



H N A & Co LLP
Chartered Accountants

(Formerly known as Hiregange & Associates LLP)

Date: 03.12.2024

To
The Additional/Joint Commissioner (Appeals – II) Of Central Tax,
Hqrs Office, 7th Floor, L.B. Stadium,
Basheer Bagh, Hyderabad – 500004

Dear Sir,

Sub: Filing of attested copy of DRC – 07 and appeal in Form GST APL – 01.

Ref: i. Appeal filed online against the Order Ref No. ZD3608241416638 dated 30.08.2024
pertaining to **M/s. Villa Orchids LLP.**
ii. GSTN: 36AANFG4817C1ZH

1. With reference to the above, we have been authorized by M/s. Villa Orchids LLP to submit an appeal against the above-referred Order and represent in the appeal proceedings before your good office and to do necessary correspondence. A copy of the authorization is attached to the appeal.
2. In this regard, it is submitted that we have already filed an appeal memorandum online in Form GST APL-01 along with authorization and annexures against the above referred order and is acknowledged vide provisional acknowledgement number AD3611240237178 dated 29/11/2024.
3. Further, we are hereby submitting the physical copy of the Appeal memorandum along with annexures and online filing acknowledgements for easy reference. Therefore, request you to take the same on record and admit the appeal.

Kindly acknowledge the receipt of the above and post the matter for hearing at the earliest.

Thanking You,

Yours truly

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

R. Lakshman Kumar
CA Lakshman Kumar K.
Partner

Enclosures:

1. Provisional Acknowledgement along with APL-01 form filed online.
2. Copies of Complete Appeal Memorandum.
3. Copy of electronic Cash/Credit ledger.



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.hnallp.com

Bengaluru | Hyderabad | Visakhapatnam | Gurugram (NCR) | Mumbai | Pune | Chennai | Guwahati |
Vijayawada | Kolkata | Raipur | Kochi | Indore | Ahmedabad | Coimbatore

Provisional Acknowledgement for submission of Form of Appeal

Your appeal has been successfully submitted against

GSTIN/UIN/Temporary ID

Date of filing

Time of filing

Place of filing

Name of the Taxpayer

Address

AD3611240237178

36AANFG4817C1ZH

29/11/2024

15:39

Hyderabad

VILLA ORCHIDS LLP

**2ND FLOOR, 5-4-187/3 AND 4
SOHAM MANSION, M.G ROA
SECUNDERABAD, Rangaredd
Telangana, 500003**

Name of the person who is filing Appeal

SOHAM MODI

Amount of pre-deposit

₹ 930585

It is a system generated acknowledgement and does not require any signature.

FORM GST APL-01

[Refer Rule 108(1)]

Appeal to Appellate Authority

- 1 GSTIN/Temporary ID/UIN - 36AANFG4817C1ZH
2 Legal Name - VILLA ORCHIDS LLP
3 Trade Name - VILLA ORCHIDS LLP
4 Address - 2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, M.G ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003
- Order Type - Demand Order
- 5 Order No - ZD3608241416638 Order Date - 29/08/2024
6 Designation and address of the officer passing the order appealed against Assistant Commissioner SECUNDERABAD and NA
Demand Id - ZD3608241416638
7 Date of communication of the order to be appealed against - 29/08/2024
8 Name of the authorised representative - SOHAM MODI[ABMPM6725H]

Category of the case under dispute -

1	Incorrect admissibility of input tax credit of tax paid or deemed to have been paid
2	Determination of tax not paid or short paid
3	Others - 1. Non-payment of interest on delay in filing of GSTR-3B 2. Non-payment of late fee on delay in filing GSTR-1 and GSTR-3B. 3. Non reversal of ITC under rule 42 and 43

9 Details of Case under dispute

- (i) Brief issue of case under dispute - Refer to Annexure
(ii) Description and clarification of goods/ services in dispute - Refer to Annexure
(iii) Period of Dispute - From - 01/04/2019 To - 31/03/2020
(iv) **Amount under Dispute**

Description		Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Amount of Dispute	Tax/Cess	4293188	4293872	718775	0	9305835	9305835
	Interest	0	0	0	0	0	
	Penalty	0	0	0	0	0	
	Fees	0	0	0	0	0	
	Other Charges	0	0	0	0	0	

- (v) Market value of seized goods - Refer to Annexure
- 10 Whether the appellant wishes to be heard in person - Yes/No Refer to Annexure
11 Statement of facts - Refer to Annexure
12 Grounds of appeal - Refer to Annexure
13 Prayer - Refer to Annexure

14 Amount Of Demand created/ admitted/ disputed

Description	Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Amount of demand created (A)	Tax/Cess	4293188	4293872	718775	0	9305835
	Interest	0	0	0	0	0
	Penalty	0	0	0	0	0
	Fees	0	0	0	0	0
	Other Charges	0	0	0	0	0
Amount of demand admitted (B)	Tax/Cess	0	0	0	0	0
	Interest	0	0	0	0	0
	Penalty	0	0	0	0	0
	Fees	0	0	0	0	0
	Other Charges	0	0	0	0	0
Amount of dispute (C)	Tax/Cess	4293188	4293872	718775	0	9305835
	Interest	0	0	0	0	0
	Penalty	0	0	0	0	0
	Fees	0	0	0	0	0
	Other Charges	0	0	0	0	0

15 Details of payment of admitted amount and pre-deposit -

Pre-Deposit % of Disputed Tax/Cess - 10%

(a) Details of payment required

Description	Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Admitted Amount	Tax/Cess	0	0	0	0	0
	Interest	0	0	0	0	0
	Penalty	0	0	0	0	0
	Fees	0	0	0	0	0
	Other charges	0	0	0	0	0
Pre-deposit (10% of Disputed Tax/Cess)	Tax/Cess	429319	429388	71878	0	930585

(b) Details of payment of admitted amount and pre-deposit

Description	Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Amount Paid	Tax/Cess	429319	429388	71878	0	930585
	Interest	0	0	0	0	0
	Penalty	0	0	0	0	0
	Fees	0	0	0	0	0
	Other Charges	0	0	0	0	0

(c) Details of amount payable towards admitted amount and pre-deposit

Description	Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Balance payable	Tax/Cess	0	0	0	0	0
	Interest	0	0	0	0	0
	Penalty	0	0	0	0	0
	Fees	0	0	0	0	0
	Other Charges	0	0	0	0	0

16 Whether appeal is being filed after the prescribed period - Yes/No

Refer to Annexure

17 If 'Yes' in item 16 -

(a) Period of delay -

Refer to Annexure

(b) Reason for delay -

Refer to Annexure

- 18 Place of supply wise details of integrated tax paid(admitted amount only)mentioned in the Table in sub-clause(a)of clause 15(item(a)),if any

Place of Supply (Name of State / UT)	Demand	Tax	Interest	Penalty	Others	Total
1	2	3	4	5	6	7
Telangana	Admitted Amount[in the table in sub-clause(a) of clause 15(item(a))]	0	0	0	0	0

Upload Supporting Documents (Relied upon), if any -

Annexure I-V	Annexures I-V.pdf
--------------	-------------------

Verification

- ☒ I, SOHAM MODI , hereby solomently affirm and declare that the information given herein above is true and correct to the best of my / our knowledge and belief and nothing has been concealed therefrom.

Place: Hyderabad

Date: 29/11/2024

Name of the Applicant

VILLA ORCHIDS LLP

Electronic Cash Ledger

GSTIN - 36AANFG4817C1ZH
Name(Legal) - VILLA ORCHIDS LLP
Period: From - 29/11/2024 To - 29/11/2024

Sr.No	Date of deposit/ Debit	Time of deposit	Reporting date (by bank)	Reference No.	Tax Period, if applicable	Description	Transaction Type (Debit/ Credit)	Integrated Tax Amount Debited / Credited (₹)					Integrated Tax Balance (₹)							
								Tax	Interest	Penalty	Fee	Others	Total	Tax	Interest	Penalty	Fee	Others	Total	
1	-	-	-	-	-	Opening Balance	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2	29/11/2024	10:10:52	29/11/2024	20241129101052482348	-	Amount deposited	Credit	0	0	0	0	0	0	0	0	0	0	0	0	0
3	29/11/2024	15:01:41	29/11/2024	IK00A4BGJ7	-	Amount deposited	Credit	0	0	0	0	0	0	0	0	0	0	0	0	0
4	29/11/2024	-	-	AA3611240459736	Dec-24	-	Debit	0	0	0	0	0	0	0	0	0	0	0	0	0
5	29/11/2024	-	-	AA3611240459736	-	-	Credit	71859	0	0	0	0	0	71859	0	0	0	0	0	71859
6	29/11/2024	-	-	DC3611240179078	Mar-20	Payment of Demand under Appeal	Debit	71859	0	0	0	0	0	71859	0	0	0	0	0	0
7	-	-	-	-	-	Closing Balance	-	-	-	-	-	-	-	-	0	0	0	0	0	0

Sr.No	Date of deposit/ Debit	Time of deposit	Reporting date (by bank)	Reference No.	Tax Period, if applicable	Description	Transaction Type (Debit/ Credit)	Central Tax Amount Debited / Credited(₹)					Central Tax Balance(₹)					
								Tax	Interest	Penalty	Fee	Others	Total	Tax	Interest	Penalty	Fee	Others
1	-	-	-	-	-	Opening Balance	-	-	-	-	-	-	0	0	0	0	94	94
2	29/11/2024	16:13:52	29/11/2024	2024112911052482948	-	Amount deposited	Credit	465233	0	0	0	0	465233	465233	0	0	94	465327
3	29/11/2024	15:01:41	29/11/2024	IK00AIBCJ7	-	Amount deposited	Credit	50	0	0	0	0	50	465283	0	0	94	465377
4	29/11/2024	-	-	AA5611240459726	Dec-24	-	Debit	39944	0	0	0	0	39944	429319	0	0	94	429413
5	29/11/2024	-	-	AA3611240459735	-	-	Credit	0	0	0	0	0	0	429319	0	0	94	429413
6	29/11/2024	-	-	DC3611240179078	Mar-20	Payment of Demand under Appeal	Debit	429319	0	0	0	0	429319	0	0	0	94	94
7	-	-	-	-	-	Closing Balance	-	-	-	-	-	-	0	0	0	0	94	94

Sr.No	Date of deposit/ Debit	Time of deposit	Reporting date (by bank)	Reference No.	Tax Period, if applicable	Description	Transaction Type (Debit/ Credit)	State Tax Amount Debited / Credited(₹)					State Tax Balance(₹)																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
								Tax	Interest	Penalty	Fee	Others	Total	Tax	Interest	Penalty	Fee	Others	Total																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
1	-	-	-	-	-	Opening Balance	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Sr.No	Date of deposit/ Debit	Time of deposit	Reporting date (by bank)	Reference No.	Tax Period, if applicable	Description	Transaction Type (Debit/ Credit)	CESS Amount Debited / Credited(₹)						CESS Balance(₹)					
								Tax	Interest	Penalty	Fee	Others	Total	Tax	Interest	Penalty	Fee	Others	Total
1	*	*	*			Opening balance	-	-	-	-	-	-	-	-	0	0	0	0	0
2	29/11/2024	10:05:52	29/11/2024	2024113910102482948		Amount capitalised	Credit	0	0	0	0	0	0	0	0	0	0	0	0
3	29/11/2024	15:07:41	29/11/2024	IKDDANEQJ7		Amount deposited	Credit	0	0	0	0	0	0	0	0	0	0	0	0
4	25/11/2024		*	AA3611240459736	Dec-24	-	Debit	0	0	0	0	0	0	0	0	0	0	0	0
5	29/11/2024		-	AA36112404459736		-	Credit	0	0	0	0	0	0	0	0	0	0	0	0
6	29/11/2024		*	DC3611240175078	Mar-20	Payment of Demand under Appeal	Debit	0	0	0	0	0	0	0	0	0	0	0	0
7	*	*	*	*		Closing balance	-	-	-	-	-	-	-	-	0	0	0	0	0



H N A & Co LLP
Chartered Accountants
(Formerly known as Hiregange & Associates LLP)

Date: 28.11.2024

To

**The Additional/Joint Commissioner (Appeals – II) Of Central Tax,
Hqrs Office, 7th Floor, L.B. Stadium,
Basheer Bagh, Hyderabad – 500004**

Dear Sir/Madam,

Sub: Filing of Appeal in GST APL-01 against Form DRC-07.

Ref:

- i. Order in Form DRC-07 OIO Vide Ref. **ZD3608241416638** dated 30.08.2024 relating to **M/s. Villa Orchids LLP**.
- ii. **GSTN: 36AANFG4817C1ZH**

1. We have been authorized by M/s. Villa Orchids LLP to submit an Appeal against the above referred Order and represent before your good office and to do necessary correspondence in the above referred matter. A copy of authorization is attached to the Appeal.
2. In this regard, we are herewith submitting the appeal against the above referred order dated 30.08.2024 in form APL-01 along with the authorization and annexures.

We shall provide any other information required in this regard. Kindly acknowledge the receipt of the appeal and post the matter for 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.hnallp.com

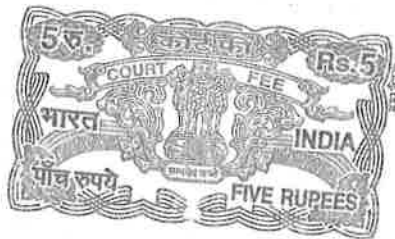
Bengaluru | Hyderabad | Visakhapatnam | Gurugram (NCR) | Mumbai | Pune | Chennai | Guwahati |
Vijayawada | Kolkata | Raipur | Kochi | Indore | Ahmedabad | Coimbatore

Index

Sl. No.	Particulars	Annexure	Page Nos.
1	Form APL-01		01-04
2	Statements of Facts	A	05-06
3	Ground of appeal	B	07-19
4	Prayer and Verification		20-20
5	Authorization		21-21
6	Order in Original vide Ref.no ZD3608241416638 dated 30.08.2024	I	22-45
7	Show cause notice Ref. No. ZD360624036653B Dated 14.06.2024	II	46-61
8	ASMT-10 dated 27.02.2024	III	62-62
9	DRC-03 dated 03.04.2021 vide ARN :AD3604210021013	IV	63-64

Form GST APL - 01**Form of Appeal to Appellate Authority****[Under Section 107(1) of Central Goods and Service Tax Act, 2017]****[See rule 108(1)]****BEFORE THE ADDITIONAL/JOINT COMMISSIONER (APPEALS - II) OF
CENTRAL TAX, HQRS OFFICE, 7TH FLOOR, L.B. STADIUM, BASHEERBAGH,
HYDERABAD - 500004**

(1) GSTIN/ Temporary ID/UIN-		36AANFG4817C1ZH	
(2) Legal Name of the Appellant		M/s. Villa Orchids LLP	
(3) Trade name, if any-		M/s. Villa Orchids LLP	
(4) Address		2nd Floor, 5-4-187/3 And 4, Soham Mansion, M.G Road, Secunderabad, Rangareddy, Telangana, 500003	
(5) Order No.	OIO: 46/2024-25(GST-Adjn) Ref No: ZD3608241416638	Order Date	29.08.2024
(6) Designation and address of the officer passing the order appealed against		Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad Salike senate, D. No: 2-4-416 & 417, Ramgopal pet, MG Road, Secunderabad.	
(7) Date of communication of the order appealed against		30.08.2024 (At portal)	
(8) Name of the authorized representative		CA. Lakshman Kumar K, C/o: H N A & Co. LLP, Chartered Accountants, 4 th Floor, West Block, Srida Anushka Pride, Above Lawrence and Mayo, Road No. 12, Banjara Hills, Hyderabad-500034. Email: laxman@hanindia.com Mob: +91 8978114334	
(9) Details of the case under dispute			
i. Brief issue of the case under dispute		1.Excess claim of ITC in GSTR-3B when compared to GSTR-2A. 2.Short payment of GST in GSTR-3B vs GSTR-9. 3.Non-payment of interest on delay filing of GSTR-3B. 4.Non-Payment of late fee on delay filing of GSTR-1& GSTR-3B. 5.Non reversal of ITC as per rule 42 & 43.	
ii. Description and classification of goods/services in dispute		NA	
iii. Period of dispute		April 2019 to March 2020	



iv. Amount under dispute

Description	Central tax	State/UT tax	Integrated tax	Cess
a. Tax/Cess	42,93,188/-	42,93,188/-	7,18,775/-	NA
b. Interest	u/s 50	u/s 50	u/s 50	NA
c. Penalty	u/s 73	u/s 73	u/s 73	NA
d. Fees	NA	NA	NA	NA
e. Other charges	NA	NA	NA	NA

v. Market value of seized goods

NA

(10) Whether the appellant wishes to be heard in person

Yes

(11) Statement of Facts

Annexure - A

(12) Grounds of Appeal

Annexure - B

(13) Prayer

To set aside the impugned order to the extent aggrieved and grant the relief sought

