

Date: 02.12.2024

To
The Commissioner of Customs and Central Tax (Appeals-II),
Hyderabad Commissionerate,
7th Floor, GST Bhavan, L.B. Stadium Road,
Basheerbagh, Hyderabad-500001

Dear Sir,

Sub: Filing of Reply to Appeal against Department Appeal.

Ref:

- i. Department Appeal vide Appeal No. 30/2024-(S)DGST
- ii. Order-in-Original No. 33/2023-24-SEC-ADJN-ADC(GST) dated 01.11.2023
pertaining to **M/s. Villa Orchids LLP.**

1. We have been authorized by M/s. Villa Orchids LLP to submit a Reply to Appeal against the above referred Department Appeal vide Appeal No. 30/2024-(S)DGST and represent before your good office to do necessary correspondence in the above referred matter. A copy of authorization is attached to the Reply to Appeal memorandum.
2. In this regard, we submit that we are herewith filing the Reply to Appeal along with the annexures as referred to in the Reply to Appeal.

We shall be glad to provide any other information in this regard. Kindly acknowledge receipt of the appeal and post the hearing at the earliest.

Thanking You,

Yours faithfully,

For M/s. H N A & Co. LLP
Chartered Accountants

R. Lakshman Kumar
CA Lakshman Kumar K
Partner



4th Floor, West Block, Srida Anushka Pride, R.No. 12, Banjara Hills, Hyderabad,
Telangana - 500 034, INDIA.

040 2331 8128, 3516 2881

sudhir@hnaindia.com

www.hnailp.com

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**BEFORE THE COMMISSIONER OF CUSTOMS & CENTRAL TAX (APPEALS-II),
HYDERABAD COMMISSIONERATE, 7TH FLOOR, GST BHAVAN, L.B. STADIUM
ROAD, BASHEERBAGH, HYDERABAD-500001**

Sub: Filing of reply to appeal against the appeal filed by the department vide Appeal No. 30/2024-(S)DGST in the case of M/s. Villa Orchids LLP.

BETWEEN:

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

.....Appellant

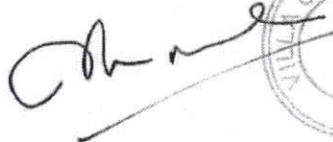
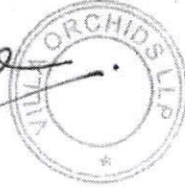
AND

**M/s. Villa Orchids LLP,
2nd Floor, 5-4-187/3 and 4,
Soham Mansion, M.G. Road,
Secunderabad, Telangana - 500003**

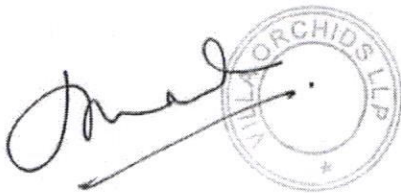
..... Respondent

FACTS OF THE CASE:

- A. M/s. Villa Orchids LLP (hereinafter referred as "Respondent") located at 2nd Floor, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad, Hyderabad, Telangana - 500003 is inter alia engaged in the provision of taxable services viz. Works Contract services, construction services in respect of residential villas and are registered with Goods and Services Tax department vide GSTIN No: "36AANFG4817C1ZH".
- B. Respondent is availing Input Tax Credit (ITC) of taxes paid on inputs and input services and discharging taxes on output liability on a timely basis by filing the monthly returns. Respondent has also filed the GSTR-09 for the period 2017-18 (July 2017 to March 2018) and 2018-19.
- C. The department has conducted an audit for the period July 2017 to March 2019 and on verification of the records certain points were observed and the same were communicated to the Respondent vide Final Audit Report No. 815/2020-21-GST dated 11.06.2021.
- D. In response to the above final audit report, Respondent filed the detailed reply along with appropriate annexures stating the reasons as to why there is no short payment of GST on the part of the Respondent.

- E. Thereafter, Respondent was in receipt of the Show Cause Notice vide Ref No. C.No. V/01/GST/78/2020-GR.12/CIR-I dated 05.01.2022. The said SCN was duly replied on 04.08.2023.
- F. Subsequently, Respondent was in receipt of Order-in-original No. 33/2023-24-SEC-ADJN-ADC(GST) dated 01.11.2023 confirming a demand of Rs. 3,64,37,446/- (Rs. 1,82,18,723 of CGST & SGST each) and appropriating an amount of Rs.3,060/- paid by the Respondent vide DRC-03, ARN No. AD361222007137K dated 19.12.2022 towards the tax demanded to such amount by the SCN.
- G. Subsequently, the said OIO was subject to review based on the powers conferred in Section 84(1) of the Finance Act, 1994 by the Commissioner of Central Tax, Secunderabad GST Commissionerate, and a Review order No. 08/2024-25-GST dated 19.04.2023 was passed by the Commissioner and directed the Assistant Commissioner to appeal against the said Order-In-Original.
- H. In line with the said direction, the Assistant Commissioner has preferred an appeal vide 30/2024-(S) DGST stating that Interest demand of Rs.827/- and penalty u/s 125 of the CGST/TGST Act, 2017. (Enclosed the appeal memorandum as **Annexure-__**)
- I. In response to the above appeal, Respondent is filing the counter reply as follows:

A handwritten signature in black ink is written over a circular stamp. The stamp contains the text "ORCHIDS LLP" around the perimeter and a small star at the bottom.

