

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

1. GSTIN	36AADCM5906D2ZO	
2. Name	Modi Housing Private Limited	
3. Details of Show Cause Notice	ZD361124013274V	Date of issue: 13/11/2024
4. Financial Year	2020-21	
5. Reply		
Given as Annexure A		
6. Documents uploaded I. Reply to Notice.		
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

Reply to the Notice:

Modi Housing Private Limited (hereinafter referred as “noticee”) is engaged in provision of construction services and administrative services and is registered with Goods and Services Tax Department vide GSTIN NO: 36AADCM5906D2ZO. Noticee herein makes the below submissions.

Submissions

9. Noticee submits that they deny all the allegations made in Show Cause Notice (SCN) as they are not factually/legally correct.
10. Noticee submits that the provisions (including Rules, Notifications & Circulars issued thereunder) of both the CGST Act, 2017 and the Telangana GST Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act, 2017 would also mean a reference to the same provision under the TGST Act, 2017. Similarly, the provisions of CGST Act, 2017 are adopted by IGST Act, 2017 thereby the reference to CGST provisions be considered for IGST purpose also, wherever arises.
11. Noticee submits that the allegations made by the Show cause Notice dated 13/11/2024 are: -

Para No.	Description	Amount
1.	Wrong Claim of Input Tax	3,02,172
2.	Turnover Reported as Exempted Supply Proposed to Tax in absence of documentary evidences.	2,74,15,516
3.	Short Reported Output Tax proposed compared with Financial Statements (Profit and Loss Account) and GSTR 3B/ GSTR 9.	40,53,750
4.	Late fees regarding filing of GSTR-9, GSTR-9C and GSTR-1.	83,400
	Total	3,18,54,838

Para 1: - Wrong Claim of Input Tax

12. In this para whole of the ITC Claimed in the financial year 2020-21 has been disallowed on the ground of non-submission of books of accounts.

Tax Head / Description	CGST	SGST	Total Input Tax
ITC 6A (as per GSTR9)	1,51,086	1,51,086	3,02,172

13. It is submitted that the actual ITC claimed by the noticee during financial year 2020-21 is Rs.32,829/- post reversal. In this regard extract of Table 6A of GSTR-9 and Table 7 I of GSTR-9 is provided here under: -

Pt. III	Details of ITC for the financial year					
Sr.No	Description	Type	Central Tax(₹)	State Tax / UT Tax(₹)	Integrated Tax(₹)	Cess(₹)
	1	2	3	4	5	6
6	Details of ITC availed during the financial year					
A	Total amount of input tax credit availed through FORM GSTR-3B (sum total of Table 4A of FORM GSTR-3B)		1,51,085.95	1,51,085.95	0.00	0.00

Pt. III	Details of ITC for the financial year				
Sr.No	Description	Central Tax(₹)	State Tax / UT Tax(₹)	Integrated Tax(₹)	Cess(₹)
	1	2	3	4	5
7	Details of ITC Reversed and Ineligible ITC for the financial year				
A	As per Rule 37	0.00	0.00	0.00	0.00
B	As per Rule 39	0.00	0.00	0.00	0.00
C	As per Rule 42	0.00	0.00	0.00	0.00
D	As per Rule 43	0.00	0.00	0.00	0.00
E	As per section 17(5)	0.00	0.00	0.00	0.00
F	Reversal of TRAN-1 credit	0.00	0.00		
G	Reversal of TRAN-2 credit	0.00	0.00		
H1	Reversal due clerical error	1,18,257.00	1,18,257.00	0.00	0.00
I	Total ITC Reversed (Sum of A to H above)	1,18,257.00	1,18,257.00	0.00	0.00
J	Net ITC Available for Utilization (6O - 7I)	32,828.95	32,828.95	0.00	0.00

14. On examination of tables provided above, it is clearly established that noticee had claimed net ITC amounting to Rs.32,829/- A detailed breakup of such amount is given as **Annexure 1**.
15. Noticee submits that it had fulfilled eligibility criteria for availing such input tax credit (ITC) and the conditions which are required to be fulfilled for the said purpose are elaborated here in section 16 of the CGST Act,2017 which are summarized as under; -

“Section 16. Eligibility and conditions for taking input tax credit.