(14) Amount of Demand Created, admitted, and disputed

Particulars of demand/Refund	Particulars	CGST	SGST	IGST	Cesses	Total amount	
	Amount of demand created (A)	a) Tax/Cesses	42,93,188/-	42,93,188/-	7,18,775/-	NA	93,05,151/-
		b) Interest	u/s 50	u/s 50	u/s 50	NA	u/s 50
		c)Penalty	u/s 73	u/s 73	u/s 73	NA	u/s 73
		d)Fees	NA	NA	NA	NA	NA
		e) other charges	NA	NA	NA	NA	NA
	Amount of demand admitted (B)	a) Tax/Cesses	NA	NA	NA	NA	NA
		b) Interest	NA	NA	NA	NA	NA
		c)Penalty	NA	NA	NA	NA	NA
		d)Fees	NA	NA	NA	NA	NA
		e) other charges	NA	NA	NA	NA	NA
	Amount of demand disputed (C)	a) Tax/Cesses	42,93,188/-	42,93,188/-	7,18,775/-	NA	93,05,151/-
		b) Interest	u/s 50	u/s 50	u/s 50	NA	u/s 50

		c)Penalty	u/s 73	u/s 73	u/s 73	NA	u/s 73
		d)Fees	NA	NA	NA	NA	NA
		e) other charges	NA	NA	NA	NA	NA

(15) Details of payment of admitted amount and pre-deposit: -

a) Details of payment required

Particulars		Central tax	State/UT tax	Integrated tax	Cess	Total
a) Admitted amount	Tax/Cess	NA	NA	NA	NA	NA
	Interest	NA	NA	NA	NA	NA
	Penalty	NA	NA	NA	NA	NA
	Fees	NA	NA	NA	NA	NA
	Other charges	NA	NA	NA	NA	NA
b) Pre-Deposit (10% of disputed tax or 25Cr. Whichever is lower)	Tax/Cess	4,29,319/-	4,29,319/-	71,878/-	NA	9,30,516/-

b) Details of payment of admitted amount and pre-deposit (pre-deposit 10% of the disputed tax and cess)

Sr. No.	Description	Tax payable	Paid through cash/credit ledger	Debit entry No.	Amount of tax paid			
1	2	3	4	5	6	7	8	9
1	Integrated tax	NA	Cash Ledger	NA	NA			
		NA	Credit Ledger	NA	NA	NA	NA	NA
2	Central tax	NA	Cash Ledger	NA	NA	NA	NA	NA
		NA	Credit Ledger	NA	NA	NA	NA	NA
3	State/UT tax	NA	Cash Ledger	NA	NA	NA	NA	NA
		NA	Credit Ledger	NA	NA	NA	NA	NA
4	Cess	NA	Cash Ledger	NA	NA	NA	NA	NA
		NA	Credit Ledger	NA	NA	NA	NA	NA

c) Interest, Penalty, Late fee, and any other amount payable and paid

S.No.	Description	Amount Payable				Debit Entry No.	Amount paid			
1	2	3	4	5	6	7	8	9	10	11
1	Interest	NA	NA	NA	NA	NA	NA	NA	NA	NA
2	Penalty	NA				NA	NA			
3	Late Fee	NA	NA	NA	NA	NA	NA	NA	NA	NA
4	Others	NA	NA	NA	NA	NA	NA	NA	NA	NA

(16) Whether appeal is filed after the prescribed period – No

(17) If 'Yes' in item 16 –

a. Period of delay - NA

b. Reasons for delay – NA

(18) Place of supply wise details of the integrated tax paid (admitted amount only) mentioned in the Table in sub-clause (a) of clause 15 (item (a)), if any

Place of Supply (Name of State/UT)	Demand	Tax	Interest	Penalty	Other	Total
1	2	3	4	5	6	7
NA	Admitted amount [in the Table in sub- clause (a) of clause 15 (Item (a))]	NA	NA	NA	NA	NA


Appellant

ANNEXURE-A

STATEMENT OF FACTS

- A. M/s. Villa Orchids LLP (hereinafter referred as "Appellant") Located 5-4-187/3 And 4, 2nd Floor, Soham Mansion, M.G Road, Secunderabad, Ranga Reddy, Telangana, 500003 is inter alia engaged in the business of construction & sale of Villas and is registered with the Goods and Services Tax department vide GSTIN No: 36AANFG4817C1ZH in the state of Telangana.
- B. The Appellant has been paying applicable GST and filing returns regularly after disclosing the required disclosures therein.
- C. Appellant has been receiving various Input goods and services during the normal course of business on which ITC is being availed for the GST charged on them. The appellant has been filing the GST returns by claiming the ITC on all its inwards supplies through GSTR - 3B.
- D. The GST authorities has carried out a scrutiny of returns furnished by the appellant for the FY 2019-20 and has intimated a few discrepancies through ASMT-10 vide Reference no: ZS3602242794130 dated 27.02.2024 and also issued DRC-01A vide DIN: 2024056YO000052045A dated 02.04.2024(Copy of ASMT-10 Enclosed as **Annexure-III**)
- E. Appellant is in receipt of the Show Cause Notice for the period 2019-20 asking to show cause as to why (Copy of Show cause Notice is enclosed as **Annexure-II**)
- i. *An amount of 93,10,451/- (IGST Rs. 7,18,775/-, CGST Rs. 42,95,838/- and SGST Rs. 42,95,838/-) being demanded for various issues for the period April 2019 to March 2020 should not be demanded from them in terms of Section 73(1) of CGST Act,2017 and SGST Act, 2017 read with Section 20 of IGST Act,2017*
 - ii. *Interest payable on the amount mentioned at S.No. (a) above, should not be recovered from them in terms of Section 50 of CGST Act,2017 and TSGST Act,2017 read with Section 20 of IGST Act ,2017*
 - iii. *Penalty should not be imposed on the amount mentioned at S.No (a) above, in terms of provisions of Sec 73(1) of CGST Act, 2017/ TSGST Act,2017 read with Section 122(2)(a) of CGST Act,2017 and also read with Section 20 of IGST Act ,2017.*
- F. Later, the Adjudicating authority has passed an order and confirmed the demand by issuing an order in Form GST DRC - 07 vide Reference No: ZD3608241416638



dated 29.08.2024. as to why:(Copy of Order in Form GST DRC – 07 is enclosed as **Annexure - I**)

Order

- i. *An amount of 93,05,151/- (IGST Rs. 7,18,775/-, CGST Rs. 42,93,188/- and SGST Rs. 42,93,188/-) being demanded for various issues for the period April 2019 to March 2020 should not be demanded from them in terms of Section 73(1) of CGST Act,2017 and SGST Act, 2017 read with Section 20 of IGST Act,2017*
- ii. *Interest payable on the amount mentioned at S.No. (a) above, should not be recovered from them in terms of Section 50 of CGST Act,2017 and TSGST Act,2017 read with Section 20 of IGST Act ,2017*
- iii. *Penalty should not be imposed on the amount mentioned at S.No (a) above, in terms of provisions of Sec 73(1) of CGST Act, 2017/ TSGST Act,2017 read with Section 122(2)(a) of CGST Act,2017 and also read with Section 20 of IGST Act ,2017.*

To the extent Aggrieved by the impugned order, which is contrary to facts, law, and evidence, apart from being contrary to a catena of judicial decisions and beset with grave and incurable legal infirmities, the appellant prefers this appeal on the following grounds (which are alternate pleas and without prejudice to one another) amongst those to be urged at the time of hearing of the appeal.

A handwritten signature in black ink is written over a circular official stamp. The stamp contains the text "APPellate AUTHORITY, ORCHID" around the perimeter and a small star at the bottom center.

ANNEXURE-B

GROUND OF APPEAL

1. Appellant submits that the impugned order is ex-facie illegal and untenable in law since the same is contrary to facts and judicial decisions.
2. Appellant 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.

In Re: Reconciliation between ITC reflected in GSTR-2A and availed in GSTR-3B

3. The impugned order has stated that during the reconciliation it has been noticed that there is an excess claim of Input tax credit in GSTR-2A compared to GSTR-3B during the financial year 2019-20 confirming an amount of Rs.44,61,441/- (IGST: Rs.4,97,755/- CGST: Rs.19,81,843/- and SGST: Rs. 19,81,843/-).
4. In this regard, the appellant wants to submit that, the impugned order has not applied rule 36(4) of CGST Act,2017, which allows to claim input tax credit in excess of 20% of ITC for Oct 2019 to Dec2019 and 10% of ITC for the period of Jan 2020 to Mar 2020 that appeared in GSTR-2A. The appellant has made a reconciliation between GSTR-2A and GSTR-3B for the period of Apr 2019 to Mar 2020 by applying the above rule and as per the information available in the record of the order, the difference between the ITC claimed in GSTR-3B and ITC reflected in GSTR-2A is provided below in a tabular form:

S.No	Particulars	IGST(Rs.)	CGST(Rs.)	SGST(Rs.)
1	Net ITC claimed through table 4 (A) of GSTR-3B	7,08,305	72,46,752	72,46,752
2	ITC reflected in GSTR-2A	2,10,550	52,47,582	52,47,582
3	ITC allowed after applying Rule 36(4) of the CGST Act,2017.	2,11,393	56,85,515	56,85,515
4	ITC short reflected in GSTR-2A (1-3)	-4,96,912	-15,33,486	-15,33,486

5. Without prejudice to the above, the Appellant submits that the why appellant is rightly eligible for ITC for the following reasons:
 - a. ITC cannot be denied merely due to the non-reflection of invoices in GSTR-2A as all the conditions specified under Section 16 of CGST Act, 2017 are satisfied.



- b. Appellant further submits that the Finance Act, 2022 has omitted Sections 42, 43 and 43A of the CGST Act, 2017 which deals ITC matching concept. The appellant submits that the substituted Section 38 of the CGST Act, 2017 now states that only the eligible ITC which is available in the GSTR-2B (Auto-generated statement) can be availed by the recipient. Now, GSTR-2B has become the main document relied upon by the tax authorities for verification of accurate ITC claims. Hence, the omission of sections 42, 43 and 43A has eliminated the concept of the provisional ITC claim process, matching and reversals.
- c. Once the mechanism prescribed under Section 42 to match the provisionally allowed ITC under Section 41 is not in operation and has been omitted by the Finance Act, 2022 the effect of such omission without any saving clause means the above provisions was not in existence or never existed in the statute.
- d. The Section 38 read with Rule 60 had prescribed the FORM GSTR 2 which is not made available till 30.09.2022. Notification No. 20 Central Tax dated 10th Nov 2020 has substituted the existing rule to w.e.f. 1.1.2021 meaning thereby the requirement of Form GSTR 2 necessary in order to due compliance of Section 38. In the absence of the said form, it was not possible for the taxpayer to comply with the same. Further, Form GSTR 2 has been omitted vide Notification No. 19/2 Central Tax dated 28.09.2022 w.e.f. 01.10.2022.
- e. Section 42 clearly mentions the details and procedure of matching, reversal, and reclaim of input tax credit with regard to the inward supply. However, Section 42 and Rule 69 to 71 have been omitted w.e.f. 01.10.2022.
- f. Rule 70 of CGST Rules 2017 which prescribed the final acceptance of input tax credit and communication thereof in Form GST MIS-1 and Rule 71 prescribes the communication and rectification of discrepancy in the claim of input tax credit in form GST MIS-02 and reversal of claim of input tax credit. Further, Rule 70 has been omitted vide Notification No. 19/2022 Central Tax dated 28.09.2022 w.e.f 01.10.2022.
- g. It is submitted that neither the form has been prescribed by the law nor the same has been communicated to the appellant therefore it is not possible to comply with the condition given in Section 42 read with Rule 69, Rule 70 and 71.
- h. Appellant further submit that the fact that there is no requirement to reconcile the invoices reflected in GSTR-2A vs GSTR-3B is also evident from the amendment in Section 16 of CGST Act, 2017 vide Section 100



- of Finance Act, 2021. Hence, there is no requirement to reverse any credit in the absence of the legal requirement during the subject period.
- i. Similarly, it is only Rule 36(4) of CGST Rules, 2017 as inserted w.e.f. 09.10.2019 has mandated the condition of reflection of vendor invoices in GSTR-2A with adhoc addition of the 20% (which was later changed to 10% & further to 5%). At that time, the CBIC vide Circular 123/42/2019 dated 11.11.2019 categorically clarified that the matching u/r. 36(4) is required only for the ITC availed after 09.10.2019 and not prior to that. Hence, the denial of the ITC for non-reflection in GSTR-2A is incorrect during the subject period.
- j. The fact of payment or otherwise of the tax by the supplier is neither known to appellant nor is verifiable by appellant. Thereby, it can be said that such condition is impossible to perform, and it is a known principle that the law does not compel a person to do something which he cannot possibly perform as the legal maxim goes: ***lex non-cogit ad impossibilia***, as was held in the case of:
- *Indian Seamless Steel & Alloys Ltd Vs UOI, 2003 (156) ELT 945 (Bom.)*
 - *Hico Enterprises Vs CC, 2005 (189) ELT 135 (T-LB). Affirmed by SC in 2008 (228) ELT 161 (SC)*
- Thereby it can be said that the condition, which is not possible to satisfy, need not be satisfied and shall be considered as deemed satisfied.
- k. In the same context, Appellant also wish to place reliance on the decision in case of Arise India Limited vs. Commissioner of Trade and Taxes, Delhi - 2018-TIOL-11-SC-VAT and M/s Tarapore and Company Jamshedpur v. State of Jharkhand - 2020-TIOL-93-HC-JHARKHAND-VAT.
- l. Section 41 allows the provisional availment and utilization of ITC, there is no violation of section 16(2)(c) of CGST Act 2017
- m. The above view is also fortified from press release dated 18.10.2018
- n. Even if there is differential ITC availed, if the same is accompanied by a valid tax invoice containing all the particulars specified in Rule 36 of CGST Rules and the payment was also made to the suppliers, the appellant is rightly eligible for ITC.
- o. The Appellant submit that under the earlier VAT laws there were provisions similar to Section 16(2) *ibid* which have been held by the Courts as unconstitutional.
- p. Appellant wish to rely on recent decisions in case of

- **Diya Agencies Versus The State Tax Officer, The State Tax Officer, Union Of India, The Central Board Of Indirect Taxes & Customs, The State Of Kerala 2023 (9) TMI 955 - Kerala High Court**
- **M/S. Henna Medicals Versus State Tax Officers, Deputy Commissioner (Arrear Recovery) Office of The Joint Commissioner, State Goods And Service Tax Kannur, Union Of India, Central Board Of Indirect Taxes & Customs, State Of Kerala- 2023 (10) TMI 98 - Kerala High Court**
- **D.Y. Beathel Enterprises Vs State Tax officer (Data Cell), (Investigation Wing), Tirunelveli 2021(3) TMI 1020-Madras High Court**
- **Bhagyanagar Copper Pvt Ltd Vs CBIC and Others 2021-TIOL-2143-HC-Telangana-GST**
- **LGW Industries limited Vs UOI 2021 (12) TMI 834 -Calcutta High Court**
- **Bharat Aluminium Company Limited Vs UOI & Others 2021 (6) TMI 1052 - Chattishgarh High Court**
- **M/s. Sanchita Kundu & Anr. Vs Assistant Commissioner of State Tax 2022 (5) TMI 786 - Calcutta High Court**

6. From the above-referred case laws it is clear that the Appellant is rightly eligible to claim of Input Tax credit. Thereby, the Proceeding to this extent needs to be dropped.

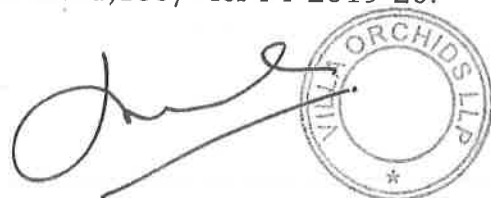
In Re: No under declaration of output tax in GSTR-9

7. The impugned order has confirmed that on comparison of tax liability declared in GSTR-9 and GSTR-3B, it was observed that there is short payment of tax for the FY 2019-20 amounting to Rs. 48,874/- (CGST Rs. 24,437/- and SGST Rs. 24,437/-) and demanded the same along with interest and penalty.

