating Authority on issues namely *Non-payment of GST under RCM on Brokerage/Commission paid on unregistered persons, Non-payment of GST on advances received in FY 2017-18 and 2018-19, Ineligible ITC availed during the FY 2018-19,* which appears to be not related to the issue on which penalty under Section 125 of the CGST Act, 2017 was proposed. Hence, it appears that the adjudicating authority had erred to the extent of dropping the penalty under Section 125 of the CGST Act, 2017. To this extent also the impugned Order-In-Original appears to be not legal and proper.

3 . 4 In view of the above, an appeal against the impugned Order-in-Original is required to be preferred with the Commissioner (Appeals-II), Office of the Commissioner of Central Tax (Appeals-II) Hyderabad for the reasons detailed in the Grounds of Appeal herein above.

ORDER

4. In view of the foregoing, the Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad GST Commissionerate, is hereby directed to make a prayer before the Commissioner (Appeals-II), Office of the Commissioner of Central Tax (Appeals-II) Hyderabad within the stipulated time as prescribed under law for correct determination of

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the following points arising out of the said Order-In-Original, whether, by an Order passed under Section 107(11) of the CGST Act,2017, the Commissioner (Appeals-II), Office of the Commissioner of Central Tax (Appeals-II) Hyderabad should:

i. set aside the impugned Order-In-Original to the extent of dropping the demand of Interest of Rs.827 /- under Section 50 of the CGST Act, 2017 and dropping the penalty proposed under Section 125 of the CGST Act,2017, in view of the reasons cited supra;

ii. confirm the demand of Rs.827/- under Section 50 of the CGST/TGST Act, 2017 as proposed in the Show Cause Notice and appropriate the same since already paid by the taxpayer;

iii. impose the penalty under Section 125 of the CGST/TGST Act, 2017, as proposed in the impugned Show Cause Notice for non-payment of interest on belated payment of tax (cash) due to delayed filing of GST-3B returns, in view of the reasons cited supra;

or

iv. Pass any such other orders as deemed fit.

Signed by
Ramesh Kumar Raman
Date: 19-04-2024 14:48:16

(RAMESH KUMAR RAMAN)
COMMISSIONER
SECUNDERABAD GST
COMMISSIONERATE

To
The Assistant Commissioner of Central Tax,
Secunderabad CGST Division,
Secunderabad GST Commissionerate.

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01 NOV 2023

I.C. No: 989

केन्द्रीय कर, केन्द्रीय उत्पाद शुल्क एवं सेवा कर आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CENTRAL TAX, CENTRAL EXCISE & SERVICE TAX
सिकंदराबाद जीएसटी आयुक्तालय, जीएसटी भवन ,एल बी स्टेडियम रोड,
SECUNDERABAD GST COMMISSIONERATE, GST BHAWAN, L.B.STADIUM ROAD
बशीरबाग, हैदराबाद BASHEERBAGH, HYDERABAD – 500 004.
Email. adjudication3@gmail.com

OR No.40/2021-22-Sec-Adjn-ADC (GST)
DIN: 20231156YO000000EB90

Date:01.11.2023

मूल आदेश सं. / ORDER-IN-ORIGINAL NO. 33/2023-24-SEC-ADJN-ADC(GST)

(Passed by SHRI B. VIJAY, Additional Commissioner of Central Tax, Central Excise and Service Tax, Secunderabad GST Commissionerate)