- 1) *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 where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

- (c) subject to the provisions of section 41, the tax **charged in respect of such supply has been actually paid to the Government**, either in cash or through utilization of input tax credit admissible in respect of the said supply; and*
- (d) he has **furnished the return under section 39**:*

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

- 3) *Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.*
- 4) *A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier”*

16. Analysis of the eligibility criteria as per facts and circumstances of the present case; -

- i. Only Registered person will be eligible to take credit of ITC paid on inward supplies of goods or service or both, which are used in the course or furtherance of business. If a person is not a registered person or is a registered person but has not used the supply of goods or services or both in the course or furtherance of business, he will not be entitled to claim ITC- In the present case inputs used in course or furtherance of business.
- ii. As per sub section (2) of section 16, four conditions need to be fulfilled which are:
 - i. Possession of tax invoice, debit note or such other tax paying document which includes invoice issued by Input Service Distributer (ISD) and bill of entry as prescribed under Customs Act, 1962- The noticee is in possession of proper and valid tax invoice. Sample Purchase invoices from each supplier are attached as Annexure 2.
 - ii. Goods or services have been received. – In our case, goods have been received by the noticee vide proper invoices and duly accounted for in the books of account of the noticee.
 - iii. Tax on supply is actually paid to the Govt. – The suppliers have duly furnished their returns that is GSTR-1 for the relevant period. The referred inputs tax invoices are duly reflected in GSTR-2A of the noticee which are auto populated from GST Portal. Such GSTR 2A report is attached as Annexure 3.
 - iv. The recipient shall furnish the return under section 39 – Month wise summary of ITC claimed in GSTR-3B, such report is attached as Annexure 4.
- iii. The recipient shall make the payment for the supply of taxable goods or services or both within a period of 180 days. Payment for both value for goods or services and tax thereon shall be paid within a period of 180 days from the date of issue of invoice by the supplier. If the payment is not made within the stipulated time, ITC which was availed by the recipient at the time of receipt of inward supply shall be reversed along with interest at applicable rates. ITC can be availed when the payment for the value of supply and tax thereon, is made in at a future date. – Payment of taxable value along applicable taxes has been made to the supplier before expiry of 180 days. To substantiate, noticee herewith submits its purchase books, party wise ledgers and bank Statement for the period 2020-21 are attached as Annexure 1, 5 & 6 respectively.

17. Noticee submits that, it is clear that all conditions for claiming input tax credit as prescribed under Section 16 has been complied by the noticee and thus demand on input tax credit raised by the department is invalid and illegal and thus liable to be quashed.

Para 2: - Turnover Reported as Exempted Supply Proposed to Tax in absence of documentary evidences.

18. This para proposed tax @ 18% on exempt turnover of Rs. 15,23,08,421/- reported in the financial year 2020-21 for non-submission of documentary evidence.

Particulars	Turnover	CGST Proposed @ 9%	SGST Proposed @ 9%	Total Output Tax Proposed
Turnover Reported as Exempted Supply Proposed to Tax in absence of documentary evidences	15,23,08,421	1,37,07,758	1,37,07,758	2,74,15,516

19. Firstly noticee submits a detailed breakup of such exempt turnover reported in GST returns.

Particulars	Amount	Nature
Sale of Flat	72,26,512	Non-GST Supply
Sale of Land	2,00,00,000	Non-GST Supply
Interest on Fixed Deposits	6,56,445	Exempt
Interest on IT refund	8,891	Exempt
Revenue Recognized	12,44,16,573	Non-GST Supply
Total	15,23,08,421	

20. On examination of table provided above it can be arrived at two components forming part of such exempt turnover.

- Exempt turnover: - Turnover exempt by the Government by exercising its power under **Section 11** vide **Notification No. 12/2017- Central Tax (Rate), dated 28th June, 2017.**
- Non-GST Turnover: - Turnover outside the preview of **GST u/s 7 read with Schedule III.**

21. Explanation to (i) Exempted Turnover:

A relevant extract of such Section and Notification is provided here under: -

Section 11. Power to grant Exemption. -

(1)Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

Notification No. 12/2017- Central Tax (Rate), dated 28th June, 2017.

<i>Sl. No</i>	<i>Chapter, Section, Heading, Group or Service Code (Tariff)</i>	<i>Description of Services</i>	<i>Rate (%)</i>	<i>Condition</i>
27	Heading 9971	Services by way of— (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.	Nil	Nil

22. From above explanation it can be established that interest on fixed deposit amounting to Rs. 6,56,445/- and interest on income tax refund amounting to Rs. 8,891/- pertains to exempted supply. Therefore, no tax shall be levied or collected for the same.

23. Explanation to (ii) non-GST supply: -

A relevant extract of such Section and schedule is provided here under: -

Section 7(2)

Notwithstanding anything contained in sub-section (1),

*(a) activities or transactions specified in **Schedule III**; or*

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

Extract of Schedule III

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

24. From above explanation it can be established that Sale of land amounting to Rs. 2,00,00,000/- shall be constituted as non-GST supply. Therefore, no tax shall be levied or collected for the same and sale deed is attached as **Annexure 7**.