REPLY TO DEPARTMENT'S APPEAL

1. Respondent submits that the grounds urged in the appeal filed by the department are untenable in law since the same is contrary to facts and judicial decisions.

In Re: Interest already paid by Respondent:

2. The impugned Appeal has stated that, *"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. In this regard, Respondent submits that the interest that was demanded by the Show Cause Notice was fully paid by Respondent. Respondent does not see any further action required in the instance. The impugned Appeal has simply stated that the said appropriation of interest is not legal without providing any legal backing. Hence, the impugned Appeal shall not be admitted and deserves to be dismissed.

In Re: Penalty on minor breaches cannot be imposed:

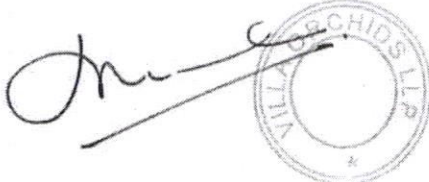
4. The impugned Appeal has stated that *"It appears that the adjudicating authority had erred to the extent of dropping the penalty under Section 125 of the CGST Act, 2017."*
5. Respondent submits that the tax demand paid by the Respondent amounts to Rs.3,060/- (Rs.1,530/- of CGST and SGST each). In this regard, Respondent would like to submit that penalty on such minor breaches cannot be imposed in accordance with Section 126(1) of the CGST Act, 2017. Relevant extract of the said provision is extracted below for ready reference:

"Section 126. General disciplines related to penalty.-

(1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

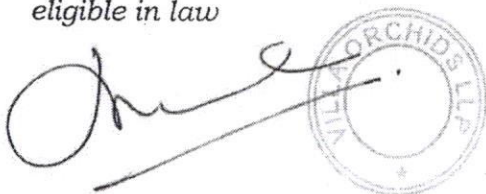
Explanation.-For the purpose of this sub-section,-

(a) a breach shall be considered a "minor breach" if the amount of tax involved is less than five thousand rupees;

A handwritten signature in black ink is written over a circular official stamp. The stamp contains the text 'CHID S L R' and 'VILL' around a central emblem.

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record."

6. In accordance with the above provision, the amount of Rs.3,060/- is considered a minor breach. Hence, imposing penalty on such breach is not in accordance with the law. Therefore, the present appeal shall not be admitted and deserves to be dismissed.
7. Respondent further submits that the short payment of interest itself is Rs.3,060/- but the grounds of department appeal stated that the penalty under Section 125 is required to be paid which is up to Rs.25,000/- under CGST and Rs.25,000/- under SGST. Hence, the demand of penalty far beyond the short payment of interest is not correct. Thereby, the department appeal shall be set aside.
8. Respondent submits that GST being a new law and trade is not much conversant with the procedures and electronic filings, the imposition of hefty penalty for mere delay in filing of returns will adversely impact the trade.
9. Respondent submits that the GST is still under the trial-and-error phase and the assesseees are facing genuine difficulties the same was also held by various courts by deciding in favour of assessee. Therefore, the imposition of the penalty during the initial trial and error phase is not warranted and this is a valid reason for setting aside the penalties. In this regard, reliance is placed on
 - a) *Bhargava Motors Vs UOI 2019 (26) GSTL 164 (Del) wherein it was held that "The GST system is still in a 'trial and error phase' as far as its implementation is concerned. Ever since the date the GSTN became operational, this Court has been approached by dealers facing genuine difficulties in filing returns, claiming input tax credit through the GST portal. The Court's attention has been drawn to a decision of the Madurai Bench of the Madras High Court dated 10th September, 2018 in W.P. (MD) No. 18532/2018 (Tara Exports v. Union of India) [2019 (20) G.S.T.L. 321 (Mad.)] where after acknowledging the procedural difficulties in claiming input tax credit in the TRAN-1 form that Court directed the respondents "either to open the portal, so as to enable the petitioner to file the TRAN-1 electronically for claiming the transitional credit or accept the manually filed TRAN-1" and to allow the input credit claimed "after processing the same, if it is otherwise eligible in law*

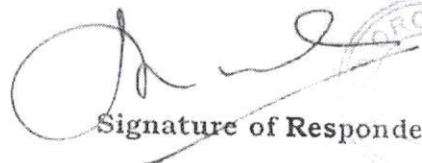


- b) *The Tyre Plaza Vs UOI 2019 (30) GSTL 22 (Del)*
- c) *Kusum Enterprises Pvt Ltd Vs UOI 2019-TIOL-1509-HC-Del-GST*
- d) *Lease Plan India Pvt. Ltd. v. Govt. of NCT & Ors. 2019-TIOL-2164-HC-DEL-GST and*
- e) *Blue Bird Pure Pvt. Ltd v. Union of India & Ors.,2019-TIOL-1564-HC-DEL-GST;*

10. Based on the above referred submissions, the Respondent requests the Appellate Authority to reject the appeal of the department.