	p`stavanaa	PREAMBLE
1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए निःशुल्क दी जाती है जिसे यह जारी किया गया है।	This copy is granted free of charge for the private use of the person to whom it is issued.
2	सीजीएसटी नियम, 2017 के नियम 108(1) के अनुसार, धारा 107 की उप-धारा (1) के तहत अपीलीय प्राधिकारी को संबंधित दस्तावेजों के साथ फॉर्म जीएसटी एपीएल-01 में इलेक्ट्रॉनिक रूप से या अन्यथा के रूप में एक अपील दायर की जाएगी। आयुक्त सीमा शुल्क और अप्रत्यक्ष कर हैदराबाद (अपील-द्वितीय) आयुक्तालय, सातवीं मंजिल, जीएसटी भवन, एलबी स्टेडियम रोड, बशीरबाग, हैदराबाद, टीएस-500004 द्वारा अधिसूचित किया जा सकता है, और एक अनंतिम पावती जारी की जाएगी (अपील प्राधिकारी द्वारा) अपीलकर्ता को तत्काल।	As per Rule 108 (1) of the CGST Rules, 2017 an appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in FORM GST APL-01, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner of Customs & Indirect Taxes Hyderabad (Appeals-II) Commissionerate, Seventh Floor, GST Bhavan, LB Stadium Road, Basheerbagh, Hyderabad, TS-500004, and a provisional acknowledgement shall be issued (by the Appellate Authority) to the appellant immediately.
3	सीजीएसटी नियम, 2017 के नियम 108 (2) के अनुसार फॉर्म जीएसटी एपीएल-01 में निहित अपील के आधार और सत्यापन के रूप में नियम 26 में निर्दिष्ट तरीके से हस्ताक्षर किए जाएंगे।	As per Rule 108 (2) of the CGST Rules, 2017 the grounds of appeal and the form of verification as contained in FORM GST APL-01 shall be signed in the manner specified in Rule 26 thereof.

(13)

4	सीजीएसटी नियम, 2017 के नियम 108(1) के अनुसार, उप-नियम (1) के तहत अपील दायर करने के सात दिनों के भीतर निर्णय या आदेश की एक प्रमाणित प्रति प्रस्तुत की जानी चाहिए और एक अंतिम पावती, जिसमें अपील संख्या होगी उसके बाद अपीलीय प्राधिकारी या इस संबंध में उसके द्वारा अधिकृत अधिकारी द्वारा फॉर्म जीएसटी एपीएल-02 में जारी की जानी चाहिए: बशर्ते कि जहां निर्णय या आदेश की प्रमाणित प्रति फॉर्म जीएसटी एपीएल-01 दाखिल करने की तारीख से सात दिनों के भीतर प्रस्तुत की जाती है, वहां अपील दायर करने की तारीख अनंतिम पावती जारी करने की तारीख होगी और जहां प्रति सात दिनों के बाद प्रस्तुत की जाती है, अपील दायर करने की तिथि ऐसी प्रति प्रस्तुत करने की तिथि होगी। स्पष्टीकरण - इस नियम के प्रावधानों के लिए, अपील को तभी दायर माना जाएगा जब अंतिम पावती, अपील संख्या को इंगित करते हुए, जारी की जाती है।	As per Rule 108 (3) of the CGST Rules, 2017 a certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in FORM GST APL-02 by the Appellate Authority or an officer authorized by him in this behalf: Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy. Explanation– For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.
5	सीजीएसटी अधिनियम, 2017 की धारा 107 (6) के अनुसार, सीजीएसटी अधिनियम, 2017 की धारा 107(1) के तहत कोई अपील तब तक दायर नहीं की जाएगी जब तक कि अपीलकर्ता ने भुगतान नहीं किया है- (k) पूर्ण रूप से, कर, ब्याज, जुर्माना, शुल्क और दंड की राशि का ऐसा हिस्सा, जो आक्षेपित आदेश से उत्पन्न होता है, जैसा कि उसके द्वारा स्वीकार किया जाता है; तथा (K) उक्त आदेश से उत्पन्न विवाद में कर की शेष राशि के दस प्रतिशत के बराबर राशि, अधिकतम पच्चीस करोड़ रुपये के अधीन, जिसके संबंध में अपील दायर की गई है।	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, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed.

Subject: GST - Short/Nonpayment of GST under Reverse Charge Mechanism and irregular Input Tax Credit (ITC) during the period from July, 2017 to March, 2019 in terms of the provisions of the CGST Act, 2017 by M/s. VILLA ORCHIDS LLP, Secunderabad, GISTIN: 36AANFG4817C1ZH- Issue of Order In Original- Reg.

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INTRODUCTION:

M/s. VILLA ORCHIDS LLP, 2*o Floor,5-4- 187/ 3 and 4, Soham Mansion, M.G.Road, ecunderabad, Hyderabad Telangaana-500003. (hereinafter called "the taxpayer] are dealers engaged in the business of supply of Construction of Residential Complex Service falling under SAC 995411 of GST Tariff of India and holders of GISTIN: 36AANFG4817 C1ZH with effect from 01.07.2017. The taxpayer has filed GST Returns including Annual returns for the year 2017-18 (July, 2017 to March, 2018] to 2018-19.