8. In this regard, the Appellant submits that the appellant has paid the difference amount through DRC-03 vide ARN AD3604210021013 dated 03.04.2021 for the FY 2019-20 and the same needs to be set aside and the same DRC-03 includes payment reversal of ITC which was availed ineligible in the financial year 2020-21 i.e. ITC of Rs. 7,167/- (CGST) and Rs. 7,167/- (SGST) (Copy of DRC-03 enclosed as **Annexure-IV**)

In Re: Non-Payment of late fee on delay filing of GSTR-01 and GSTR-3B:

9. The impugned order has stated that during the course of scrutiny of returns, it was noticed that the Appellant has filed GSTR-01 and GSTR-3B returns belatedly for which interest is demanded amounting to Rs.11,150/- for FY 2019-20.

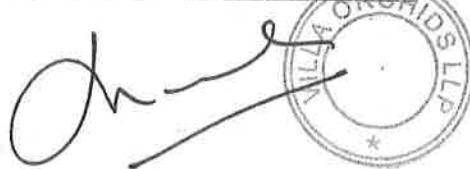


10. In this regard, the Appellant submits that the interest amount calculated in the impugned order is not correct due to wrongly considered the number of days in the GSTR-01 interest calculation and considered the same late fee amount in the GSTR-3B late fee calculation column.

11. Now the Appellant submits the actual late fee payable by the Appellant irrespective of the late fee amount demanded in the impugned order as per the due date of filing and the actual date of filing:

GSTR-01 late fee calculation				
Month	Due date	Actual date	No. of days delay	Late fee liability
Apr-19	11/05/2019	20/05/2019	9	450
May-19	11/06/2019	10/06/2019	0	-
Jun-19	11/07/2019	09/07/2019	0	-
Jul-19	11/08/2019	12/08/2019	1	50
Aug-19	11/09/2019	10/09/2019	0	-
Sep-19	11/10/2019	07/10/2019	0	-
Oct-19	11/11/2019	12/11/2019	1	50
Nov-19	11/12/2019	25/01/2020	43	2,150
Dec-19	11/01/2020	27/02/2020	31	1,550
Jan-20	11/02/2020	24/06/2020	0	-
Feb-20	11/03/2020	24/06/2020	2	100
Mar-20	11/04/2020	25/08/2020	136	6,800
Total				11,150

GSTR-3B late fee calculation				
Month	Due date	Actual filing date	No. of days delay	Late fee liability
Apr-19	20/05/2019	20/05/2019	0	0
May-19	20/06/2019	20/06/2019	0	0
Jun-19	20/07/2019	20/07/2019	0	0
Jul-19	22/08/2019	27/08/2019	5	250
Aug-19	20/09/2019	18/09/2019	0	0
Sep-19	20/10/2019	21/10/2019	1	50
Oct-19	20/11/2019	25/01/2020	66	3,300
Nov-19	23/12/2019	28/01/2020	67	3,350
Dec-19	20/01/2020	04/03/2020	15	750
Jan-20	20/02/2020	24/06/2020	125	6,250
Feb-20	20/03/2020	24/06/2020	96	4,800
Mar-20	20/04/2020	16/07/2020	87	4,350
Total				23,100



12. From the above table it is clear that in late fee payable related to GSTR-01 is Rs.11,150/- and for GSTR-3B is Rs.23,100/-. However, the Appellant at the time of filing the monthly GST return has paid the late Rs.10,150/- and requesting you consider the submissions made and drop the proceedings to that extent.

In Re: Non-Payment of Interest on delay filing of GSTR-3B

13. The impugned order has stated that during the course of scrutiny of returns, it was noticed that the Appellant has filed GSTR-3B returns belatedly for which interest is demanded amounting to Rs.23,044/- (CGST Rs.11,180/- and SGST Rs.11,180/-) for FY 2019-20.

14. In this regard, the Appellant submits that the impugned order is incorrect and vague as the details of GSTR-3B for March 2019 interest amount of Rs. 8,563/- are included in the demand amount which is not related to FY 2019-20. Therefore, the Appellant requests to drop the proceedings to that extent in this regard.

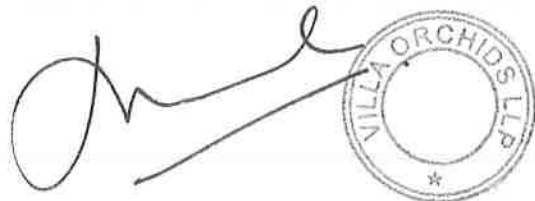
In Re: Reversal under Rule 42 and rule 43 is not required for the exempted and non-GST supply declared by the Appellant in the GSTR-09

15. The Appellant submits that the impugned order has stated that the Appellant has declared exempted, and Nil rated turnover in annual return however the proportionate reversal of ITC as per Rule 42 and 43 of the GST Act, 2017 of Rs. 47,43,576/- (IGST Rs.2,21,020/-, CGST Rs.22,61,278/- and SGST RS. 22,61,278/-) not made and confirmed the same along with the Interest and penalty.

16. In this regard, the Appellant submits that the impugned order has considered the exempt value declared in GSTR-3B irrespective of the value declared at the time of filing GSTR-09 of FY 2019-20 and the same needs to be considered as the final value for 42/43 reversals as per the GST Act 2017.

17. The Appellant submits that the order is erroneous for the following reasons, thereby, the same needs to be dropped outrightly: -

- a. Impugned order has not examined whether the turnover declared in tables 5C, 5D, 5E and 5F of GSTR-09 is required to be considered for the purpose of reversal under Rule 42 and 43 of CGST Rules, 2017
- b. Impugned order has considered the entire ITC availed during the period as the common credit whereas the reversal under Rule 42 and 43 is

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

required to be made only on common ITC used for the provision of both taxable and exempted turnover.

- c. Further the order has taken exempt turnover as per GSTR-3B returns and the Input tax credit amount as per the GSTR-09 of FY 2019-20.

This shows that the impugned order has been issued on an incorrect basis and the same needs to be dropped.

18. The appellant submits that the bifurcation of turnover mentioned in the GSTR-9 are as follows:

Table No.	Nature of supply	Taxable Value
5 (F)	Non- GST supply	6,35,31,068/-
	Total	6,35,31,068/-

With respect to value declared in Table-5(f) of GSTR-09 is related to income received on account of the sale of the villa which is covered under Schedule III of GST Act 2017.

Post OC Sale of villas:

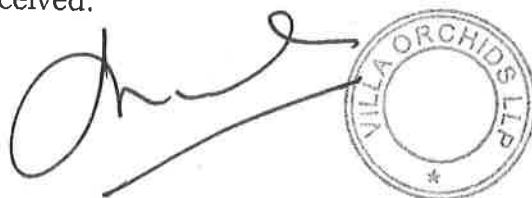
19. With respect to the amount declared under Table 5F as Non-GST supplies which is towards the sale of villas after receipt of occupancy certificate and is disclosed under the head Non-GST supply because same is neither supply of goods nor supply of services as per schedule III to the CGST Act, 2017 and the extract is as follows:

"Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building."

clause (b) of paragraph 5 of Schedule II
construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier."

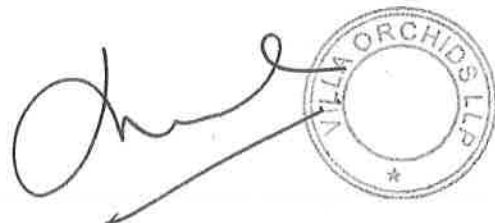
From the above, it is clear that the consideration received after the issuance of the completion certificate is covered under Schedule III of the GST Act 2017 and hence such value cannot be considered as exempt turnover for the purpose of Rule 42/43 reversal. Therefore, the question of ITC reversal is not applicable and the same needs to be dropped.

20. To substantiate further, that the consideration received on villas is after receiving the occupancy certificate, the Appellant is enclosing the copies of sale deeds along with details of payments or instalments received.



In Re: Penalties and interest are not payable/imposable:

21. In this regard, Appellant submits that when tax is not applicable, the question of interest & also penalties does not arise. It is a natural corollary that when the principal is not payable there can be no question of paying any interest as held by the Supreme Court in *Prathiba Processors Vs. UOI*, 1996 (88) ELT 12 (SC).
22. Further, Appellant submits that the Impugned order had not discharged the burden of proof regarding the imposition of the penalty under CGST Act, 2017. In this regard, wishes to rely on the judgment in the case of *Indian Coffee Workers' Co-Op. Society Ltd Vs C.C.E. & S.T.*, Allahabad 2014 (34) S.T.R 546 (All) it was held that *"It is unjustified in absence of discussion on fundamental conditions for the imposition of penalty under Section 78 of Finance Act, 1994"*.
23. Appellant submits that Section 73(11) of the CGST Act, 2017 which provides for penalty in case of non-payment of self-assessed tax reads as follows: -
"(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax"
From the above-referred sub-section, it is clear that the penalty is applicable only when any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax. However, in the instant case, the Appellant has paid the self-assessed tax and there is no delay in payment of tax. Hence, the penalty under Section 73(11) is not applicable in the instant case.
24. Appellant submits that the Supreme Court in the case of *CTI Vs Reliance Petro Products Pvt Ltd* (SC) 2010 (11) SCC (762) while examining the imposition of penalties under Section 271(1)(c) of Income Tax Act, 1961 held that penalties are not applicable in similar circumstances.
25. Appellant submits that from the above referred decision of the Supreme Court, penalties cannot be imposed merely because the assessee has claimed certain ITC which was not accepted or was not acceptable to the revenue when the assessee has acted on the bonafide belief that the ITC is eligible. In the instant case also, Appellant has availed the ITC on bonafide belief that the same is eligible which

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

was not accepted by the department. Therefore, in these circumstances the imposition of penalties is not warranted and the same needs to be dropped.

26. Appellant submits that it is pertinent to understand that the Supreme Court in the above-referred case has held that the penalties shall not be imposed even though the mens rea is not applicable for the imposition of penalties.
27. Appellant submits that GST being a new law, the imposition of penalties during the initial years of implementation is not warranted. Further, Appellant submits that they are under bonafide belief that ITC availed by them are eligible, thus, penalties shall not be imposed. Further, the government has been extending the due dates & waiving the late fees for delayed filing etc., to encourage compliance and in these circumstances imposition of penalties for claiming ITC on bonafide belief is not at all correct and the same needs to be dropped.
28. In addition to above, Appellant submits that where an authority is vested with discretionary powers, discretion has to be exercised by application of mind and by recording reasons to promote fairness, transparency and equity. In this regard the reliance is placed on the judgement of hon'ble Supreme Court in the case of Maya Devi v. Raj Kumari Batra dated 08.09.2010 [Civil Appeal No.10249 of 2003] wherein it was held that *"14. It is in the light of the above pronouncements unnecessary to say anything beyond what has been so eloquently said in support of the need to give reasons for orders made by Courts and statutory or other authorities exercising quasi-judicial functions. All that we may mention is that in a system governed by the rule of law, there is nothing like absolute or unbridled power exercisable at the whims and fancies of the repository of such power. There is nothing like a power without any limits or constraints. That is so even when a Court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well recognized and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity."*
29. Appellant submits that the Supreme Court in case of **Hindustan Steel Ltd. v. State of Orissa —1978 [AIR 1970 SC 253]** while dealing with the similar facts wherein a mandatory penalty is prescribed without the concept of mens rea held that *"Under the Act penalty may be imposed for failure to register as a dealer; Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-*



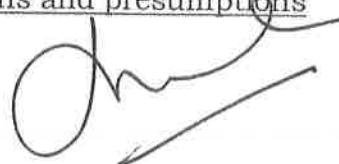
criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that The offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out

30. Appellant further submits that it was held in the case of Collector of Customs v. Unitech Exports Ltd. 1999 (108) E.L.T. 462 (Tribunal) that- ***"It is settled position that penalty should not be imposed for the sake of levy. The penalty is not a source of Revenue.*** The penalty can be imposed depending upon the facts and circumstances of the case that there is a clear finding by the authorities below that this case does not warrant the imposition of penalty. ***The respondent's Counsel has also relied upon the decision of the Supreme Court in the case of M/s. Pratibha Processors v. Union of India reported in 1996 (88) E.L.T. 12 (S.C.) that penalty ordinarily levied for some contumacious conduct or a deliberate violation of the provisions of the particular statute."*** Hence, Penalty cannot be imposed in the absence of deliberate defiance of law even if the statute provides for a penalty

31. Appellant submits that the Supreme Court in case of Price Waterhouse Coopers Pvt. Ltd Vs Commissioner of Income Tax, Kolkata S.L.P.(C) No.10700 of 2009 held as follows

"20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars.

Demand was confirmed based on assumptions and presumptions



32. Appellant submits that the order was issued based on mere assumptions and presumptions and without considering the intention of the law, documents on record, the scope of activities undertaken and the incorrect basis of computation, creating its own assumptions, presumptions. Further, they have arrived at the conclusion in respect of excess availment of ITC without actual examination of facts, provisions of the Finance Act, 1994. In this regard, Appellant relies on decision of the Hon'ble Supreme Court in case **Oudh Sugar Mills Limited v. UOI, 1978 (2) ELT 172 (SC)** wherein it was held that "*we must hold that the finding that 11,606 maunds of sugar were not accounted for by the Appellant has been arrived at **without any tangible evidence and is based only on inferences involving unwarranted assumptions.** The finding is thus vitiated by an error of law.*"

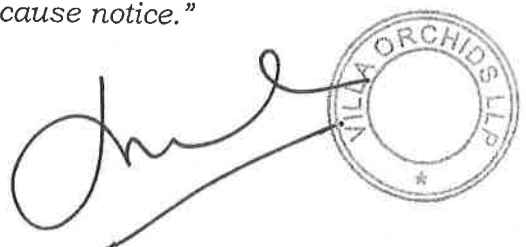
The Hon'ble SC categorically held that such order issued with assumptions and presumptions is not sustainable under the law. Therefore, on this count alone the entire proceedings in the order do not sustain and require to be set aside.

33. Appellant submits that the entire order seems to have been issued with revenue bias without appreciating the statutory provisions, the intention of the same and the objective of the transaction/activity and nature of the business. Appellant submits that the impugned order has been issued without examining the activities carried out by the Appellant. In case the department had examined all these aspects, the department would not have passed the impugned order. Appellant submits that it is the duty of the authority to consider the facts of the case properly before passing the order. Therefore, impugned order issued without considering the facts of the case is not valid and the same needs to be set aside.

Order is vague and lack of details

34. Appellant submits that the impugned order has not given clear reasons as to how the Appellant has excess claimed the input tax credit 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 notice was not given proper opportunity to meet the allegations indicated in the show cause notice.*"

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

- 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).

35. From the invariable decisions of various High Courts, it is clear that the order without details is not valid and the same needs to be set aside.

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:

36. The Appellant submits that the impugned order 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. 09/2023-C.T dated 31.03.2023 (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.
37. It is settled law that any delegated legislation travelling beyond the Statutory provisions be 'ultra vires' i.e meaning it is beyond the powers granted to the tax



authorities. Such a circular is invalid and unenforceable and is not sustained in law and for the same reliance is placed on the following case laws:

- Mohit Minerals Pvt Ltd Versus Union Of India 2022 (61) G.S.T.L. 257 (S.C.)
- Munjaal Manish bhai Bhatt Versus Union of India 2022 (62) G.S.T.L. 262 (Guj.)

Order is not in accordance with the law:

38. The Appellant further submits that the impugned Order has been issued both for CGST and SGST. However, as per Section 6 of the CGST Act, 2017, a separate order shall be issued for CGST and SGST. This shows that the order is issued not in accordance with the law and the same needs to be dropped.

State tax authorities have no jurisdiction to demand 'IGST':

39. We further submit that State tax authorities lack jurisdiction to charge & demand IGST since it is a union levy and in terms of Article 269A of the Constitution of India, only the Centre can levy and collect tax. Section 4 of the IGST Act, 2017 authorizes by specific notification and till date, the notifications were issued only for refund processing and not any other powers that is exercisable under the IGST Act, 2017. That being a case, the impugned notice is without jurisdiction and authority of law which is impermissible.

40. Appellant craves leave to alter, add to and/ or amend the aforesaid grounds.

41. Appellant wishes to be heard in person before passing any order in this regard.

For M/s. Villa Orchids LLP

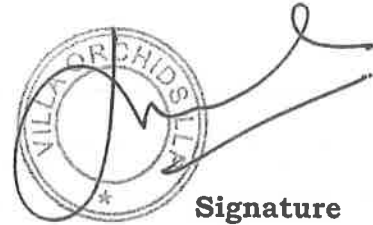


Authorized Signatory

PRAYER

Therefore, it is prayed that

- a) To set aside the impugned order to the extent aggrieved.
- b) To hold that there is no excess claim of Input tax credit.
- c) To hold that there is no under-declaration of output tax liability.
- d) To hold that there is no requirement to make a reversal as per rule 42/43 of GST Act 2017.
- e) To hold that there is no liability to pay the interest and penalty.
- f) To provide any other consequential relief.