11. Respondent craves leave to alter, add to, and/or amend the above reply.

12. Respondent would also like to be heard in person before any order being passed in this regard.

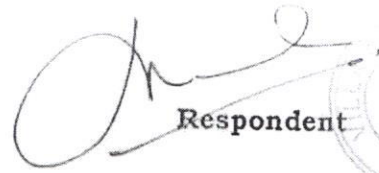
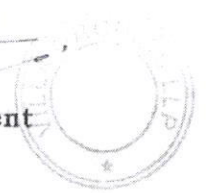

Signature of Respondent

PRAYER

Therefore, it is humbly prayed to accept the submissions filed by the Respondent and dismiss the appeal filed by the department, and also grant any other consequential relief as may deem appropriate.

Place: Hyderabad

Date: 27.11.2024

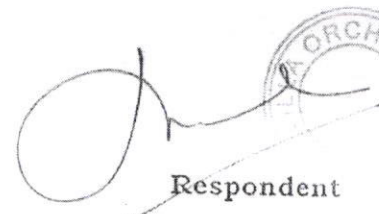

Respondent 

VERIFICATION

I, SOHAM SATISH MODI of M/s. Villa Orchids LLP (Respondent) herein do declare that what is stated above is true to the best of our information and belief.

Verified today the 27th of November 2024

Place: Hyderabad


Respondent 

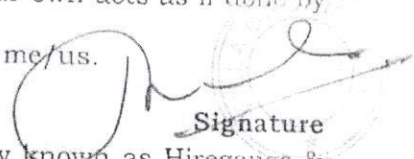
**BEFORE THE HON'BLE COMMISSIONER OF CUSTOMS & CENTRAL TAX
(APPEALS-II), HYDERABAD COMMISSIONERATE, 7TH FLOOR, GST BHAVAN,
L.B. STADIUM ROAD, BASHEERBAGH, HYDERABAD-500004.**

Sub: Reply to Appeal against the Appeal No. 30/2024-(S) DGST of M/s. Villa Orchids LLP.

I, **SOHAM SATISH**, ¹⁰⁰¹ (PARTNER) of M/s. **Villa Orchids LLP**, Hyderabad hereby authorize and appoint **H N A & Co. LLP** (Formerly known as Hiregange & Associates LLP), Chartered Accountants or their partners and qualified staff who are authorized to act as an authorized representative under the relevant provisions of the law, to do all or any of the following acts: -

- To act, appear and plead in the above-noted proceedings before the above authorities or any other authorities before whom the same may be posted or heard and to file and take back documents.
- To sign, file, verify, and present pleadings, applications, appeals, cross-objections, revision, restoration, withdrawal and compromise applications, replies, objections and affidavits, etc., as may be deemed necessary or proper in the above proceedings from time to time.
- To Sub-delegate all or any of the aforesaid powers to any other representative and I/We do hereby agree to ratify and confirm acts done by our above-authorized representative or his substitute in the matter as my/our own acts as if done by me/us for all intents and purposes.

This authorization will remain in force till it is duly revoked by me/us.
Executed this 21st November 2024 at Hyderabad


Signature

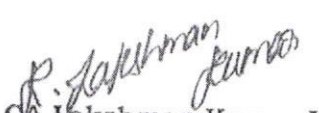
I the undersigned partner of M/s. **H N A & Co. LLP** (Formerly known as Hiregange & Associates LLP), Chartered Accountants, do hereby declare that the said M/s. **H N A & Co. LLP** (Formerly known as Hiregange & Associates LLP) is a registered firm of Chartered Accountants and all its partners are Chartered Accountants holding certificate of practice and duly qualified to represent in above proceedings under Section 116 of the SGST Act, 2017. I accept the above-said appointment on behalf of M/s. **H N A & Co. LLP** (Formerly known as **H N A & CO, LLP**). The firm will be represented through any one or more of its partners or staff members who are qualified to represent before the above authorities.

Dated: 21.11.2024

Address for service:

H N A & Co. LLP
(Formerly Hiregange & Associates LLP)
Chartered Accountants,
4th Floor, West Block, Anushka Pride,
Above Himalaya Book World,
Road Number 12, Banjara Hills,
Hyderabad, Telangana 500034

**For H N A & Co. LLP
Chartered Accountants**


CA Lakshman Kumar K
Partner (M.No. 241726)

I Partner/Employee/associate of M/s. **H N A & Co. LLP** duly qualified to represent in above proceedings in terms of the relevant law, also accept the above said authorization and appointment.

Sl No.	Name	Qualification	Mem. /Roll No.	Signature
1	Sudhir V S	CA	219109	
2	Venkata Prasad P	BA LLB		
3	Srimannarayana S	CA	253989	
4	Revanth Krishna K	CA	262586	
5	Mohammed Shabaz	Advocate	TS/2223/2016	
6	Akash Heda	CA	269711	