BRIEF FACTS OF THE CASE:

2. Audit on the GST accounts of the taxpayer has been conducted by the Superintendents of Central Tax, Group-12, Circle-I of Audit-II Commissionerate for the year 2017-18 | July, 2017 to March, 2018] to 2018-19 and the following observations were noticed and communicated to the tax payer vide the Final Audit Report No.815 /2020-21-GST dated 11.06.2021 issued by the Assistant Commissioner, Audit II, Circle-I:

(i) Non-payment of GST under RCM on Brokerage/Commission paid to unregistered persons (Rs.3060/-): On scrutiny of GST Returns with Balance sheet and Ledgers, it was observed that the taxpayer has not discharged Tax of Rs.3,060/- on payment made to un-registered persons under RCM for the period O1.07.2017 to 12.10.2017 as per Notification No.8/2017- Central Tax Rate Dt.28.06.2017. The details are as under:

Month	Taxable Value (Rs)	CGST@9%	SGST@9%	Total GST payable
Jul,17	8500	765	765	1530
Aug,17	8500	765	765	1530
Total	1700	1530	1530	3060

(15)

The tax liability vests on the taxpayer under RCM on purchases from unregistered dealers in terms of Section 9 (4) of the CGST Act, 2017, which prescribes as follows:

"9. Levy and collection.

(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an supplier, pay the tax on reverse charge basis as the recipient of such unregistered supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both"

During the period from 01.07.2017 to 12.10.2017, in respect of purchases from unregistered dealers, the taxpayer has not paid GST in contravention of Section 9 (4) of the CGST Act, 2017 read with Notification No.08/2017-Central Tax (Rate) dated 20.06.2017 as amended by Notification No.38/2017-Central Tax (Rate) dated 13.10.2017 issued by the Government under Section 9(4). Therefore, the tax amount of Rs.3,060/- (CGST:Rs. 1,530/- (+) SGST:Rs. 1,530/-) along with applicable interest and applicable penalty are recoverable from the taxpayer under Section 74 (1), Section 50 and Section 74 (1) of respectively of the CGST Act, 2017.

(ii) Interest for delayed filing of GSTR-3B returns for the months of July, 2017, August, 2017 and October, 2017: On verification of GSTR-3B returns filed by the party, it was observed that there is a delay in filing of GSTR-3B returns for the Months July, 2017, August,2017 and October, 2017 as detailed hereunder:

Month	Cash paid in Rs.	Due date	Filed date	Delay	Interest @ 18% payable
Jul-17	188774	25.08.2017	02.09.2017	5	466
Aug-17	48092	20.09.2017	03.10.2017	13	308
Oct-17	4008	20.11.2017	17.12.2017	27	53
				Total:	827

Interest liability is concurrent with tax liability on the taxpayer in terms of Section 50 of the CGST Act, 2017 which reads as under:

Section 50. Interest on delayed payment of tax. -

(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.

Rate of interest prescribed @18% for Sub-section (1) of section 50 of the CGST Act, 2017 vide Notification No. 13/2017 - Central Tax, dated the 28th June, 2017. The tax payer is liable to pay interest amount of Rs.827/- under Section 50 along with applicable penalty under Section 125(5) of CGST Act-2017.

(iii) Non-payment of GST on Advances received in FY,2017-18 and 2018-19: As per Section 13 of CGST Act, 2017, reproduced below:

Section 13. Time of supply of services.

(1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:

(i) the date of issue of invoice by the supplier, if the invoice issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(ii) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier;

The details are as under:

Description	**2017-18**	**2018-19**	**Total**
SALES AS PER P&L	198345402	204489452	402834854
TURNOVER AS PER GSTR 9C	206465103	206601387	413066490
AMOUNTS RECEIVED THROUGH CHEQUES	116714926	298469294	415184220
NON-GST /EXEMPTED	**2017-18**	**2018-19**	**Total**
SUPPLY(Sale of Land)	144185500	2257500	146443000
TAXABLE SUPPLY (INCLUDING TAX) i. e. Construction Service	8781302	82261636	9104f2938
Total			237485938

