

Form GST DRC-06

[See rule 142(4)]

Reply to the Show Cause Notice

ARN: ZD360824029678U

Date: 09/08/2024

1. GSTIN	36AANFG4817C1ZH		
2. Name	VILLA ORCHIDS LLP		
3. Details of Show Cause Notice	Reference No. ZD360624036653B	Date of issue 14/06/2024	
4. Financial Year	2019-2020		
5. Reply			
Dear sir, With respect to the show cause notice issued vide above reference number, we are herewith submitting the reply in form GST DRC-06 along with the annexures as specified in the reply. kindly consider the same and drop further proceedings in this regard.			
6. Documents uploaded			
Reply signed copy_compressed.pdf DOT_NOTICE_ZD360624036653B_20240614060341.pdf SCN Villa Orchid 2019-20.pdf			
7. Option for personal hearing	☒	Yes	☐ No

8.Verification-

I hereby solemnly 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.

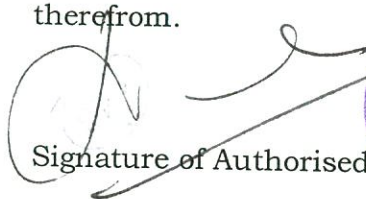
Signature of Authorized Signatory
Name : SOHAMMODI
Designation / Status: Designated
Partner
Date: 09/08/2024

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

1.GSTIN	36AANFG4817C1ZH	
2.Name	M/S. VILLA ORCHIDS LLP	
3.Details of Show Cause Notice	Ref No: ZD360624036653B	Date of issue: 14.06.2024
4.Financial Year	2019-20 (Apr 2019- March 2020)	
5.Reply Given as Annexure A		
6.Documents uploaded:		
7.Option for personal hearing	Yes- Required	No ☐

8.Verification -

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


Signature of Authorised Signatory



ANNEXURE A:

FACTS OF THE CASE:

- A. M/s. Villa Orchids LLP (hereinafter referred as "Noticee") 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. The Noticee has been paying applicable GST and filing returns regularly after disclosing the required disclosures therein.
- B. Noticee regularly discharges GST liability and files periodical returns. Noticee also filed Annual Return in Form GSTR-9 and the reconciliation statement in Form GSTR-9C For the period 2019-20.
- C. The GST authorities has carried out an scrutiny of returns furnished by the Noticee for the FY 2019-20 and has intimated a few discrepancies through ASMT-10 vide Reference no: ZU360523050702D dated 27.02.2024 and also issued DRC-01A vide DIN: 2024056YO000052045A dated 02.04.2024.
- D. Presently Noticee is in receipt of Show cause notice issued u/s 73 in Form DRC-01 having SCN Reference no: ZD360624036653B dated 14.06.2024 from the Assistant Commissioner of central tax as to why: (Copy of DRC-01 is enclosed **Annexure-I**)
- a. 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
- b. 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
- c. 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
- E. In response to the above notice, Noticee is herewith making the following submissions.



Submissions

1. Noticee submits that they deny all the allegations made in Show Cause Notice (SCN) as they are not factually/legally correct.
2. Noticee submits that the provisions (including Rules, Notifications & Circulars issued thereunder) of both the CGST Act, 2017 and the TGST Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act, 2017 would also mean a reference to the same provision under the TGST Act, 2017. Similarly, the provisions of CGST Act, 2017 are adopted by IGST Act, 2017 thereby the reference to CGST provisions be considered for IGST purpose also, wherever arises.

In Re: Excess claim of ITC in GSTR-3B compared with GSTR-2A

3. The Impugned notice has alleged Noticee has excess claimed ITC in GSTR-3B in comparison to ITC auto populated in GSTR-2A amounting to Rs. 44,61,441/- (IGST Rs.4,97,755/- CGST Rs. 19,81,843/- and SGST Rs. 19,81,843/-) for the period FY 2019-20 and proposed to demand the tax on the same.
4. In this regard, Noticee submits that there is no excess claim of ITC as alleged in the impugned notice. Noticee submits that Noticee has claimed the input tax credit of Rs.1,51,46,307/- (IGST of Rs.7,08,305/-, CGST Rs.72,19,001/- and SGST Rs. 72,19,001/-) in table 4(A) of the GSTR-3B during the FY2019-20 based on the invoices issued by the suppliers following section 16(2) of the CGST Act, 2017. which should be compared with the input tax credit available as per GSTR-2A.
5. Further, Noticee submits per the information available in the records of the Noticee, the ideal difference between the ITC claimed as per GSTR-3B returns filed for the financial year 2019-20 and the ITC reflected in the GSTR-2A is provided below in the tabular form: -