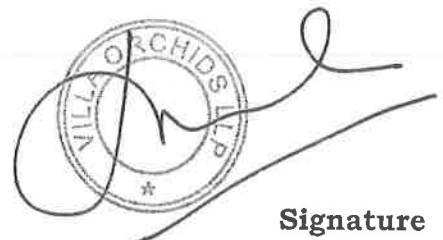
Signature

VERIFICATION

I, Soham Satish Modi, Partner Authorized Signatory of M/s. Villa Orchids LLP hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Place: Hyderabad

Date: _____



Signature

**BEFORE THE ADDITIONAL COMMISSIONER /JOINT COMMISSIONER
(APPEALS -II) OF CENTRAL TAX, HQRS OFFICE, 7TH FLOOR, L.B. STADIUM,
BASHEERBAGH, HYDERABAD - 500004.**

**Sub: Filing of Appeal against Order-in-Original vide OIO: 46/2024-25(GST-Adjn)
Ref No: ZD3608241416638 dated 30.08.2024 in the case of M/s. Villa Orchids LLP**

I, Soham Satish Modi, Partner of M/s. Villa Orchids LLP, hereby authorizes and appoint H N A & Co. LLP, Chartered Accountants, Bangalore 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: -

- a. 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.
- b. 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.
- c. To Sub-delegate all or any of the aforesaid powers to any other representative and I/Appellant 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 on ____ 2024 at Hyderabad

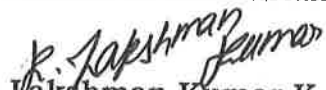

Signature

I, the undersigned partner of M/s H N A & Co. LLP, Chartered Accountants, do hereby declare that the said M/s H N A & Co. 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 CGST Act, 2017. I accept the above-said appointment on behalf of M/s H N A & Co. LLP. The firm will represent through any one or more of its partners or Staff members who are qualified to represent before the above authorities.

Dated: __.06.2024

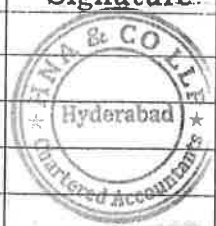
Address for service:

**H N A & Co. LLP
Chartered Accountants,
4th Floor, West Block, Anushka Pride,
above Lawrence & Mayo,
Road Number 12, Banjara Hills,
Hyderabad, Telangana 500034.**

**For HNA & Co. LLP
Chartered Accountants,

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	CA/LLB	AP/3511/2023	
3	Srimannarayana S	CA	261612	
4	Akash Heda	CA	269711	
5	P. Manikanta	CA	277705	



FORM GST DRC - 07*[See rule 100(1), 100(2), 100(3) & 142(5)]***Summary of the order**

Reference No: ZD3608241416638

Date: 30/08/2024

To,

GSTIN/ID: 36AANFG4817C1ZH

Name: VILLA ORCHIDS LLP

Address: 5-4-187/3 AND 4, 2ND FLOOR, SOHAM MANSION, M.G ROAD, SECUNDERABAD,
Rangareddy, Telangana, 500003**1. Details of order -**

(a) Order no: 46/2024-25

(b) Order date: 29/08/2024

(c) Financial year: 2019-2020

(d) Tax period: Apr 2019 - Mar 2020

2. Issues involved - Excess ITC claimed**3. Description of goods / services -**

Sr. No.	HSN	Description
1.	9954	Construction services

4. Section of GST Act under which demand is created: 73**5. Details of demand**

(Amount in Rs.)

Sr. No.	Tax rate(%)	Turnover	Place of supply	Act	Tax/Cess	Interest	Penalty	Fee	Others	Total
1.	0	0.00	Telangana	CGST	4,293,18 8.00	0.00	0.00	0.00	0.00	4,293,18 8.00
2.	0	0.00	Telangana	SGST	4,293,87 2.00	0.00	0.00	0.00	0.00	4,293,87 2.00
3.	0	0.00	Telangana	IGST	718,775. 00	0.00	0.00	0.00	0.00	718,775. 00



Signature:

Name: Satyanarayana Ravula

Designation: Assistant Commissioner
SECUNDERABAD

Jurisdiction: MAHANKALI
STREET-RP ROAD
2:Secunderabad:Telangana

Copy to- --


TRUE COPY

DRAFT



केन्द्रीयकरसहायक आयुक्त कार्यालय, सिकंदराबादमालाएवमसेवाकरमण्डल,
सिकंदराबाद।
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.secddiv@gov.in



GEXCOM/ADJN/GST/1468/2024-CGST-
DIV-SNBD-COMMRTE-SECUNDERABAD

दिनांक/Date: 29.08.2024

DIN: 20240856YO0000426944

ORDER-IN-ORIGINAL No.46/2024-25 (GST-Adjn)

(Passed by Shri R.Satyanarayana, I.R.S., Assistant Commissioner of Central Tax,

Secunderabad GST Division)



PREAMBLE

1. This copy is granted free of charge for the private use of persons to whom it is issued.

इसे जिस व्यक्तिको जारी किया गया है यह प्रतिनिजी प्रयोग केलिए बिना मूल्यके दीजातीहै.

2. Under Section 107(1) of the Central Goods and Service Act, 2017 any person aggrieved by this order can prefer appeal within three months from the date of communication of such order to the Joint Commissioner (Appeals), Hqrs Office, 7th floor, L.B. Stadium Road, Basheerbagh, Hyderabad-4.

कोईभी व्यक्ति जो केंद्रीयवस्तु एवम सेवा करअधिनियम, 2017 की धारा107 (1) केतहत, इस आदेश से दुखी होताहोतो वह ऐसे आदेश के विरुद्ध संयुक्त आयुक्त (अपील), मुख्यालय कार्यालय, सातवीं मंजिल, जी.एस.टी. भवन, एल.बी.स्टेडियम रोड, बशीरबाग, हैदराबाद -500 004 के समक्ष इस आदेश के सूचित होनेके तीन माह के अंदर अपील दर्ज कर सकताहै.

3. Appeals shall be filed in **FORM GST APL-01** prescribed under Rule 108 of Central Goods and Service Tax Rules, 2017.

केंद्रीयवस्तु एवम सेवा कर नियम, 2017 केनियम108 केतहतनिर्धारितफॉर्मGST APL-01 मेंअपीलदायरकीजाएगी।

4. The grounds of appeal and form of verification as contained in Form GST APL 01 shall be signed in the manner specified in rule 26 of Central Goods and Service Tax Rules, 2017

अपीलकाआधारऔरफॉर्मके सत्यापनकेरूपमेंफॉर्मजीएसटीएपीएल01 मेंनिहितहै, केंद्रीयसामानऔरसेवाकर नियम, 2017 केनियम26 मेंनिर्दिष्टतरीकेसेहस्ताक्षरकिजाएंगे।

5. A certified copy of the decision or order appealed against shall be submitted within seven days of filing appeal under sub rule 1 of 108 of Central Goods and Service Tax Rules, 2017.

6. 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, in relation to which the appeal has been filed.

केंद्रीयवस्तु एवम सेवाकरअधिनियम, 2017 की धारा 107 (6) केअनुसार, अपीलकतनिकेंद्रीयवस्तु एवम सेवाकरअधिनियम, 2017कीधारा 107 (1) केतहतकोईअपीलदायरनहींकीजाएगी, जबतककिअपीलकतनिभुगताननहीं.

TRUE COPY

Sub: Short / Non/Short-payment of GST- Excess availment of ITC- Non payment of Interest / late fee on delayed payment of GST Returns -Non-Reversal of ITC M/s.Villa Orchids LLP, GSTIN: 36AANFG4817C1ZH - Issuance of OIO - Reg.

M/s.Villa Orchids LLP (here-in-after referred to as "Taxpayer"), situated at 2nd Floor, 5-4-187/3&4, Soham Mansion, M.G Road, Secunderabad, Telangana-500003, are engaged in Service Provision, Works Contract Services, Construction services of single dwelling or multi dwelling or multi-storied residential buildings, Real Estate Agents, Construction of Res. Complex, falling under the HSN 995411, 00440104, 00440334 and 00440410. The taxpayer is registered with the Central GST Department with GSTIN: 36AANFG4817C1ZH for the purpose of payment of GST and falls under the jurisdiction of Ramgopalpet-III CGST Range, Secunderabad GST Division, Secunderabad GST Commissionerate.

2. On scrutiny of the returns filed by M/s. VILLA ORCHIDS LLP. for the FY 2019-20, certain discrepancies were noticed. The intimation of the same was given to the tax payer by issuance of FORM GST-ASMT-10 vide Reference No. ZU360523050702D dated 27.02.2024 and issuance of DRC-01A vide DIN: 2024056YO000052045A dated. 02.04.2024. The details of the discrepancies are as follows:

- (i) Excess availment of ITC in GSTR-3B on comparison with credit available in GSTR-2A for FY 2019-20
- (ii) Short payment of GST on comparison of tax liability declared in GSTR-9 & GSTR-3B for FY 2019-20.
- (iii) Non-payment of interest on delayed filing of GSTR-3B Returns for FY 2019-20
- (iv) Non-payment of Late Fee on delayed filing of GSTR-1 and GSTR-3B for FY 2019-20
- (v) Non reversal of ITC in accordance with provisions of Rule 42 and Rule 43 of CGST Rules, 2017 for FY 2019-20.

Basing on above observations a Show cause notice Ref. No. GEXCOM/ADJN/GST/1468/2024-CGST-DIV-SNBD-COMMRTE-SEC'BAD dt.16.05.2024 was issued by the Jurisdictional Assistant Commissioner demanding the short paid / Non-paid Taxes and penalty, Late fee to be paid in terms of legal provisions laid down under law.

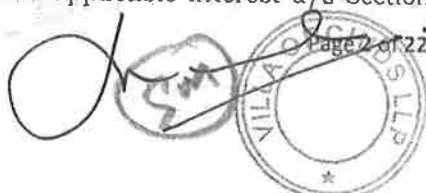
3.1 (ISSUE No: 1): Excess availment of ITC of Rs.44,61,441/- (IGST: 4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs. 19,81,843/-) noticed in GSTR-3B on comparison with credit available in GSTR-2A for the FY 2019-20.

The said ITC was irregular in terms of sub-section (2)© of Section 16 of the CGST Act, 2017. The details of are furnished hereunder: -

(Amount in Rs.)

Excess availment of ITC as per the comparison between credit available in GTR-2A and credit availed in GSTR-3B for the FY 2019-20									
FY	ITC availed per GSTR-3B for FY 2019-20			ITC available per GSTR-2A for FY 2019-20			Excess availed ITC		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
2019-20	708305	7219001	7219001	210550	5237158	5237158	497755	1981843	1981843

From the above it appears that, excess availed ITC of Rs.44,61,441/- (IGST: 4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs. 19,81,843/-) in the FY 2019-20 which is not available in GSTR-2A returns is inadmissible as per Section 16 and 41 of CGST Act, 2017 and liable to be recovered interms of the provisions of Section 73 of CGST Act, 2017 along with applicable interest u/s Section 50(3) of CGST Act, 2017. Further, it



TRUE COPY

appears that are liable for penal action in terms of Section 73(9) of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017, SGST Act, 2017 read with Section 20 of IGST Act, 2017.

3.2: ISSUE-2: Short payment of GST on comparison of tax liability declared in GSTR-9 & GSTR-3B for FY 2019-20.

3.2.1 it is observed there is a short payment of tax due differential liability declared in GSTR-9 and GSTR-3B for the FY 2019-20 to the tune of Rs.48,874/- (CGST: Rs.24,437/- & SGST: Rs.24,437/-). The details of short payment are mentioned hereunder: -

(Amt.in Rs.)

Short payment of GST on comparison of tax liability declared in GSTR-9 and GSTR-3B for FY 2019-20					
Tax liability as declared in table 4 of GSTR-9		Tax paid in GSTR-3B		Difference	
CGST: Rs. 9845849/-	SGST: Rs. 9845849/-	CGST: Rs.9821413/-	SGST: Rs. 9821413/-	CGST: Rs.24437/-	SGST: Rs.24437/-

3.2.2. In view of the above, it appears that the taxpayer has not followed the procedure prescribed in Section 37, Section 39, Section,44 and Section 59 of CGST Act, 2017. Therefore, it appears that the taxpayer is liable to pay GST of Rs.48,874/- (CGST: Rs.24,437/- & SGST: Rs.24,437/-) along with applicable interest under Section 50 of CGST Act, 2017 and penalty under Section 122(2)(a) read with Section 73 of CGST Act, 2017/SGST Act, 2017 read with Section 20 of IGST Act, 2017.

3.3. (ISSUE No.3) Non-payment of interest on delayed filing of GSTR-3B returns:

3.3.1. During the course of scrutiny of returns, it was noticed that the taxpayer had filed the GSTR-3B returns for the following months belatedly. The taxpayer has paid the tax amount and filed the returns but not paid the interest on cash portion of tax paid under Section 50 of CGST Act, 2017. The details of delayed filing of GSTR-3B returns and non-payment of interest are given below: (Amount in Rs.)

GSTR-3B Month	Due date of filing	Actual date of filing	No of days delayed	Amt paid in cash	Rate of interest	Amt of Interest liability
October-2019	20-11-2019	25-01-2020	66	6,34,224	18%	20,643
March-2019	05-05-2020	16-07-2020	72	2,41,156	18%	8,563
Total						29,206/-
Interest Already paid						6162/-
Interest amount to be paid						23044/-

3.3.2. Legal provisions

i). Section 50 (1) of CGST Act 2017:-

(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.

[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said

period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

provisions of section 10 or section 51 or section 52 shall, for every calendar month or part CHAPTER IX RETURNS 70 thereof, furnish, a return, electronically, of inward and outward supplies of goods

3.3.3. In view of the above, the taxpayer is liable to pay interest in cash of Rs.23,044/- (CGST: Rs.11,180/- & SGST: Rs.11,180/-) under section 50 as applicable under the provisions of CGST Act, 2017.

3.4 (ISSUE No.4). Non payment of Late Fee on delayed filing of GSTR-1 and GSTR-3B for FY 2019-20:

3.4.1. During the course of scrutiny of returns, it was noticed that the taxpayer had not paid late fee for delayed filing of GSTR-I and GSTR-3B returns. The details of delayed filing of GSTR-3B, GSTR-1 returns and non-payment of late fee are given below:

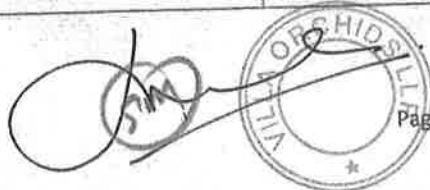
GSTR -1 late filing details

	Due date of filing	Actual date of filing	No of days delayed	Late fee liability
Apr-19	11-05-2019	20-05-2019	70	3500
May-19	11-06-2019	10-06-2019	39	1950
Jun-19	11-07-2019	09-07-2019	9	450
Jul-19	11-08-2019	12-08-2019	80	4000
Aug-19	11-09-2019	10-09-2019	87	4350
Sep-19	11-10-2019	07-10-2019	83	4150
Oct-19	11-11-2019	12-11-2019	30	1500
Nov-19	11-12-2019	25-01-2020	43	2150
Dec-19	11-01-2020	27-02-2020	31	1550
Jan-20	11-02-2020	24-06-2020	0	0
Feb-20	11-03-2020	24-06-2020	2	100
Mar-20	11-04-2020	25-08-2020	136	6800
	Total			21650

GSTR -3B late filing details

	Due date of filing	Actual date of filing	No of days delayed	Late fee liability
Apr-19	20-05-2019	20-05-2019	70	3500
May-19	20-06-2019	20-06-2019	39	1950
Jun-19	20-07-2019	20-07-2019	9	450
Jul-19	22-08-2019	27-08-2019	80	4000
Aug-19	20-09-2019	18-09-2019	87	4350
Sep-19	20-10-2019	21-10-2019	83	4150
Oct-19	20-11-2019	25-01-2020	30	1500
Nov-19	23-12-2019	28-01-2020	43	2150
Dec-19	20-01-2020	04-03-2020	31	1550
Jan-20	22-02-2020	24-06-2020	0	0
Feb-20	22-03-2020	24-06-2020	2	100
Mar-20	22-04-2020	16-07-2020	136	6800
	Total			22700

	Total	CGST	SGST
Total late fee payable	44350	22175	22175
Late fee paid	10150	5075	5075
Balance Late fee Payable	34200	17100	17100



TRUE COPY

3.4.2: Legal provisions:

Section 47. Levy of late fee.— (1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees. (2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory

3.4.3. In view of the above, the taxpayer is liable to pay latefee in cash of **Rs.34,200/-** (CGST: Rs. 17,100/-, SGST: Rs. 17,100/-) under section 47 as applicable under the provisions of CGST Act, 2017 read with Section 37 and Section 39 of CGST Act, 2017 and SGST Act, 2017.