During the period 2017- 18 and 2018-19, it was observed that the taxpayer has received an amount of Rs.41,51,84,220/- through cheques. Out of this

(17)

amount, the taxpayer has paid tax on the taxable value of Rs.7,71,55,032/- at the rate of 18%. The taxpayer has claimed Rs.14,64,43,000/- towards exempted Sales (Sale of Land). Thus the taxpayer has not paid Tax on the differential Turnover of Rs.17,76,98,282/- which worked out to Rs.1,59,92,845/ -(CGST @9%) and Rs.1,59,92,845/- (SGST @9%). The details are as under:

Total receipts during FY 2017- 18 and 2018-19	41,51,84,220
Invoice raised during FY 2017- 18 and 2018-19 against Sale of land.	14,64,43,000
Tax already paid during 2017- 18 and 2018-19 (including tax) taxable value Rs.7,71,55,032/-	9,10,42,938
Differential amount for Construction service	17,76,98,282

In view of the above, the tax payer is liable to pay tax amount i.e., CGST:Rs.1,59,92,845/- @9% and SGST Rs. 1,59,92,845/- @9% on taxable value of Rs.17,76,98,282/- along with applicable interest and penalty under Section 74 (1), Section 50 and Section 74 (1) of respectively of the CGST Act, 2017.

(iv) Ineligible ITC availed during the FY-2018-19: During audit of the records of the taxpayer for the period from April, 2018 to March, 2019, it appeared that the taxpayer has wrongly claimed Input Tax Credit to the extent of Rs.44,51,756/- (Rs.22,25,878/- of CGST, 22,25,878/- of SGST). The said irregular ITC is recoverable along with interest and penalty under Section 50 and 74 of the CGST Act, 2017, SGST Act, 2017 and the said provisions of the CGST Act-2017.

Description	IGST	CGST	SGST	Total ITC
GSTR-2A (Dynamic as on 10.12.21) Grand Total for FY 2018-19	850665	5087976	5087976	11026617
GSTR-3B Returns ITC claimed and shown @ Tab-6B and Tab-8B	70696	7313854	7313854	14698404
Net excess ITC over and above of GSTR-2A Returns	779969	-2225878	-2225878	-4451756

In terms of Section 16(2) of the CGST Act, 2017 stipulates conditions for availing ITC by the Registered person. Section 16(2) as existing during the material period is reproduced below:

(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 registered under this Act, or such other tax paying documents as may be supplier 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 where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;*
(c) 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 utilisation of input tax credit admissible in respect of the said supply; and
(d) he has furnished the return under section 39.

In terms of Section 16(2)(c) of the CGST Act, 2017, one of the conditions for availing ITC by the recipient customer is that the tax charged in respect of the supply has been paid to the Government by the supplier. However, the taxpayer did not produce any evidence in support of payment of GST to the Government by the supplier to the extent of the said amount of credits. Similar provisions exist under the Telangana State Goods and Services Tax Act, 2017 and the CGST Act, 2017 made applicable to IGST Act, 2017 also.

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 take the credit of eligible input tax, as self assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

Section 42 of CGST Act 2017: Matching, Reversal and Reclaim of Input Tax Credit (CHAPTER IX - RETURNS):

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(1) The details of every inward supply furnished by a registered person (hereafter in this section referred to as the "recipient") for a tax period shall, in such manner and within such time as may be prescribed, be matched-

(a) with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the "supplier) in his valid return for the same tax period or any preceding tax period;

(b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and

(c) for duplication of claims of input tax credit.

(vi)(f) Further Rule 36 of the CGST Rules 2017, lays down the documentary requirements and conditions for claiming ITC as below:

As per Rule 36 which prescribes the documentary requirements and conditions for claiming input tax credit.

(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.

In view of the above provisions, it is seen that ITC can be availed by a registered taxpayer only if all applicable particulars specified in the Tax

Invoice (under Chapter VI of the Rules, ibid) are furnished in the Form GSTR-2A of the taxpayer.