S.No	Particulars	IGST	CGST	SGST
1	Net ITC Auto populated in GSTR-2A	2,11,392	56,66,120	56,66,120
2	Net ITC Claimed in GSTR-3B	7,08,305	72,19,001	72,19,001
3	Difference(2-1)	4,96,913	15,52,881	15,52,881

6. Without prejudice to the above, we would like to submit that we are rightly eligible for ITC for the following reasons:



- a. ITC cannot be denied merely due to non-reflection of invoices in GSTR-2A as all the conditions specified under Section 16 of CGST Act, 2017 has been satisfied.
- b. GSTR-2A cannot be taken as a basis to deny the ITC in accordance with Section 41, Section 42, Rule 69 of CGST Rules, 2017.
- c. We further submits that Finance Act, 2022 has omitted Section 42, 43 and 43A of the CGST Act, 2017 which deals ITC matching concept. We 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 the accurate ITC claims. Hence, omission of sections 42, 43 and 43A has eliminated the concept of the provisional ITC claim process, matching and reversals.
- d. 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.
- e. 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.
- f. 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.
- g. 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.



- h. It is submitted that neither the form has been prescribed by the law nor the same has been communicated to the We therefore it is not possible to comply with the condition given in Section 42 read with Rule 69, Rule 70 and 71. Hence, the allegation of the impugned notice is not correct.
- i. **We 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.**
- j. **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.**
- k. The fact of payment or otherwise of the tax by the supplier is neither known to We nor is verifiable by We. 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.
- l. In the same context, We 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*.
- m. Section 41 allows the provisional availment and utilization of ITC, there is no violation of section 16(2)(c) of CGST Act 2017



- n. The above view is also fortified from press release dated 18.10.2018.
- o. 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 We is rightly eligible for ITC.
- p. We 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.
- q. We wish to rely on recent decisions in case of
- D.Y. Beathel Enterprises Vs State Tax officer (Data Cell), (Investigation Wing), Tirunelveli 2021(3) TMI 1020-Madras High Court
 - Jurisdictional High Court decision in case of 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.
 - Suncraft Energy Private Limited Versus The Assistant Commissioner, State Tax, Ballygunge Charge And Others 2023 (8) TMI 174-Calcutta High court affirmed by Supreme Court in case of The Assistant Commissioner of State Tax Vs Suncraft Energy Private Limited 2023 (12) TMI 739 – SC order
 - 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. Gargo Traders V/s The Joint Commissioner, Commercial Taxes (State Tax) & Ors. 2023 (6) TMI 533 - Calcutta 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
- Hence, noticee requests you to drop the proceedings initiated in this regard.

In Re: No Short payment of GST on comparison of tax liability in GSTR-9 and GSTR-3B



7. The impugned notice has alleged 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, Noticee submits the Reconciliation between tax liability declared in GSTR-9 and GSTR-3B along with the reasons as tabulated below:

S.No	Particulars	CGST	SGST
1	Tax liability as per GSTR-9	98,45,849	98,45,849
2	Tax liability as per GSTR-3B	98,21,413	98,21,413
3	Difference	24,437	24,437
Reasons for the Difference			
A	Short Payment in reconciliation	9,137	9,137
B	Interest	15,300	15,300
	Total	24,437	24,437

9. Noticee submits that the interest income is exempted from payment of GST vide Notification No.12/2017-CT dated 28.06.2017, therefore the demand to that extent needs to be dropped.

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

10. The impugned notice has alleged that during the course of scrutiny of returns, it was noticed that Noticee 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.

11. In this regard, Noticee submits that the impugned notice is incorrect and vague as the details of GSTR-3B for March 2019 are included in the demand amount which does not pertain to FY 2019-20. Therefore, Noticee requests to drop the demand an amount of Rs. 8,563/- and to the extent of balance amount Rs. 14,381/- notice is not liable.