3.5 (Issue No.5). Non reversal of ITC in accordance with provisions of Rule 42 and Rule 43 of CGST Rules, 2017 for FY 2019-20.

3.5.1. During the course of scrutiny of returns, it was noticed that the taxpayer had not reversed ITC proportionately as per Section 17(2) of CGST Act, 2017 read with Rule 42 of CGST Rules, 2017 as detailed below:

1. Taxable Value as per Table 3.1 (c) of GSTR-3B	49636965
2. Taxable Value as per Table 3.1(Total) of GSTR-3B	159072319
3. ITC as per Table 4A of GSTR-3B or 6A of GSTR-9	15201809
4. Amount to be reversed $((1/2)*3)$	4743576.167
Liability	Rs.47,43,576/- (IGST: Rs.2,21,020/-, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-)

3.5.2. Legal provisions:**i). Section 17 - Apportionment of credit and blocked credits: -**

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

ii). Rule 42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof. -

(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the total input tax involved on inputs and input services in a tax period, be denoted as T

TRUE COPY

(b) the amount of input tax, out of T' , attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as T_1'

(c) the amount of input tax, out of T' , attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as T_2' ;

(d) the amount of input tax, out of T' , in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as T_3' ;

(e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as C_1' and calculated as

$$C_1 = T - (T_1 + T_2 + T_3);$$

(f) the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as T_4' ;

[Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of T_4 shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.]

(g) T_1' , T_2' , T_3' and T_4' shall be determined and declared by the registered person at the invoice level in FORM GSTR-2 [and at summary level in FORM GSTR-3B];

(h) input tax credit left after attribution of input tax credit under clause [(f)] 75 shall be called common credit, be denoted as C_2' and calculated as

$$C_2 = C_1 - T_4;$$

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as D_1' and calculated as

$$D_1 = (E/F) \times C_2$$

where, E

E is the aggregate value of exempt supplies during the tax period, and F

F is the total turnover in the State of the registered person during the tax period:

[Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of E/F for a tax period shall be calculated for each project separately, taking value of E and F as under:-

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F = aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier;

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR



number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of *'E'* in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended.]

[Provided further]77 that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of *'E/F'* shall be calculated by taking values of *'E'* and *'F'* of the last tax period for which the details of such turnover are available, previous to the month during which the said value of *'E/F'* is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A]78 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as *'D2'*, and shall be equal to five per cent. of *C2*; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as *'C3'*, where,-

$$C3 = C2 - (D1 + D2);$$

[(l) the amount *'C3'*, *'D1'* and *'D2'* shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03;]

(m) the amount equal to aggregate of *'D1'* and *'D2'* shall be [reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03;]

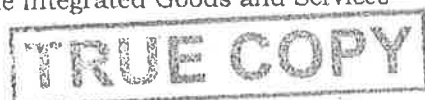
Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in *'T1'* and *'T2'* respectively, and the remaining amount of credit on such inputs or input services shall be included in *'T4'*.

3.5.3. In view of the above, the taxpayer is liable to pay reverse the ITC of Rs.47,43,576/- (IGST: Rs.2,21,020, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-) along with applicable interest under Section 50 of CGST Act, 2017 and penalty under Section 122(2)(a) read with Section 73 of CGST Act, 2017 & SGST Act, 2017 read with Section 20 of IGST Act, 2017.

4. For the administration and collection of State Goods and Services tax in respect of Telangana State, an Act was in operation in respect of Jurisdiction of Telangana state. This Act is titled as "The Telangana Goods and Services Act, 2017" (for short here in after referred to as "the TGST Act, 2017") and it contains the provisions exactly similar to the CGST Act, 2017 as referred above. Since, it is only repetition; the provisions of the TGST Act, 2017 are not reproduced in this notice.

4.1. Further, as per Section 6(1) of the TSGST Act, 2017, the Officers appointed under CGST Act, 2017 are authorized to be proper officers for the purposes of the said Act.

4.2. For the administration and collection of the Integrated Goods and Services Tax (IGST), an Act was in operation which is titled as "The Integrated Goods and Services



Tax Act, 2017" (for short here in after referred to as "the IGST Act, 2017"). As per the provisions of Section 20 of the IGST Act, 2017, the provisions of CGST Act, 2017 relating to inter alia Input tax credit, Registration, tax invoice, account and records, payment of tax, inspection, search, seizure and arrest, Demands and recovery, offences and penalties etc shall, mutatis mutandis, apply, so far as may be, in relation to Integrated tax as they apply in relation to Central tax as if they are enacted under the IGST Act, 2017. Accordingly, in respect of any recovery, penalty and other demands related to IGST, the provisions of CGST Act, 2017 will be applicable.

5. Therefore, M/s. Villa Orchids LLP, situated at 2nd Floor, 5-4-187/3&4, Soham Mansion, M.G Road, Secunderabad, Telangana-500003, are required to Show Cause to the **Assistant/Deputy Commissioner of Central Tax, Secunderabad Division, Salike Senate, 1st Floor, D. No. 2-4-416 & 417, Ramgopalpet, MG Road, Secunderabad 500003** within thirty days (30) from the date of issue of this notice as to why: -

- i) an amount Rs.44,61,441/- (IGST: Rs.4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs.19,81,843/-) for irregular availment of input tax credit in GSTR-3B on comparison with ITC available in GSTR-2A for the FY 2019-20 as discussed in Para 2.1, should not be demanded from them under the provisions of Sub-Section (1) of Section 73 of the CGST Act, 2017 and SGST Act, 2017 read with Section 20 of IGST Act, 2017;
- ii) an amount of Rs.48,874/- (CGST: Rs.24,437/- & SGST: Rs.24,437/-) for short payment GST on comparison of liability declared in GSTR-9 and tax paid in GSTR-3B for FY 2019-20 as discussed in Para 2.2, should not be demanded from them under the provisions of Section 73(1) of the CGST Act, 2017 & TSGST Act, 2017;
- iii) an amount of Rs.23,044/- (CGST: Rs.11,180/- & SGST: Rs.11,864/-) for interest on delayed filing of GSTR-3B returns during the FY 2019-20 as discussed in Para 2.3, should not be demanded from them under the Section of 50(1) of CGST Act, 2017/SGST Act, 2017;
- iv) an amount of Rs.34,200/- (CGST: Rs.17,100/-, SGST: Rs.17,100/-) for late fee on delayed filing of GSTR-1 and GSTR-3B returns during FY 2019-20 as discussed in para 2.4, should not be demanded from them under the Section of 47 of CGST Act, 2017/SGST Act, 2017;
- v) an amount Rs.47,43,576/- (IGST: Rs.2,21,020, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-) for non-reversal of ITC for the FY 2019-20 as discussed in Para 2.5, should not be demanded from them under the provisions of sub section (1) of Section 73 of the CGST Act, 2017 & SGST Act, 2017 read with Section 20 of IGST Act, 2017;
- vi) Interest should not be demanded on the demand amounts mentioned at Sl.No.(i), (ii) & (v) under Section 50 of the CGST Act, 2017 / TSGST Act, 2017 read with Section 20 of IGST Act, 2017;
- vii) Penalty should not be imposed on the demand amounts mentioned at Sl.No.(i), (ii) & (v) in terms of provisions of Section 73(1) of CGST Act, 2017 / TSGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and also read with Section 20 of IGST Act, 2017;

6. Reply to SCN and Personal Hearing:

Tax payer have uploaded reply vide DRC-06 dt. 09.08.2024 in GST portal. Even the Tax payer have opted for Personal hearing vide DRC-06, they did not attend to Personal hearing posted on 27.06.2024, 05.08.2024 and 09.8.2024.

7. Discussions & Findings :

I have gone through the Show Cause Notice issued dated 16.05.2024 and Tax payer's reply (DRC 06) and merits on record. I have propose to adjudicate the case under the provisions of Section 73 CGST Act, 2017 and relevant provisions of SGST and IGST Act, 2017.



TRUE COPY

The issues to be taken up for discussion in this order is as follows:

- (i) Excess availment of ITC in GSTR-3B on comparison with credit available in GSTR-2A for FY 2019-20
- (ii) Short payment of GST on comparison of tax liability declared in GSTR-9 & GSTR-3B for FY 2019-20.
- (iii) Non-payment of interest on delayed filing of GSTR-3B Returns for FY 2019-20
- (iv) Nonpayment of Late Fee on delayed filing of GSTR-1 and GSTR-3B for FY 2019-20
- (v) Non reversal of ITC in accordance with provisions of Rule 42 and Rule 43 of CGST Rules, 2017 for FY 2019-20.

8.1: Excess availment of ITC in GSTR-3B on comparison with credit available in GSTR-2A for FY 2019-20 :

8.1.1 Show cause notice alleged that excess availment of ITC of Rs.44,61,441/- (IGST: Rs.4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs.19,81,843/-) was noticed on comparison of the Input Tax Credit availed in GSTR-3B and the ITC available in GSTR-2A for the period FY 2019-20. The details are furnished hereunder: -

(Amount in Rs.)

Excess availment of ITC as per the comparison between credit available in GSTR-2A and credit availed in GSTR-3B for the FY 2019-20									
FY	ITC availed per GSTR-3B for FY 2019-20			ITC available per GSTR-2A for FY 2019-20			Excess availed ITC		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
2019-20	708305	7219001	7219001	210550	5237158	5237158	497755	1981843	1981843

8.1.2 The said excess availment of ITC was irregular in terms of sub-section (2) (c) of Section 16 of the CGST Act, 2017, as the taxpayer has failed to ensure that the tax charged in respect of their input supplies has duly been credited to the Government by the suppliers. In view of the above, the excess availed ITC of Rs.44,61,441/- (IGST: Rs.4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs.19,81,843/-) which is not available in GSTR-2A returns is inadmissible interms of Section 16 and 41 of CGST Act, 2017

8.1.3 LEGAL PROVISIONS:

i) Section 16 of CGST Act 2017: —

"Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(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 a supplier registered under this Act, or such other tax paying documents as may be 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 or, as the case may be, services—

© 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 utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39;"

TRUE COPY

ii) 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 avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

iii) Rule-36 of CGST Rules, 2017: -

"(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

iv) Section 59 of CGST Act, 2017:

59. Self-assessment. — Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

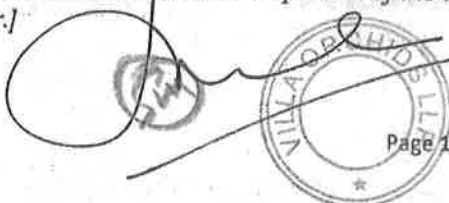
v) Section 73(1) of CGST Act, 2017: -

In terms of sub-section (1) of Section 73, Where it 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 for any reason, other than the 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 leviable under the provisions of this Act or the rules made thereunder.

vi). Section 50 of CGST Act 2017: -

(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.

[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

**TRUE COPY**

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty four per cent., as may be notified by the Government on the recommendations of the Council.

vii). **Section 122(2)(a) of CGST Act 2017: -**

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised, —

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

.” **Other Legal Provisions are discussed supra.**

8.1.4. DISCUSSIONS AND FINDINGS: The tax payer has in their reply at para 6(i) & 6(j) stated that there is no requirement to reconcile the invoices reflected in GSTR-2A with GSTR-3B due to amended Section 16 of CGST Act, 2017 vide section 100 of Finance Act, 2021 hence, there is no legal requirement to reverse the ITC during subject period. Further, stated that the mandate conditions of reflection of vendor invoices in GSTR-2A inserted vide Rule 36(4) is with effective from 09.10.2019 only and the deny is in correct for the subject period of demand.

The taxpayer can ascertain electronically in common portal with Auto drafted GSTR-2A whether the suppliers had paid tax on the inward supplies. The details of outward supplies declared by the suppliers in their respective GSTR-1 returns are shared with the respective recipient of goods or services or both, electronically through common portal in the form GSTR-2A (Rule 60 of the CGST Rules, 2017), for respective tax periods. The GSTR-2A provides the details of invoices furnished by the suppliers and GSTR-3B return filing status of the suppliers. **The non-reflection of invoices in GSTR-2A indicates that the tax on the same has not been paid by the supplier. The conditions for availing input tax credit paid by the taxpayer have been prescribed under Section 16 of the CGST Act, 2017 and it is prescribed under Section 16(2)(C) of CGST Act, 2017 that before taking the input tax credit into the credit ledger, provisionally, as prescribed under Section 41 of the CGST Act, 2017, the taxpayer shall make sure that the tax amount mentioned in the tax invoice is actually been credited to the Government account.**

In terms of amended rule 36(4) of CGST Rules avilment of ITC related to non-reflected invoices in GSTR-2A to the tune of 20%, 10% and 5%, as the case may be, during the period from 09.10.2019 onwards also, **subject to certain terms and conditions**, as per section 16(2)(c) of the CGST Act, 2017 in respect of invoices/supplies that were not reported by the concerned suppliers in their FORM GSTR-1

Therefore, in terms of the provisions of Section 16(2) (c) of CGST Act, 2017 and Rule 36(1)(b) of CGST Rules, 2017, to avail input tax credit against invoices being in possession of a recipient of supply, it is also mandatory that the tax mentioned in the said invoice therein is paid. Thus, the ITC availed by a recipient is subject to payment of tax by the supplier in terms of the provisions of Section 39 of CGST Act, 2017 read with Rule 61 of CGST Rules, 2017.

From the foregoing facts of the case and statutory provisions it appears that the taxpayer had failed to ensure that the tax charged in respect of their input supplies had duly been credited to the Government by their suppliers as envisaged in Section 16(2) (c) of CGST Act, 2017 either by way of getting the details of outward supplies uploaded

Page 11 of 22

TRUE COPY

by their suppliers in their GSTR-1 returns which in turn would appear in the taxpayer's auto-populated GSTR-2A statement for the relevant period or by furnishing irrefutable evidence to the effect that the supplier had in fact paid the applicable taxes to the Government on the said input supplies by furnishing the suppliers' GSTR-3B returns for the relevant period. This had led to contravention of Section 41 of CGST Act, 2017 according to which the excess availed input tax credit on which tax has not been paid by the supplier liable to be recovered along with applicable interest.

In view of above, it appears that the taxpayer had availed excess ITC to the tune of Rs.44,61,441/- (IGST: Rs.4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs.19,81,843/-) for the period FY 2019-20 is in contravention of provisions of Section 16 and 41 of CGST Act, 2017 read with Rule 36 of CGST Rules, 2017.

Hence the wrongly availed ITC of Rs.44,61,441/- (IGST: Rs.4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs.19,81,843/-) against the provisions of Section 16 & 41 of CGST Act, 2017 read with Rule 36 of CGST Rules, 2017, is irregular and the same is required to be recovered in terms of Section 73(1) of CGST Act, 2017, along with interest under Section 50 (3) of CGST Act, 2017.

Further, it appears that the taxpayer has deliberately availed input tax credit during the F.Y. 2019-20 in contravention of the provisions of Section 16 (2) (c) 41 of CGST Act, 2017 read with Rule 36 of CGST Rules, 2017, and mis-stated the eligible input tax credit in their Electronic credit ledger and GSTR-3 B during the period F.Y. 2019-20 towards the above ineligible input tax credit on the said inputs/input services with intention to evade payment of GST in cash, it appears the tax payer is liable for penal action in terms of Section 73 (9) of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and SGST Act, 2017.

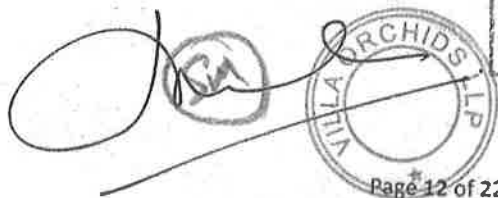
8.2. ISSUE-2: Short payment of GST on comparison of tax liability declared in GSTR-9 & GSTR-3B for FY 2019-20.

8.2.1 it is observed there is a short payment of tax due differential liability declared in GSTR-9 and GSTR-3B for the FY 2019-20 to the tune of Rs.48,874/- (CGST: Rs.24,437/- & SGST: Rs.24,437/-). The details of short payment are mentioned hereunder: -

Amt. in Rs.