When the supplier files GSTR -1 Return in any particular month disclosing his sales, the corresponding details are captured in the GSTR - 2A of the recipient. Hence, the amount of ITC available as disclosed in Table 4A must match with tax details disclosed in Form GSTR -2A. It is important to reconcile Form GSTR - 3B and Form GSTR - 2A. The excess Input Tax credit is not appearing in the GSTR 2 A of the taxpayer for the relevant period. Hence, it appeared that the supplier of the recipient has not paid the tax to the Government to that extent of the amount not appearing in the GSTR 2A.

Hence, it appeared that the taxpayer is not eligible for Rs.44,51,756/- (Rs.22,25,878 of CGST and Rs.22,25,878 of SGST). The taxpayer was requested to pay the said ineligible ITC along with interest and penalty as applicable along with other paras.

3. **Reply of the taxpayer**: The taxpayer has been requested to comply the payment involved in the above objections from para 2(i) to 2 (ii) vide the Superintendent of Central Tax, Group 12's C No V/01/GST/81/2020-Gr. 12/Cir-1 dated 27.03.2021 and C.No.V/01/GST/78/2020-Gr. 12/Cir-I dated 08,04.2021 and for para 2(iv) regarding excess claim of 1TC for 2018-19 communicated by Superintendent of Central Tax, Group-12's letter C.No.V/01/GST/78/2020-Gr.12/Cir-1 dated 29.12.2021 vide DIN 20211256VS0000999BAO. In reply to the same, the taxpayer vide his letter dated 27.05.2021 has submitted, observation wise that:

(i) **Para-1: Non payment of GST under RCM on Brokerage/Commission paid to unregistered persons:** We contend that there is no liability, but, however, the amount being nominal, we wish to remit along with interest and request you to drop further proceedings in this regard. The payment was made therough DRC-03 ARN No.D1362200171423 dated 31.12.2020.

Verification: On verification of DRC-03 ARN No.D1362200171423 dated 31.12.2020, it was found that the payment made voluntarily under Section 73(5) was CGST:Rs.45,275/- and SGST:Rs.45,275/- but not the amount of Rs.3060/- involved in the objection.

(ii) **Para 2: Interest for delayed filing of GSTR-3B Returns for the months July. 2017, August, 2017 and October, 2017:** In this regard, we would like to submit that we have paid an amount of Rs.827/- towards interest vide CPIN: 21053600068521 dated 27.05.2021.

(51)

Verification: On verification, it is found that DRC-03 is not submitted but only paid Challan CPIN: 21053600068521 dated 27.05.2021 submitted which is not sufficient unless cash debit is affected through DRC-03.

(iii) **Para-3: Non-payment of GST on Advances received in FY.2017-18 and 2018-19:** In this regard, we wish to submit that the project undertaken by us got completed & all units were sold by now and received the completion certificate also. The customers also have paid the amounts towards the sale of Villas. We have remitted the applicable GST also (including the advance received in FY 2017-18, 2018-19, 2019-20 & 2020-21 as shown below:

Sl. No.	Particulars	July, 2017 to Marh, 2021
1	Total receipts	70,67,62,816
2	Less:Land (exempt sales)	32,04,85,000
3	Less: Non-taxable receipts (Stamp duty, registration charges, GST etc.)	7,09,77,240
4	Net Taxable Value	31,53,00,570
5	Declared in GST returns	31,07,73,154
6	Difference to be declared	45,27,417
7	GST payable on the above 6	8,14,935

The year wise reconciliation is enclosed as Annexure III. Further, it is submitted that the major portion of the liability was paid through ITC in which case there is no interest liability on the belated remittance of the GST, if any to that extent.

Verification: The period of audit undertaken is from July, 2017 to March, 2019 and the audit s observation is limited to this period only. It is found that total receipts (advances received through as per ledger) is Rs.41.51,84,220/- whereas for the same period as per the reconciliation sheet submitted [Annexure-I1I] by the taxpayer, it is Rs.22,28,82,098/-. However, in the present context, the reconciliation made by the taxpayer for the period from 2017-18 to 2020-2 1 is not relevant. The taxpayer's contention should be limited to the involved liability of Rs.3,19,85,690/- (CGST:Rs.1,59,92,845/ -@9% and SGST Rs. 1,59,92,845/-) only as per the objection raised in the FAR.