In Re: Non-Payment of Late fee on delayed filing of GSTR-3B and GSTR-1

12. The impugned has alleged that Noticee has not paid a late fee for the delayed filing of GSTR-1 and GSTR-3B amounting to Rs.34,200/-(CGST Rs. 17,100/- and SGST Rs. 17,100/-) for the FY 2019-20.



13. In this regard, Noticee submits that Noticee is not liable to pay the demanded amount. Therefore, the noticee requests to drop the proceedings initiated in this regard.

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

14. Noticee submits that the impugned notice has stated that the Noticee has declared an amount of Rs. 4,96,36,965/- as exempted and Nil rated turnover ITC attributable to the same as per Rule 42 and 43 of the CGST Act, 2017 has not reversed and proposed to deny ITC of Rs. 47,43,576/- (IGST Rs.2,21,020/- CGST Rs.22,61,278/- and SGST RS. 22,61,278/-) along with the Interest and penalty.

15. In this regard, Noticee submits that the impugned notice is erroneous for the following reasons, thereby, the same needs to be dropped outrightly: -

- a. Impugned notice has not examined whether the turnover declared in table 3.1(c) of GSTR-3B is required to be considered for the purpose of reversal under Rule 42 and 43 of CGST Rules, 2017
- b. Impugned notice has considered the entire ITC availeds during the period as the common credit whereas the reversal under Rule 42 ad 43 is required to be made only on common ITC used for provision of both taxable and exempted turnover.

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

16. Noticee submits that the bifurcation of turnover mentioned in the notice are as follows:

Table No.	Nature of supply	Amount
3.1 (C)	Exempted supplies	1,76,02,965/-
3.1 (E)	Non- GST supply	3,20,34,000/-
	Total	4,96,36,965/-

17. With respect to the above table, Noticee submits that Noticee has mistakenly disclosed a turnover of Rs. 1,76,02,965/- as exempt turnover instead of disclosing in Non-GST turnover. In this regard, Noticee submits that Non-GST supply includes sale of land which is covered under schedule-III.

18. Noticee further submits that Noticee has availed ITC only on inputs and input services which are exclusively used for providing the construction services on



which Noticee is discharging GST at full rate. Therefore, the Noticee is rightly eligible for ITC claimed in GSTR-3B as the same belongs to construction services and do not pertain to sale of land as disclosed in GSTR-09. Once the Noticee has not availed any ITC relating to common inputs or input services, there is no question of reversal of ITC under Rule 42 of CGST Rules, 2017. Hence, the impugned notice needs to be dropped.

In Re: Interest and Penalty are not payable/imposable:

19. Noticee submits that Noticee is of vehement belief that the input availed by Noticee is not required to reverse, therefore, the question of interest and penalty does not arise. Further, it is a natural corollary that when the principal is not payable there can be no question of paying any Penalty as held by the Supreme Court in *Prathiba Processors Vs UOI*, 1996 (88) ELT 12 (SC).
20. Further, Noticee submits that the impugned show cause notice 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"*.
21. Noticee 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 Noticee 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.
22. Noticee submits that the Supreme Court in case of *CIT 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.



23. Noticee 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 bonafide belief that the ITC is eligible. In the instant case also, Noticee has availed the ITC on bonafide belief that the same is eligible which was not accepted by the department. Therefore, in these circumstances the imposition of penalties is not warranted and the same needs to be dropped.
24. Noticee 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 imposition of penalties.
25. Noticee submits that GST being a new law, the imposition of penalties during the initial years of implementation is not warranted. Further, Noticee 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.
26. In addition to above, Noticee 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."*



27. Noticee 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.*
28. Noticee 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



29. Noticee 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.”

30. Notice submits that from all the above submissions, it is clear that imposition of penalties is not warranted therefore the impugned notice needs to be dropped.

In Re: Impugned notice is not valid

Notice issued on assumptions and presumptions

31. Noticee submits that impugned SCN was issued with prejudged and premeditated conclusions on various issues raised in the notice. That being a case, issuance of SCN in that fashion is bad in law and requires to be dropped. In this regard, reliance is placed on Oryx Fisheries Pvt. Ltd. v. Union of India — 2011 (266) E.L.T. 422 (S.C.).