Short payment of GST on comparison of tax liability declared in GSTR-9 and GSTR-3B for FY 2019-20					
Tax liability as declared in table 4 of GSTR-9		Tax paid in GSTR-3B		Difference	
CGST: Rs. 9845849/-	SGST: Rs. 9845849/-	CGST: Rs.9821413/-	SGST: Rs. 9821413/-	CGST: Rs.24437/-	SGST: Rs.24437/-

8.2.2. In view of the above, it appears that the taxpayer has not followed the procedure prescribed in Section 37, Section 39 and Section 59 of CGST Act, 2017 and failed to submitted details of nature of outward supplies towards the differential value of supplies. Therefore, it appears that the taxpayer is liable to pay GST of Rs.48,874/- (CGST: Rs.24,437/- & SGST: Rs.24,437/-) along with applicable interest under Section 50 (1) of CGST Act, 2017 and penalty under Section 122(2)(a) read with Section 73 (9) of CGST Act, 2017/SGST Act, 2017 read with Section 20 of IGST Act, 2017.



TRUE COPY

8.2.3: LEGAL PROVISIONS:**i) Section 39 of CGST Act, 2017:****Furnishing of returns**

(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part CHAPTER IX RETURNS 70 thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed: Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein.

(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

ii) Section 44 of CGST Act, 2017:**Annual return.**

Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:

iii) Section 59 of CGST Act, 2017:

59. Self-assessment. — Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

8.2.4. Other Legal Provisions

i) **Section 73(1) of CGST Act, 2017:** -In terms of sub-section (1) of Section 73, Where it 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 for any reason, other than the 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 leviable under the provisions of this Act or the rules made thereunder.

ii). Section 50 of CGST Act, 2017: -

(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.

[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty four per cent., as may be notified by the Government on the recommendations of the Council.

iii). Section 122(2)(a) of CGST Act 2017: -

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised, —

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

8.2.5. DISCUSSIONS AND FINDINGS: The tax payer has in their reply at para 8 & 9 furnished break up of short liability on reconciliation arrived is due to

i) short payment of tax Rs. 18,274/- (CGST:9137/- + SGST:9137/-) and

ii) interest amount of Rs. 48,874 (CGST: 24437/- + SGST: 24437/-).

However the taxpayer have not produced any proof for discharge such short liability declared and not produced any evidence towards the Interest amount received. Hence the submissions made by the Tax payer are not acceptable.

In view of the above legal position prescribed in Section 37, Section 39 and Section 59 of CGST Act, 2017 the taxpayer has not followed the procedure and failed to submit the evidence and details of nature of supplies towards the differential value of supplies. Therefore, it appears that the liable tax of GST of Rs.48,874/- (CGST: Rs.24,437/- & SGST: Rs.24,437/-) is recoverable under Section 73(1) of CGST Act, 2017 along with applicable interest under Section 50(1) of CGST Act, 2017 and penalty under Section 122(2)(a) read with Section 73(9) of CGST Act, 2017/SGST Act, 2017 read with Section 20 of IGST Act, 2017.

8.3. Non-payment of interest on delayed filing of GSTR-3B returns:

8.3.1. Show cause notice alleged that the taxpayer had filed GSTR-3B returns belatedly for the month of October, 2019 and March, 2019, but the taxpayer has short paid interest on cash portion of tax paid which arouse out of late filing of GSTR-3B. The details of delayed filing of GSTR-3B returns and interest payable are given below:

(Amount in Rs.)

GSTR-3B Month	Due date of filing	Actual date of filing	No of days delayed	Amt paid in cash	Rate of interest	Amt of Interest liability
October-2019	20-11-2019	25-01-2020	66	6,34,224	18%	20,643
March-2019	05-05-2020	16-07-2020	72	2,41,156	18%	8,563
Total						29,206/-
Interest Already paid						6162/-
Interest amount to be paid						23044/-

TRUE COPY

8.3.2. Legal provisions**i). Section 50 (1) of CGST Act 2017:-**

(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.

[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said

period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

ii). Whereas in terms of Section 39(1) of CGST Act, 2017 "Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part CHAPTER IX RETURNS 70 thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed."

iii). Further, in terms of Section 39(7) of CGST Act, 2017 "Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return. In terms of Section 59 of CGST Act, 2017, "Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39".

8.3.3. DISCUSSIONS AND FINDINGS: Tax payer in their reply at para 11, furnished that

- i) the demand of Interest for the month of March, 2019 is not sustainable since the said period does not cover under notice period i.e F.Y. 2019-20.
- ii) and they are not liable to pay the balance demand amount of Rs. 14,381/-

with reference to point no (i) above, it is pertinent to mention that the Period of demand is a typographical error. Instead of March, 2020 it was typed as March, 2019. It is my be observed that demand issuing authority have correctly mentioned the due date of filing of GSTR-3B for the month of March, 2020 as 05.05.2020. Hence the demand is within the limitations of notice period.

with reference to point no (ii) the tax payer have not furnished valid reason for their non-liability of payment of interest demanded.

8.3.4. From the above clarification and in view of the legal provisions, the taxpayer has contravened the provisions of Section 39 of CGST Act, by not paying the liable interest in cash of Rs.23,044/- (CGST: Rs.11,180/- & SGST: Rs.11,864/-) under section 50 of CGST Act, 2017. Hence the same is required to be recovered from the taxpayer in terms of Section 50 of CGST Act, 2017.

8.4. Non payment of Late Fee on delayed filing of GSTR-1 and GSTR-3B for FY 2019-20:

8.4.1. Show cause notice alleged that the taxpayer had short paid late fee for delayed filing of GSTR-1 and GSTR-3B returns. The details are furnished below:



TRUE COPY

GSTR -1 late filing details

	Due date of filing	Actual date of	No of days delayed	Late fee liability
Apr-19	11-05-	20-05-	9	450
May-19	11-06-	10-06-	0	0
Jun-19	11-07-	09-07-	0	0
Jul-19	11-08-	12-08-	1	50
Aug-19	11-09-	10-09-	0	0
Sep-19	11-10-	07-10-	0	0
Oct-19	11-11-	12-11-	1	50
Nov-19	11-12-	25-01-	0	0
Dec-19	11-01-	27-02-	47	2350
Jan-20	11-02-	24-06-	134	6700
Feb-20	11-03-	24-06-	105	5250
Mar-20	11-04-	25-08-	136	6800
	Total			21650

GSTR -3B late filing details

	Due date of filing	Actual date of filing	No of days delayed	Late fee liability
Apr-19	20-05-2019	20-05-2019	0	0
May-19	20-06-2019	20-06-2019	0	0
Jun-19	20-07-2019	20-07-2019	0	0
Jul-19	22-08-2019	27-08-2019	5	250
Aug-19	20-09-2019	18-09-2019	0	0
Sep-19	20-10-2019	21-10-2019	1	50
Oct-19	20-11-2019	25-01-2020	66	3300
Nov-19	23-12-2019	28-01-2020	36	1800
Dec-19	20-01-2020	04-03-2020	44	2200
Jan-20	22-02-2020	24-06-2020	123	6150
Feb-20	22-03-2020	24-06-2020	94	4700
Mar-20	22-04-2020	16-07-2020	85	4250
	Total			22700
	Total	CGST	SGST	
Total late fee payable	44350	22175	22175	
Late fee paid	10150	5075	5075	
Balance Late fee Payable	34200	17100	17100	

8.4.2. Legal provisions

37. Furnishing details of outward supplies.— (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

Section 39. Furnishing of returns.— (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or

part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof

Sections 47. Levy of late fee.— (1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees. (2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory

8.4.3. DISCUSSIONS AND FINDINGS; Tax payer at para 13 of their reply has submitted that they are not liable to pay the demand late fee and not provided any reasons or legal authority to substantiate their reply.

Therefore in view of the above legal provisions, the taxpayer is liable to pay latefee in cash for delayed filing of GSTR-1 and GSTR-3B for so much of time arrived in demand notice in terms of provisions of Section 47 of CGST Act, 2017 read with Section 37 and Section 39 of CGST Act, 2017 and SGST Act, 2017. However the late fee calculated in demand notice is erred by not applying condition under Section 47(1) i.e. "during which such failure continues subject to a maximum amount of five thousand rupees" Hence the liable late fee is re-calculated and arrived as follows:

Amt. In Rs.									
Late to be paid due to late filing of GSTR-1		Late to be paid due to late filing of GSTR-3B		Total of late due for payment		Late fee already paid during the period under consideration		Balance amount due for payment	
CGST	SGST	CGST	SGST	CGST	SGST	CGST	SGST	CGST	SGST
8950	8950	10775	10775	19725	19725	5275	5275	14450	14450

From the above table, the Tax payer is liable to pay the late fee of Rs. 28,900/- (CGST: 14450/- + SGST: 14450/-) (as revised above) in terms of provisions of Section 47 of CGST Act, 2017 read with Section 37 and Section 39 of CGST Act, 2017 and SGST Act, 2017.

8.5. Non reversal of ITC in accordance with provisions of Rule 42 and Rule 43 of CGST Rules, 2017 for FY 2019-20.

8.5.1 Show cause notice alleged that the taxpayer has declared Nil rated /exempted supplies in GSTR-1 and GSTR-3B filed for FY 2019-20, but have not reversed proportionate ITC as per Section 17(2) of CGST Act, 2017 read with Rule 42 of CGST Rules, 2017 as detailed below:

1. Taxable Value as per Table 3.1 (c) of GSTR-3B	49636965
2. Taxable Value as per Table 3.1(Total) of GSTR-3B	159072319
3. ITC as per Table 4A of GSTR-3B or 6A of GSTR-9	15201809
4. Amount to be reversed $\{(1/2)*3\}$	4743576.167
Liability	Rs.47,43,576/- (IGST: Rs.2,21,020/-, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-)

TRUE COPY

8.5.2 In view of the above, it appears that the taxpayer is liable to reverse the ITC of Rs.47,43,576/- (IGST: Rs.2,21,020/-, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-) for the FY 2019-20 as per Section 17(2) of CGST Act, 2017 read with Rule 42 and Rule 43 of CGST Rules, 2017.

8.5.3. Legal provisions

i). Section 17 - Apportionment of credit and blocked credits: -

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

ii). Rule 42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof. -

(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely, -

(a) the total input tax involved on inputs and input services in a tax period, be denoted as ***T***;

(b) the amount of input tax, out of ***T***, attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as ***T1***;

(c) the amount of input tax, out of ***T***, attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as ***T2***;

(d) the amount of input tax, out of ***T***, in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as ***T3***;

(e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as ***C1*** and calculated as

$$C1 = T - (T1 + T2 + T3);$$

(f) the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as ***T4***;

[Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of ***T4*** shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.]

(g) ***T1***, ***T2***, ***T3*** and ***T4*** shall be determined and declared by the registered person at the invoice level in FORM GSTR-2 [and at summary level in FORM GSTR-3B];

(h) input tax credit left after attribution of input tax credit under clause [(f)] 75 shall be called common credit, be denoted as ***C2*** and calculated as

TRUE COPY

$$C2 = C1 - T4;$$

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as $_D1'$ and calculated as

$$D1 = (E \div F) \times C2$$

where, $_$

E' is the aggregate value of exempt supplies during the tax period, and $_$

F' is the total turnover in the State of the registered person during the tax period:

[Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of $_E/F'$ for a tax period shall be calculated for each project separately, taking value of E and F as under:-

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F = aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier;

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of $_E'$ in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended.]

[Provided further] 77 that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of $_E/F'$ shall be calculated by taking values of $_E'$ and $_F'$ of the last tax period for which the

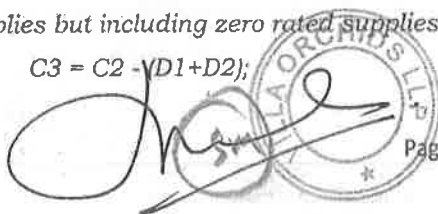
details of such turnover are available, previous to the month during which the said value of $_E/F'$ is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A] 78 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as $_D2'$, and shall be equal to five per cent. of $C2$; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as $_C3'$, where,-

$$C3 = C2 - (D1 + D2);$$



TRUE COPY

[(l) the amount _C3_, _D1' and _D2' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03;]

(m) the amount equal to aggregate of _D1' and _D2' shall be [reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03;]

Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in _T1' and _T2' respectively, and the remaining amount of credit on such inputs or input services shall be included in _T4'.

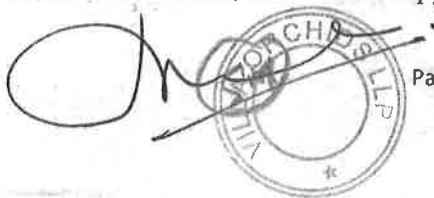
8.5.4. DISCUSSIONS AND FINDINGS: Tax payer, at para No. 14 of their reply mentioned that- rule 42 is not required for non-GST and exempt supplies and the notice is erroneous while examining the nature of supplies as declared in GSTR-3B for the purpose of reversal of proportionate ITC under Rule 42 and 43 of CGST Rules, 2017. However, the tax payer have failed to produce the relied proof of documents towards their nature of supplies as quantified at para 16 of their reply. Without concrete evidence the demand notice can't be judged as erroneous in quantifying the demand amount.

In view of the above, it appears that the taxpayer has not followed the procedure prescribed in Section 17(2) of CGST Act, 2017 read with Rule 42 of CGST Rules, 2017. Therefore, tax payer has contravened the provision of Section 17(2) of CGST Act, 2017 read with Rule 42 of CGST Rules, 2017. Hence, the taxpayer is liable to reverse the ITC of Rs.47,43,576/- (IGST: Rs.2,21,020, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-) along with applicable interest under Section 50 of CGST Act, 2017. Since the tax payer has failed reverse the as much as of proportionate ITC as calculated under Rule 42 of CGST Rules, 2017 read with Section 17(2) the same is liable to be recovered under Section 73(1) of CGST Act, 2017 along with interest applicable under Section 50 (1) of CGST Act, 2017 and penalty under Section 122(2)(a) read with Section 73 (9) of CGST Act, 2017 & SGST Act, 2017 read with Section 20 of IGST Act, 2017.

9. For the administration and collection of State Goods and Services tax in respect of Telangana State, Act was in operation in respect of Jurisdiction of Telangana state. This Act is titled as "The Telangana Goods and Services Act, 2017" (for short here in after referred to as "the TGST Act, 2017") and it contains the provisions exactly similar to the CGST Act, 2017 as referred above. Since, it is only repetition; the provisions of the TGST Act, 2017 are not reproduced in this notice.

9.1. Further, as per Section 6(1) of the TSGST Act, 2017, the Officers appointed under CGST Act, 2017 are authorized to be proper officers for the purposes of the said Act.

9.2. For the administration and collection of the Integrated Goods and Services Tax (IGST), an Act was in operation which is titled as "The Integrated Goods and Services Tax Act, 2017" (for short here in after referred to as "the IGST Act, 2017"). As per the provisions of Section 20 of the IGST Act, 2017, the provisions of CGST Act, 2017 relating to inter alia Input tax credit, Registration, tax invoice, account and records, payment of tax, inspection, search, seizure and arrest, Demands and recovery, offences and penalties etc shall, mutatis mutandis, apply, so far as may be, in relation to Integrated tax as they apply in relation to Central tax as if they are enacted under the IGST Act, 2017. Accordingly, in respect of any recovery, penalty and other demands related to IGST, the provisions of CGST Act, 2017 will be applicable.



10. In view of the foregoing discussions and findings, in terms of provisions of Section 73 of CGST Act, 2017 having regard to the facts and circumstances of the case, I pass the following order:

ORDER

- (i) I Confirm the demand of **Rs.44,61,441/-** (IGST: **Rs.4,97,755/-** CGST: **Rs.19,81,843/-** & **SGST: Rs.19,81,843/-**) for irregular availment of input tax credit in GSTR-3B on comparison with ITC available in GSTR-2A for the FY 2019-20 as discussed in Para 8.1, under the provisions of sub section (1) of Section 73 of the CGST Act, 2017 and SGST Act, 2017 read with Section 20 of IGST Act, 2017;
- (ii) I Confirm the demand of **Rs.48,874/-** (CGST: **Rs.24,437/-** & **SGST: Rs.24,437/-**) for short payment GST on comparison of liability declared in GSTR-9 and tax paid in GSTR-3B for FY 2019-20 as discussed in Para 8.2, under the provisions of Section 73(9) of the CGST Act, 2017 & TSGST Act, 2017;
- (iii) I confirm the demand of **Rs.23,044/-** (CGST: **Rs.11,180/-** & **SGST: Rs.11,864/-**) towards interest on delayed filing of GSTR-3B returns during the FY 2019-20 as discussed in Para 8.3, under the Section of 50(1) of CGST Act, 2017/SGST Act, 2017 read with Section 20 of IGST Act, 2017;
- (iv) Ordered for payment of **Rs.28,900/-** (CGST: **Rs.14,450/-**, **SGST: Rs.14,450/-**) towards late fee (re-calculated) on delayed filing of GSTR-1 and GSTR-3B returns during FY 2019-20 as discussed in para 8.4, under the Section 47 of CGST Act, 2017/SGST Act, 2017;
- (v) I confirm the demand of **Rs.47,43,576/-** (IGST: **Rs.2,21,020**, **CGST: Rs.22,61,278/-** & **SGST: Rs.22,61,278/-**) for non-reversal of ITC for the FY 2019-20 as discussed in Para 8.5, under the provisions of sub section (1) of Section 73 of the CGST Act, 2017 & SGST Act, 2017 read with Section 20 of IGST Act, 2017.
- (vi) Confirmed the interest on the demand amounts mentioned at Sl.No.(i), (ii) & (v) under Section 50 of the CGST Act, 2017/ TSGST Act, 2017 read with Section 20 of IGST Act, 2017;
- (vii) Imposed penalty on the demand amounts mentioned at Sl.No.(i), (ii) (iii) & (v) in terms of provisions of Section 73(1) of CGST Act, 2017 / TSGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and also read with Section 20 of IGST Act, 2017.