4. **Invocation of extended period alleging suppression of facts:** The provisions for invoking extended period of limitation due to suppression etc.,

are prescribed under Section 74 (1), 74 (5) to 74 (7) of the CGST Act, 2017 as under:

74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts.-

(1) Whereit 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 by 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 equivalent to the tax specified in the notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub section (5) falls short of the amount actually payable, he shall proceed to issue the notice as proided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

4.1. Factors for alleging the suppression etc., and consequential penalties: The above issues of non- payment Tax/non-reversal of ITC on the issues at Para 2(i) to 2(iii) & 2(iv) came to light only during audit of the taxpayers' records by the Department. The subject issues were never intimated to Department nor Sought such tax liability correctly in any of the statutory returns and further have filed the clarification from the Department. It is also observed that the taxpayer has not reflected such tax liability correctly in any of the statutory returns and further have filed the Annual Return GSTR-9 or GSTR-9C without taking cognizance of the RCM. While filing STR-9C for the year 2017-18 & 2018-19, the taxpayer has not reversed mismatched with GSTR-3Bs fled. Hence the Department was not in the

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knowledge the subject issue prior to the conduct of Audit. This non-payment therefore appeared to be a deliberate avoidance or evasion of tax on the part of the taxpayer.

4.2. Further, the taxpayer cannot claim ignorance in as much as they are operating under GST for nearly 4 years. Since the taxpayer has been registered with the department for many years, it can be reasonably assumed that they are well versed with the provisions of the law. In the regime of self-assessment under Section 59 of the CGST Act, 2017, greater responsibility and trust is placed on the taxpayer to correctly assess, pay and declare the tax liability. In doing so. it appeared that they have suppressed these facts, which have seen the day of light only during verification of records by the Departmental officers. Whereas the taxpayer has agreed to the first two objections and the involved amount stated to have been paid but not paid and but did not care to contend the Para-2 (iii) in true spirit and give a confusing and ambiguous reply giving the data from July, 20 17 to March, 2021 which is found to have not been according to the objection raised. On the objection at Para-3 also, the taxpayer did not respond or filed any written defensive reply till date of issue of this show cause notice.

4.3. All these actions/inactions indicate that the taxpayer has suppressed the facts with intent to evade the interest penalty as applicable. Therefore, this is a fit case for demanding the duty from the taxpayer by invoking extended period in terms of Section 74(1) of the CGST Act, 2017 along with the applicable interest in terms of section 50(1) of the CGST Act, 2017. Further, it appeared that the taxpayer is also liable for a penalty in terms of Section 74 (1) of the CGST Act, 2017.

5. In view of the foregoing, a notice vide C. No.V/01/GST/78/2020-GR.12/CIR-I dated 05.01.2022 was issued to M/s. VILLA ORCHIDS LLP, 2nd Floor, 5-4-187/ 3 and 4, Soham Mansion, M.G.Road, Secunderabad, Hyderabad, Telangaana-500003, to show cause to the Additional/Joint Commissioner of Central Tax & GST, Secunderabad GST Commissionerate, 7th Floor, GST Bhavan, Hyderabad, Telangana, 500004, within thirty (30) days of receipt of this notice as to why:

(i) An amount of total GST of Rs.3,060/- (CGST:Rs. 1,530/ - (+) SGST:Rs. 1,530/-) (Rupees Three Thousand and Sixty only) for the year 2017-18 should not be demanded from the taxpayer under Section 74 (1) of the CGST Act, 2017;

(ii) Interest as applicable should not be demanded from the taxpayer in terms of Section 50 (3) of the CGST Act, 2017 on the proposed demand of Rs.3,060/- as mentioned at Sl.No.(i) above;

(iii) Penalty equal to the demand at SI. No.(i) should not be imposed on the taxpayer in terms of Section 74 (1) of the CGST Act. 2017; However, the taxpayer has the option to pay the reduced penalty of 25% in terms of Section 78 (8) of the CGST Act, 2017 subject to the condition that the said tax along with interest payable under section 50 and a penalty equivalent to twenty five percent of such tax within thirty days of issue of this notice;

(iv) Interest of Rs.827/-(Rupees Eight Hundred and Twenty Seven Only) (CGST:Rs.413.50 (+) SGST: Rs,413.50) should not be demanded from the taxpayer in terms of Section 50 of the CGST Act, 2017;