32. Noticee submits that the subject SCN is issued based on mere assumption and unwarranted inference, interpretation of the law without considering the intention of the law, documents on record, the scope of activities undertaken, and the nature of activity involved, the incorrect basis of computation, creating its own assumptions, presumptions. Further, they have arrived at the conclusion without actual examination of facts, provisions of the CGST Act, 2017. In this regard, Noticee relies on the decision of the Hon'ble Supreme Court in case **Oudh Sugar Mills Limited v. UOI, 1978 (2) ELT 172 (SC)**

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

Notice is vague and lack of details

34. Noticee submits that the impugned notice has not given clear reasons as to how the Noticee has availed the irregular 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 noticee was not given proper opportunity to meet the allegations indicated in the show cause notice.”

- b. Dayamay Enterprise Vs State of Tripura and 3 OR's. 2021 (4) TMI 1203 - Tripura High Court
 - c. Mahavir Traders Vs Union of India (2020 (10) TMI 257 - Gujarat High Court)
 - d. Teneron Limited Versus Sale Tax Officer Class II/Avato Goods and Service Tax & Anr. (2020 (1) TMI 1165 - Delhi High Court)
 - e. Nissan Motor India Private Limited, Vs the State of Andhra Pradesh, The Assistant Commissioner (CT) (2021 (6) TMI 592 - Andhra Pradesh High Court)
- From the invariable decisions of various High Courts, it is clear that the notice without details is not valid and the same needs to be dropped.

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

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

36. Noticee submits that the impugned SCN was issued under section 73 of CGST Act, 2017 which provides for adjudication of demand within 3 years from the due date of the annual return of the corresponding FY. For FY 2019-20, the annual return due date falls on 31.03.2021 and the 3-year time limit expires by 31.03.2024 however citing the difficulties caused due to Covid-19, the Government has extended the time limit from 31.03.2024 to 30.06.2024 by exercising the powers u/s. 168A by the Notification No. 09/2023 dated 31.03.2023. However, again exercising the powers u/s. 168A, ibid the time limit was further extended to 31.08.2024 by the Notification No. 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



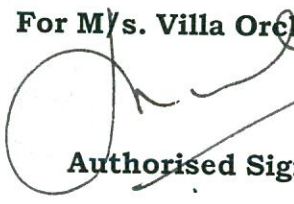
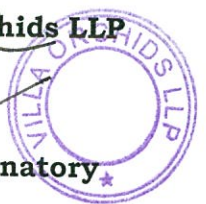
Section 168A and is not sustained in the law. Accordingly, the demand for FY 2019-20 deserves to be dropped as the Show Cause Notice in the instant case is not issued prior to 31.12.2023 (i.e original due date to issue notice without considering extensions) as envisaged under Section 73 of CGST Act, 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.)

38.Noticee craves leave to alter, add to and/or amend the above reply.

39.Noticee would also like to be heard in personal, before any order being passed in this regard.

For M/s. Villa Orchids LLP

Authorised Signatory 

**BEFORE THE ASSISTANT COMMISSIONER OF CENTRAL TAX, SECUNDERABAD GST
DIVISION, SALIKE SENATE, D.NO:2-4-416, RAMGOPALPET, MG ROAD
SECUNDERABAD.**

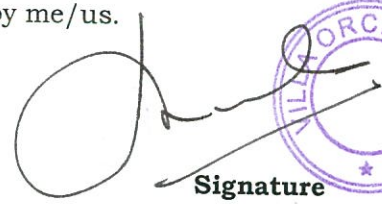
Sub: Proceedings under Show Cause Notice vide Ref No. ZD360624036653B dated 16.04.2024 issued to M/s. Villa Orchids LLP

I, Soham Satish Modi, Partner of M/s. **Villa Orchids LLP** hereby authorizes and appoint M/s. 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/We do hereby agree to ratify and confirm acts done by our above-authorized representative or his substitute in the matter as my/our own acts as if done by me/us for all intents and purposes.

This authorization will remain in force till it is duly revoked by me/us.

Executed this on 31.07.2024 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 TGST Act, 2017. I accept the above-said appointment on behalf of M/s Hiregange & Associates. 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: 09.08.2024

Address for service:

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

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

**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.

S.No.	Name	Qualification	Membership No.	Signature
1	Sudhir V S	CA	219109	
2	Srimannarayana S	CA	261612	
3	Revanth Krishna K	CA	262586	
4	Akash Heda	CA	269711	
5	Manikanta	CA	277705	