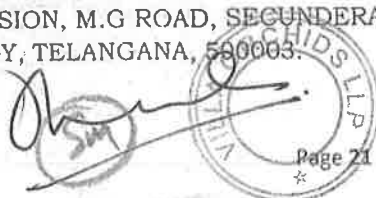
02.10.2024

31.12.2024
29.08.2024

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

To
M/S. VILLA ORCHIDS LLP,
36AANFG4817C1ZH,
2ND FLOOR, 5-4-187/3 & 4,
SOHAM MANSION, M.G ROAD, SECUNDERABAD,
RANGAREDDY, TELANGANA, 500003.

TRUE COPY



Copy submitted to: The Commissioner of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, Opp. L.B.Stadium, Hyderabad (Attention: Superintendent, (Review)).

Copy to: The Superintendent of Central Tax, Ramgopalpet-III GST Range, Secunderabad GST Division- For information please.



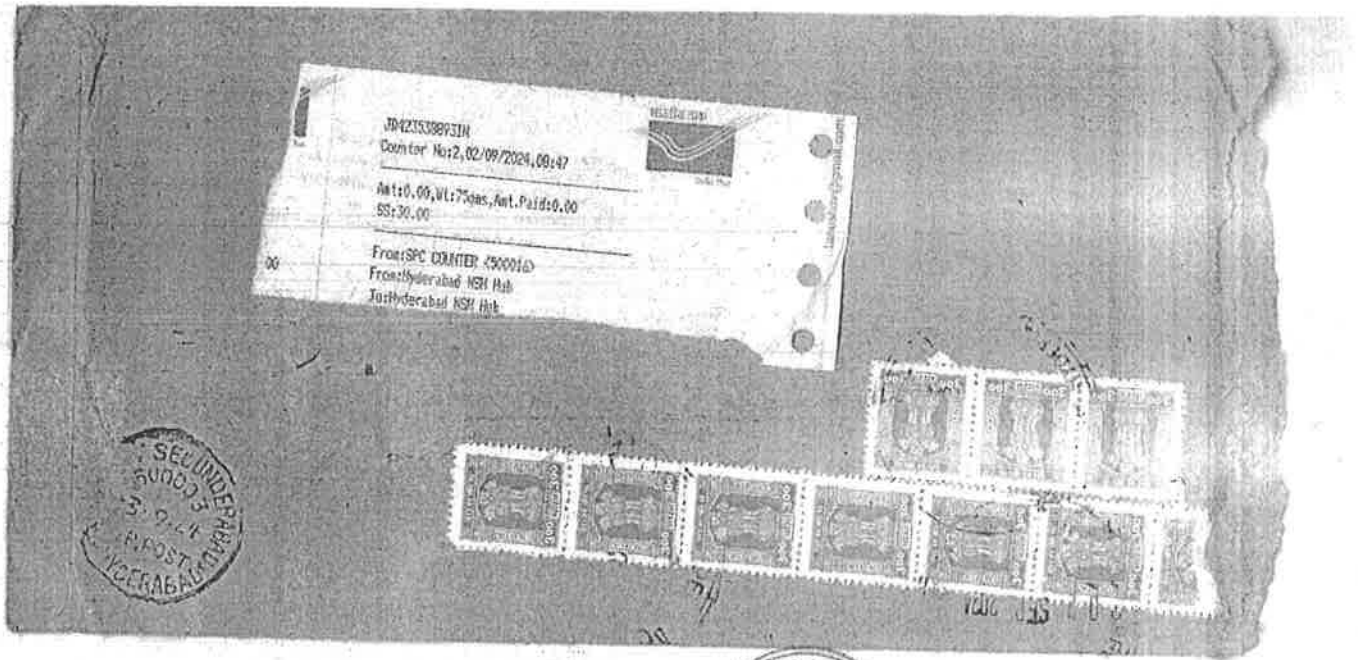
POST

भारत सरकार सेवार्थ
ON INDIA GOVERNMENT SERVICE



Office of the
सहायक/उप आयुक्त का कार्यालय
Asst./Dy. Commissioner
केन्द्रीय कर/Central Tax
सिकन्दराबाद एम.जी. रोड मण्डल
Secunderabad Division
सिकन्दराबाद एम.जी. रोड आयुक्तालय
Secunderabad G.O. Commissionerate
"सलीक सीनेट" # 2-4-416 & 417
"SALIK SENATE" # 2-4-416 & 417
रामगोपालपेट, एम.जी. रोड
Ramgopalpet, M.G. Road,
सिकन्दराबाद/Secunderabad-500 003.





FORM GST DRC - 01

[See rule 100(2) & 142(1)(a)]

Reference No. - ZD360624036653B

Date - 14-06-2024

To

GSTIN/ID: 36AANFG4817C1ZH

Name: VILLA ORCHIDS LLP

Address : 5-4-187/3 AND 4, 2ND FLOOR, SOHAM MANSION, M.G ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003

Tax Period : APR 2019 - MAR 2020

F.Y.- 2019-2020

Act/ Rules Provisions - CGST ACT,2017

Section / sub-section under which SCN is being issued - 73

Summary of Show Cause Notice

(a) Brief Fact of the Case : SCRUTINY OF GST Returns

(b) Grounds : SCRUTINY OF GST Returns

(c) Tax and other dues :

(Amount in Rs.)

Sr. No.	Tax Rate (%)	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
1	0	0.00	APR 2019	MAR 2020	IGST	Telangana	7,18,775.00	0.00	0.00	0.00	0.00	7,18,775.00
2	0	0.00	APR	MAR	CGST	NA	42,95,838.	0.00	0.00	0.00	0.00	42,95,838.00

			2019	2020			00						
3	0	0.00	APR 2019	MAR 2020	SGST	NA	42,96,522.00	0.00	0.00	0.00	0.00	42,96,522.00	
Total							93,11,135.00	0.00	0.00	0.00	0.00	93,11,135.00	

Show Cause Notice is attached.

Supporting documents attached by officer:

scn villa orchids llp pdf.pdf : 06/2023-24

Details of personal hearing and due date to file reply:

Sr. No.	Description	Particulars
1	Date by which reply has to be submitted	17-06-2024
2	Date of personal hearing	NA
3	Time of personal hearing	NA
4	Venue where personal hearing will be held	NA

Signature

Name: Satyanarayana Ravula

Designation: Assistant Commissioner

Jurisdiction: SECUNDERABAD:SECUNDERABAD:HYDERABAD



**NATION
TAX
MARKET**



केन्द्रीयकरसहायक आयुक्त कार्यालय,सिकंदराबादमालाएवमसेवाकरमण्डल, सिकंदराबाद।

**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.secdlv@gov.in

C. No.GEXCOM/AD.JN/GST/1468/2024-CGST DIV-SNBD-COMMRTE-SEC'DAD
DIN: 20240556YO000000BEDO

Date:16.05.2024

SHOW CAUSE NOTICE No.06/2024-25

Sub: GST – Scrutiny of GST Returns for FY 2019-20 in respect of
M/s.Villa Orchids LLP. bearing GSTIN No. 36AANFG4817C1ZH
-Issuance of Show Cause Notice under section 73 of CGST
Act, 2017-reg.

M/s.Villa Orchids LLP (here-in-after referred to as "Taxpayer"), situated at 2nd Floor, 5-4-187/3&4, Soham Mansion, M.G Road, Secunderabad, Telangana-500003, are engaged in Service Provision, Works Contract Services, Construction services of single dwelling or multi dwelling or multi-storied residential buildings, Real Estate Agents, Construction of Res. Complex, falling under the HSN 995411, 00440104, 00440334 and 00440410. The taxpayer is registered with the Central GST Department with GSTIN: **36AANFG4817C1ZH** for the purpose of payment of GST and falls under the jurisdiction of Ramgopalpet-III CGST Range, Secunderabad GST Division, Secunderabad GST Commissionerate.

2. On scrutiny of the returns filed by M/s. VILLA ORCHIDS LLP. for the FY 2019-20, certain discrepancies were noticed. The intimation of the same was given to the tax payer by issuance of FORM GST-ASMT-10 vide Reference No. ZU360523050702D dated 27.02.2024 and issuance of DRC-01A vide DIN: 2024056YO000052045A dated. 02.04.2024. The details of the discrepancies are as follows:

2.1. ISSUE-1: Excess availment of ITC in GSTR-3B on comparison with credit available in GSTR-2A for FY 2019-20.

2.1.1 On comparison of the Input Tax Credit availed in GSTR-3B and the ITC available in GSTR-2A for the period FY 2019-20, it was noticed that there was an excess availment of ITC to the tune of **Rs.44,61,441/- (IGST: Rs.4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs.19,81,843/-)**. The said excess availment of ITC was irregular in terms of sub-section (2)(c) of Section 16 of the CGST Act, 2017, as the taxpayer has failed to ensure that the tax charged in respect of their

OC
NO
307/24

input supplies has duly been credited to the Government by their suppliers. The details of excess availment of ITC are furnished hereunder: -

Excess availment of ITC as per the comparison between credit available in GTR-2A and credit availed in GSTR-3B for the FY 2019-20									
FY	ITC availed per GSTR-3B for FY 2019-20			ITC available per GSTR-2A for FY 2019-20			Excess availed ITC		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
2019-20	708305	7219001	7219001	210550	5237158	5237158	497755	1981843	1981843

2.1.2. In view of the above, it is found that the taxpayer has availed excess ITC of **Rs.44,61,441/-** (IGST: **Rs.4,97,755/-** CGST: **Rs.19,81,843/-** & SGST: **Rs.19,81,843/-**). in the FY 2019-20 which is not available in GSTR-2A returns which is inadmissible as per Section 16 and 41 of CGST Act, 2017.

2.1.3. LEGAL PROVISIONS:

i) Section 16 of CGST Act 2017: —

*"Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him **which are used or intended to be used** in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*

(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 a supplier registered under this Act, or such other tax paying documents as may be 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 or, as the case may be, services—

*(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;"

ii) 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 avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

iii) **Rule-36 of CGST Rules,2017: -**

"(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."

Other Legal Provisions

i) **Section 73(1) of CGST Act,2017: -**

In terms of sub-section (1) of Section 73, Where it 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 for any reason, other than the 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 leviable under the provisions of this Act or the rules made thereunder.

ii). **Section 50 of CGST Act 2017: -**

(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.

[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty four per cent., as may be notified by the Government on the recommendations of the Council.

iii). Section 122(2)(a) of CGST Act 2017: -

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised, —

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

2.1.4. From the foregoing facts of the case and statutory provisions it appears that the taxpayer had failed to ensure that the tax charged in respect of their input supplies had duly been credited to the Government by their suppliers as envisaged in Section 16(2)(c) of CGST Act, 2017 either by way of getting the details of outward supplies uploaded by their suppliers in their GSTR-1 returns which in turn would appear in the taxpayer's auto-populated GSTR-2A statement for the relevant period or by furnishing irrefutable evidence to the effect that the supplier had in fact paid the applicable taxes to the Government on the said input supplies by furnishing the suppliers' GSTR-3B returns for the relevant period. This had led to contravention of Section 41 of CGST Act, 2017 according to which the excess availed input tax credit on which tax has not been paid by the supplier shall be reversed along with applicable interest and the taxpayer in the instant case has miserably failed to do so.

2.1.5. As discussed above, in terms of the provisions of Section 16(2)(c) of CGST Act, 2017 and Rule 36(1)(b) of CGST Rules, 2017, to avail input tax credit against invoices being in possession of a recipient of supply, it is also mandatory that the tax mentioned in the said invoice therein is paid. Thus, the ITC availed by a recipient is subject to payment of tax by the supplier in terms of the provisions of Section 39 of CGST Act, 2017 read with Rule 61 of CGST Rules, 2017.

2.1.6. In view of above, it appears that the taxpayer had irregularly availed excess ITC (difference between GSTR-3B and 2A Auto populated statement) to the tune of **Rs.44,61,441/- (IGST: Rs.4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs.19,81,843/-)** for the period FY 2019-20 contravening Section 16 and 41 of CGST Act, 2017 read with Rule 36 of CGST Rules, 2017.

2.1.7. Since the taxpayer has wrongly availed and utilized the excess ITC of **Rs.44,61,441/- (IGST: Rs.4,97,755/- CGST: Rs.19,81,843/- & SGST:**

Rs.19,81,843/-). against the provisions of Section 16 & 41 of CGST Act, 2017 read with Rule 36 of CGST Rules, 2017, the same is required to be recovered from the taxpayer in terms of Section 73(1) of CGST Act, 2017, along with interest in terms of Section 50 of CGST Act, 2017. Further, it appears they are liable for penal action in terms of Section 73 of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and SGST Act, 2017 & Section 20 of IGST Act, 2017.

2.1.8. The said observation was communicated to the taxpayer by issuance of FORM GST-ASMT-10 with Reference No. ZU360523050702D dated 27.02.2024 and issuance of DRC-01A vide DIN.2024056YO000052045A dated.02.04.2024. The taxpayer has not made any submissions in response to the said FORM GST DRC-01A.

2.2. ISSUE-2: Short payment of GST on comparison of tax liability declared in GSTR-9 & GSTR-3B for FY 2019-20.

2.2.1 On comparison of tax liability declared in GSTR-9 and GSTR-3B for the FY 2019-20, it is observed that there is a short payment of tax amount to the tune of Rs.48,874/- (CGST: Rs.24,437/- & SGST: Rs.24,437/-). The details of short payment are mentioned hereunder: -

(in Rs.) (numbers are rounded off)

Short payment of GST on comparison of tax liability declared in GSTR-9 and GSTR-3B for FY 2019-20					
Tax liability as declared in table 4 of GSTR-9		Tax paid in GSTR-3B		Difference	
CGST: Rs. 9845849/-	SGST: Rs. 9845849/-	CGST: Rs.9821413/-	SGST: Rs. 9821413/-	CGST: Rs.24437/-	SGST: Rs.24437/-

2.2.2. In view of the above, it appears that the taxpayer has not followed the procedure prescribed in Section 37, Section 39 and Section 59 of CGST Act, 2017. Therefore, it appears that the taxpayer is liable to pay GST of Rs.48,874/- (CGST: Rs.24,437/- & SGST: Rs.24,437/-) along with applicable interest under Section 50 of CGST Act, 2017 and penalty under Section 122(2)(a) read with Section 73 of CGST Act, 2017/SGST Act, 2017 read with Section 20 of IGST Act, 2017.

2.2.3. The said observation was communicated to the tax payer by issuance of FORM GST-ASMT-10 with Reference No. ZU360523050702D dated 27.02.2024 and issuance of DRC-01A vide DIN.2024056YO000052045A dated.02.04.2024. The taxpayer has not made any submissions in response to the said FORM GST DRC-01A.

2.3. ISSUE-3: Non-payment of interest on delayed filing of GSTR-3B Returns for FY 2019-20:

2.3.1. During the course of scrutiny of returns, it was noticed that the taxpayer had filed the GSTR-3B returns for the following months belatedly. The

taxpayer has paid the tax amount and filed the returns but not paid the interest on cash portion of tax paid under Section 50 of CGST Act, 2017. The details of delayed filing of GSTR-3B returns and non-payment of interest are given below:

GSTR-3B Month	Due date of filing	Actual date of filing	No of days delayed	Amt paid in cash	Rate of interest	Amt of Interest Liability
October-2019	20-11-2019	25-01-2020	66	6,34,224	18%	20,643
March-2019	05-05-2020	16-07-2020	72	2,41,156	18%	8,563
Total						29,206/-
Interest Already paid						6162/-
Interest amount to be paid						23044/-

2.3.2. Legal provisions

i). Section 50 (1) of CGST Act 2017:-

(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.