(v) Penalty as applicable under Section 125 (5) of the CGST Act. 2017 should not be imposed on them;

(vi) An amount of Rs.3,19,85,690/- (CGST Rs.1.59,92,845/ - @9% and SGST Rs.1,59,92,845/-) during the year 2017-18 & 2018-19 should not be demanded by/from the taxpayer Section 74 (1) of the CGST Act, 2017;

(vii) Interest as applicable should not be demanded from the taxpayer in terms of Section 50 of the CGST Act. 2017 on the proposed demand of Rs.3,19,85,690/- as mentioned at Sl. No.(vi) above;

(viii) Penalty equal to the demand at Sl. No.(vi) should not be imposed on the taxpayer in terms of Section 74 (1) of the CGST Act, 2017; However, the taxpayer has the option to pay the reduced penalty of 25% in terms Section 74 (8) of the CGST Act, 2017 subject to the condition that the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of this notice;

(ix) An amount of Rs.44,51,756/- (CGST Rs.22,25,878/- (+) SGST Rs.22,25,878/-) (Rupees Forty Four Lakhs Fifty One Thousand Seven Hundred and Fifty Six Only) should not be demanded from the taxpayer in terms of Section 74 (1) of the CGST Act, 2017;

(x) Interest as applicable should not be demanded from the taxpayer in terms of Section 50 of the CGST Act, 2017 on the proposed demand of as mentioned at Sl. No. (ix) above;

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(xi) Penalty equal to the demand at Sl. No.(ix) should not be imposed on the taxpayer in terms of Section 74 (1) of the CGST Act, 2017; However, the taxpayer has the option to pay the reduced penalty of 25% in terms Section 74 (8) of the CGST Act, 2017 subject to the condition that the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of this notice;

6. Reply to the notice: The taxpayer through his authorized representative M/s HNA & Co LLP submitted reply to the notice vide his letter dated 04.08.2023. His submissions as mentioned in the reply are reproduced hereunder:

(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.

In Re: Impugned notice is not valid

Notice issued on assumptions and presumptions

(3) Noticee submits that impugned SCN was issued with prejudged and premeditated conclusions on various issues raised in the notice. That being a case, issuance of SCN in that fashion 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.)** wherein it was held that *"It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony."*

(4) Noticee submits that the subject SCN is issued based on mere assumption and unwarranted inference, interpretation of the law without considering the intention of the law, documents on record, the scope of activities undertaken, and the nature of activity involved, the incorrect basis

of computation, creating its own assumptions, presumptions. Further, they have arrived at the conclusion without actual examination of facts, provisions of the CGST Act, 2017. In this regard, Noticee relies on the decision of the Hon'ble Supreme Court in case **Oudh Sugar Mills Limited v. UOI, 1978 (2) ELT 172 (SC)**

Notice is vague and lack of details

(5) Noticee submits that the impugned notice has not given clear reasons as to how the Noticee has availed the irregular credit and why there is short payment of tax, therefore, the same is lack of details and hence, becomes invalid. In this regard, reliance is placed on

a. 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."*
b. Dayamay Enterprise Vs State of Tripura and 3 OR's. 2021 (4) TMI 1203 - Tripura High Court
c. Mahavir Traders Vs Union of India (2020 (10) TMI 257 - Gujarat High Court)
d. Teneron Limited Versus Sale Tax Officer Class II/Avato Goods and Service Tax & Anr. (2020 (1) TMI 1165 - Delhi High Court)
e. Nissan Motor India Private Limited, Vs the State of Andhra Pradesh, The Assistant Commissioner (CT) (2021 (6) TMI 592 - Andhra Pradesh High Court)

From the invariable decisions of various High Courts, it is clear that the notice without details is not valid and the same needs to be dropped.

(6) Noticee submits that Noticee has not received any summary of the proposed demand in Form DRC-01 electronically till date which is mandated as per Rule 142(1) of CGST Rules, 2020 when a demand notice is issued under Section 74 of CGST Act, 2017. In this regard, Noticee submits that Rule 142(1) of CGST Rules, 2017 reads as follows:

> ***"Rule 142. Notice and order for demand of amounts payable under the Act***
>
> *(1) The proper officer shall serve, along with the*