[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

ii). Whereas in terms of Section 39(1) of CGST Act, 2017 "Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part CHAPTER IX RETURNS 70 thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed."

iii). Further, in terms of Section 39(7) of CGST Act, 2017 "Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return. In terms of Section 59 of CGST Act, 2017, "Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39".

2.3.3. In view of the above, the taxpayer is liable to pay interest in cash of **Rs.23,044/-** (CGST: Rs.11,180/- & SGST: Rs.11,864/-) under section 50 as applicable under the provisions of CGST Act, 2017 and SGST Act, 2017.

2.3.4. The said observation was communicated to the taxpayer vide FORM GST-ASMT-10 vide Reference No. ZU360523050702D dated 27.02.2024. The taxpayer has not made any submissions. Hence, FORM GST DRC-01A vide DIN.2024056YO000052045A dated.02.04.2024 was issued to the taxpayer under the provisions of Section 73 of CGST Act, 2017 read with Rule 142(1A) of CGST Rules, 2017. The taxpayer has not made any submissions in response to the said FORM GST DRC-01A.

2.4. ISSUE-4: Nonpayment of Late Fee on delayed filing of GSTR-1 and GSTR-3B for FY 2019-20:

2.4.1. During the course of scrutiny of returns, it was noticed that the taxpayer had not paid late fee for delayed filing of GSTR-I and GSTR-3B returns. The details of delayed filing of GSTR-3B, GSTR-1 returns and non-payment of late fee are given below:

GSTR -1 late filing details

	Due date of filing	Actual date of filing	No of days delayed	Late fee liability
Apr-19	11-05-2019	20-05-2019	9	450
May-19	11-06-2019	10-06-2019	0	0
Jun-19	11-07-2019	09-07-2019	0	0
Jul-19	11-08-2019	12-08-2019	1	50
Aug-19	11-09-2019	10-09-2019	0	0
Sep-19	11-10-2019	07-10-2019	0	0
Oct-19	11-11-2019	12-11-2019	1	50
Nov-19	11-12-2019	25-01-2020	0	0
Dec-19	11-01-2020	27-02-2020	47	2350
Jan-20	11-02-2020	24-06-2020	134	6700
Feb-20	11-03-2020	24-06-2020	105	5250
Mar-20	11-04-2020	25-08-2020	136	6800
	Total			21650

GSTR -3B late filing details

	Due date of filing	Actual date of filing	No of days delayed	Late fee liability
Apr-19	20-05-2019	20-05-2019	0	0
May-19	20-06-2019	20-06-2019	0	0
Jun-19	20-07-2019	20-07-2019	0	0
Jul-19	22-08-2019	27-08-2019	5	250
Aug-19	20-09-2019	18-09-2019	0	0
Sep-19	20-10-2019	21-10-2019	1	50
Oct-19	20-11-2019	25-01-2020	66	3300
Nov-19	23-12-2019	28-01-2020	36	1800
Dec-19	20-01-2020	04-03-2020	44	2200
Jan-20	22-02-2020	24-06-2020	123	6150
Feb-20	22-03-2020	24-06-2020	94	4700
Mar-20	22-04-2020	16-07-2020	85	4250
	Total			22700

	Total	CGST	SGST
Total late fee payable	44350	22175	22175
Late fee paid	10150	5075	5075
Balance Late fee Payable	34200	17100	17100

2.4.2. Legal provisions

37. Furnishing details of outward supplies.— (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

9. Levy and collection.— (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

39. Furnishing of returns.— (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof

47. Levy of late fee. — (1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees. (2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory

2.4.3. In view of the above, the taxpayer is liable to pay late fee in cash of **Rs.34,200/-** (CGST: Rs.17,100/-, SGST: Rs.17,100/-) under section 47 as applicable under the provisions of CGST Act, 2017 read with Section 37 and Section 39 of CGST Act, 2017 and SGST Act, 2017.

2.4.4. The said observation was communicated to the taxpayer vide FORM GST-ASMT-10 vide Reference No.ZU360523050702D dated 27.02.2024. The taxpayer

has not made any submissions. Hence, FORM GST DRC-01A vide DIN.2024056YO000052045A dated.02.04.2024 was issued to the taxpayer under the provisions of Section 73 of CGST Act, 2017 read with Rule 142(1A) of CGST Rules, 2017. The taxpayer has not made any submissions in response to the said FORM GST DRC-01A.

2.5. Non reversal of ITC in accordance with provisions of Rule 42 and Rule 43 of CGST Rules, 2017 for FY 2019-20.

2.5.1 On scrutiny of GSTR-1 and GSTR-3B returns filed by the taxpayer for FY 2019-20, it is observed that the taxpayer has declared Nil rated/exempted supplies but not reversed ITC proportionately as per Section 17(2) of CGST Act, 2017 read with Rule 42 of CGST Rules, 2017 as detailed below:

1. Taxable Value as per Table 3.1 (c) of GSTR-3B	49636965
2. Taxable Value as per Table 3.1(Total) of GSTR-3B	159072319
3. ITC as per Table 4A of GSTR-3B or 6A of GSTR-9	15201809
4. Amount to be reversed $\{(1/2)*3\}$	4743576.167
Liability	Rs.47,43,576/- (IGST: Rs.2,21,020/-, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-)

2.5.2 In view of the above, it appears that the taxpayer is liable to reverse the ITC of Rs.47,43,576/- (IGST: Rs.2,21,020/-, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-) for the FY 2019-20 as per Section 17(2) of CGST Act, 2017 read with Rule 42 and Rule 43 of CGST Rules, 2017.

2.5.3. Legal provisions

i). Section 17 - Apportionment of credit and blocked credits: -

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

ii). Rule 42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof. -

(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely, -

(a) the total input tax involved on inputs and input services in a tax period, be denoted as T ;

(b) the amount of input tax, out of T' , attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as $T1'$

(c) the amount of input tax, out of T' , attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as $T2'$;

(d) the amount of input tax, out of T' , in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as $T3'$;

(e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as $C1'$ and calculated as

$$C1 = T - (T1 + T2 + T3);$$

(f) the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as $T4'$;

[Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of $T4$ shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.]

(g) $T1'$, $T2'$, $T3'$ and $T4'$ shall be determined and declared by the registered person at the invoice level in FORM GSTR-2 [and at summary level in FORM GSTR-3B];

(h) input tax credit left after attribution of input tax credit under clause [(f)] 75 shall be called common credit, be denoted as $C2'$ and calculated as

$$C2 = C1 - T4;$$

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as $D1'$ and calculated as

$$D1 = (E/F) \times C2$$

where, E

E' is the aggregate value of exempt supplies during the tax period, and F

F' is the total turnover in the State of the registered person during the tax period:

[Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under:-

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F = aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier;

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of

India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of *'E'* in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended.]

[Provided further]⁷⁷ that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of *'E/F'* shall be calculated by taking values of *'E'* and *'F'* of the last tax period for which the details of such turnover are available, previous to the month during which the said value of *'E/F'* is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A]⁷⁸ of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as *'D2'*, and shall be equal to five per cent. of *'C2'*; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as *'C3'*, where,-

$$C3 = C2 - (D1 + D2);$$

(l) the amount *'C3'*, *'D1'* and *'D2'* shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03;]

(m) the amount equal to aggregate of *'D1'* and *'D2'* shall be [reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03;]

Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in *'T1'* and *'T2'* respectively, and the remaining amount of credit on such inputs or input services shall be included in *'T4'*.

2.5.4. In view of the above, it appears that the taxpayer has not followed the procedure prescribed in Section 17(2) of CGST Act, 2017 read with Rule 42 of CGST Rules, 2017. Therefore, it appears that the taxpayer is liable to reverse the ITC of Rs.47,43,576/- (IGST: Rs.2,21,020, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-) along with applicable interest under Section 50 of CGST Act, 2017 and penalty under Section 122(2)(a) read with Section 73 of CGST Act, 2017 & SGST Act, 2017 read with Section 20 of IGST Act, 2017.

2.5.5. The intimation of the same was given to the taxpayer by issuance of FORM GST-ASMT-10 with Reference No ZU360523050702D dated 27.02.2024

and issuance of DRC-01A dated 02.04.2024. The taxpayer has not made any submissions in response to the said FORM GST DRC-01A so far.

3. For the administration and collection of State Goods and Services tax in respect of Telangana State, an Act was in operation in respect of Jurisdiction of Telangana state. This Act is titled as "The Telangana Goods and Services Act, 2017" (for short here in after referred to as "the TGST Act, 2017") and it contains the provisions exactly similar to the CGST Act, 2017 as referred above. Since, it is only repetition; the provisions of the TGST Act, 2017 are not reproduced in This Notice.

3.1. Further, as per Section 6(1) of the TSGST Act, 2017, the Officers appointed under CGST Act, 2017 are authorized to be proper officers for the purposes of the said Act.

3.2. For the administration and collection of the Integrated Goods and Services Tax (IGST), an Act was in operation which is titled as "The Integrated Goods and Services Tax Act, 2017" (for short here in after referred to as "the IGST Act, 2017"). As per the provisions of Section 20 of the IGST Act, 2017, the provisions of CGST Act, 2017 relating to interalia Input tax credit, Registration, tax invoice, account and records, payment of tax, inspection, search, seizure and arrest, Demands and recovery, offences and penalties etc shall, mutatis mutandis, apply, so far as may be, in relation to Integrated tax as they apply in relation to Central tax as if they are enacted under the IGST Act, 2017. Accordingly, in respect of any recovery, penalty and other demands related to IGST, the provisions of CGST Act, 2017 will be applicable.

4. Now therefore, M/S. Villa Orchids LLP, situated at 2nd Floor, 5-4-187/3 and 4, Soham Mansion, M.G Road, Secunderabad, Rangareddy, Telangana, 500003, are required to Show Cause to the **Assistant/Deputy Commissioner of Central Tax, Secunderabad Division, Salike** Senate, 1st Floor, D. No. 2-4-416 & 417, Ramgopalpet, MG Road, Secunderabad 500003 within thirty days (30) from the date of issue of this notice as to why: -

i) an amount **Rs.44,61,441/- (IGST: Rs.4,97,755/- CGST: Rs.19,81,843/- & SGST: Rs.19,81,843/-)** for irregular availment of input tax credit in GSTR-3B on comparison with ITC available in GSTR-2A for the FY 2019-20 as discussed in Para 2.1, should not be demanded from them under the provisions of Sub-Section (1) of Section 73 of the CGST Act, 2017 and SGST Act, 2017 read with Section 20 of IGST Act, 2017;

ii) an amount of **Rs.48,874/- (CGST: Rs.24,437/- & SGST: Rs.24,437/-)** for short payment GST on comparison of liability declared in GSTR-9 and tax

paid in GSTR-3B for FY 2019-20 as discussed in Para 2.2, should not be demanded from them under the provisions of Section 73(1) of the CGST Act, 2017 & TSGST Act, 2017;

iii) an amount of **Rs.23,044/- (CGST: Rs.11,180/- & SGST:Rs.11,864/-)** for interest on delayed filing of GSTR-3B returns during the FY 2019-20 as discussed in Para 2.3, should not be demanded from them under the Section of 50(1) of CGST Act, 2017/SGST Act, 2017;

iv) an amount of **Rs.34,200/- (CGST: Rs.17,100/-, SGST: Rs.17,100/-)** for late fee on delayed filing of GSTR-1 and GSTR-3B returns during FY 2019-20 as discussed in para 2.4, should not be demanded from them under the Section of 47 of CGST Act, 2017/SGST Act, 2017;

v) an amount **Rs.47,43,576/- (IGST: Rs.2,21,020, CGST: Rs.22,61,278/- & SGST: Rs.22,61,278/-)** for non-reversal of ITC for the FY 2019-20 as discussed in Para 2.5, should not be demanded from them under the provisions of sub section (1) of Section 73 of the CGST Act, 2017 & SGST Act, 2017 read with Section 20 of IGST Act, 2017;

vi) Interest should not be demanded on the demand amounts mentioned at Sl.No.(i), (ii) & (v) under Section 50 of the CGST Act, 2017 / TSGST Act, 2017 read with Section 20 of IGST Act, 2017;

vii) Penalty should not be imposed on the demand amounts mentioned at Sl.No.(i), (ii) & (v) in terms of provisions of Section 73(1) of CGST Act, 2017 / TSGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and also read with Section 20 of IGST Act, 2017;

5. M/s. VILLA ORCHIDS LLP, having GSTIN No. 36AANFG4817C1ZH are hereby directed to produce all the evidence upon which they intend to rely in support of their defence. They should also indicate in their written reply, whether they wish to be heard in person, before the case is adjudicated. If no mention is made in their written explanation, it would be presumed that they do not desire a personal hearing.

6. If no reply is received to this notice within the stipulated period of time as above or if they do not indicate their wish for a personal hearing or having indicated so, if they do not appear before the adjudicating authority when the case is posted for personal hearing, then it shall be construed that they do not have anything to state in their defence and the case shall be decided on merits ex-parte based on the material available on record, without any further notice/intimation to them.

7. M/s. VILLA ORCHIDS LLP are also informed that in terms of Section 73(8) of the CGST Act, 2017 and TSGST, Act, 2017, "where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest applicable under Section 50 within thirty days of issue of the notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded".

8. The show cause notice is issued without prejudice to any other action that may be initiated under any other provisions of the CGST Act, 2017/IGST Act, 2017/TGST Act, 2017 or any other law for the time being in force in India.

9. Reliance for issue of this notice is based on the following:

- i) GSTR 3B, GSTR-1, GSTR-2A and GSTR-9 for the FY 2019-20 (available with the Taxpayer)
- ii) ASMT-10 issued by the Superintendent of Central Tax, Ramgopalpet- III Range vide Reference No. ZU360523050702D dated 27.02.2024
- iii) DRC-01A issued by the Assistant Commissioner of Central Tax, Secunderabad GST Division vide DIN No. 2024056Y0000052045A dated 02.04.2024.

3-12-24241212101
16/05/2024

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

To
M/S. VILLA ORCHIDS LLP,
2ND FLOOR, 5-4-187/3 & 4,
SOHAM MANSION, M.G ROAD, SECUNDERABAD,
RANGAREDDY, TELANGANA, 500003.

Copy submitted to: The Commissioner of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, Opp. L.B.Stadium, Hyderabad (Attention: Superintendent, (Review))

Copy to: The Superintendent of Central Tax, Ramgopalpet-III GST Range, Secunderabad GST Division – for information.

[See rule 99(1)]

Reference No: ZU380523050702D

Date: 27/02/2024

To GSTIN: 36AANFG4817C1ZH

Name: VILLA ORCHIDS LLP

Address: 5-4-187/3 AND 4,2ND FLOOR,SOHAM MANSION,M,G ROAD,SECUNDERABAD,TGRAN,36,500003

Tax period - F.Y.: 2019-2020

Notice for intimating discrepancies in the return after scrutiny

This is to inform that during scrutiny of the return for the tax period referred to above, the following discrepancies have been noticed:

The ASMT-10 is issued on online(through AIO).The reply vide ASMT-11 may be submitted within the due date.
If no explanation is received by the aforesaid date, it will be presumed that you have nothing to say in the matter(in respect of ASMT-10) and proceedings in accordance with the CGST ACT, 2017 will be initiated.

ACT	Tax	Interest	Penalty	Fee	Others	Total
IGST						
CGST						
SGST/UGST						
CESS						
Total						

You are hereby directed to explain the reasons for the aforesaid discrepancies by 28-03-2024.If no explanation is received by the aforesaid date, it will be presumed that you have nothing to say in the matter and proceedings in accordance with law may be initiated against you without making any further reference to you in this regard.

Name : Ramineni Sravan Kumar

Designation: Superintendent

FORM GST DRC - 03

ANNEXURE -IV

[See rule 142(2)&142(3)]

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

ARN :AD3604210021013

Date :03/04/2021

1.	GSTIN	36AANFG4817C1ZH									
2.	Name	VILLA ORCHIDS LLP									
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	Others	Total	Ledger utilised (Cash/credit)	Debit entry no.	Date of debit entry
1.	APR 2019- MAR 2020	CGST	Telangana	31,604.00	0.00	0.00	0.00	31,604.00	Credit	DI3604210002609	03/04/2021
2.	APR 2019- MAR 2020	SGST	Telangana	31,604.00	0.00	0.00	0.00	31,604.00	Credit	DI3604210002609	03/04/2021

8. Reasons, if any -

2019-20 Annual returns short payment

9. 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.

Signature of Authorized Signatory

Name: SOHAM MODI

Designation: Designated Partner

Date: 02/04/2021

DRC-03