25. Further, according to clause (b) of para 5 of schedule II, the sale of flat amounting to Rs. 72,26,512/- shall be constituted as non- GST supply. To substantiate, extract of such clause is provided below for your readily reference. Additionally, completion certificate of such flat is attached in **Annexure 8**.

Clause (b) of paragraph 5 of schedule II

The following shall be treated as supply of services, namely: -

(a) renting of immovable property;

(b) 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.

26. In consideration of submissions made above, it is requested that all such further proceedings under this matter shall be dropped.

Para 3: - Short Reported Output Tax proposed compared with Financial Statements (Profit and Loss Account) and GSTR 3B/ GSTR 9.

27. This Para points out to a difference in turnover as per financials and turnover declared in GSTR-9 returns.

S.No.	Particulars	Table No.	Amount
1.	Taxable value as per financials	Table 5A	17,57,54,604
2.	Taxable Value as per GSTR-9	Table 5P	15,32,33,773
	Difference (2-1)		2,25,20,831

28. It is submitted that such difference between financials & GSTR-9 is on the account of following incomes. A break up of such supplies is provided in Table 1 below: -

Particulars	Amount
Revenue - Services Charges	1,44,000
Revenue - Hoarding Rent - Exempt	90,000
Share of Profit from LLPs	2,19,79,237
Share of Income tax refund	3,02,957
Bad Debts	4,087
Total	2,25,20,281

29. In this regard reference to definition of aggregate turnover of section 2(6) of CGST Act,2017 and Extract of Advance Rulings, Karnataka, Anil Kumar Agrawal, is as under: -

aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

Extract Of Authority for Advance Rulings, Karnataka, Anil Kumar Agrawal,

"7.7 Partner's salary, received as partner, from applicant's partnership firm: The applicant is in receipt of certain amount termed as partner's salary from the firm where the applicant is also a partner. The applicant has not furnished any documents relevant to the issue, such as copy of

agreement, appointment order etc., so as to decide whether the applicant is an employee of the partnership firm or not. In case, if the applicant is a working partner and is getting salary then the said salary is neither supply of goods nor supply of service in terms of clause 1 of Schedule III of CGST Act, 2017. “Further, in case if the applicant is in receipt of the amount towards his share of profit from the said partnership firm, then also the said income is not under the purview of GST as the share of profit is nothing but application of money and hence the said salary is not required to be included in the aggregate turnover for registration under the provisions of GST Act.”

30. On examination of section 2(6) and extract of authority for advance rulings, Karnataka, it is clear that such income from firms and LLP are not supply.

31. **Notification No. 12/2017- Central Tax (Rate), dated 28th June, 2017.**

Sl. No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (%)	Condition
27	Heading 9971	Services by way of— (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.	Nil	Nil

32. Hence interest on IT refund is exempted by government vide Notification No. 12/2017- Central Tax (Rate), dated 28th June, 2017.

33. Further, with regards to income from hoarding income, it is submitted that noticee has two separate verticals

- i. Silver Oak Villas LLP having GSTN: - 36ADBFS3288A2Z7
- ii. Modi Housing Private Limited having GSTN: - 36AADCM5906D2ZO

34. Noticee had inadvertently recorded hoarding rent paid by Silver Oak Villas LLP to Modi Housing Private Limited as income received and also recorded such amount as expenses. Since, such supply is made between two verticals of same entity, it does not amount to supply according to section 7.
35. In support of such submissions, noticee here by submits bank statements of two verticals showing such transactions as **Annexure 6** & summary of all such payments as **Annexure 9**.

Para 4: - Late fees regarding filing of GSTR-9, GSTR-9C and GSTR-1.

36. This Para points out late fees regarding filing of GSTR-9, GSTR-9C and GSTR-1.

Nature of return	Period	Due Date of Period	Date of Filing Return	No. of Days Delayed	Late Fee @ Rs.100 per day
GSTR-9	2020-21	28/02/2022	21/03/2022	21	2,100
GSTR-9C	2020-21	28/02/2022	21/03/2022	21	2,100
GSTR-1	Apr-20	11/05/2020	22/09/2020	134	13,400
GSTR-1	May-20	11/06/2020	14/09/2020	95	9,500
GSTR-1	Jun-20	11/07/2020	22/09/2020	73	7,300
GSTR-1	Jul-20	11/08/2020	22/09/2020	42	4,200
GSTR-1	Aug-20	11/09/2020	10/11/2020	60	6,000
GSTR-1	Sep-20	11/10/2020	23/11/2020	43	4,300
GSTR-1	Oct-20	11/11/2020	27/11/2020	16	1,600
GSTR-1	Nov-20	11/12/2020	23/01/2021	43	4,300
GSTR-1	Dec-20	11/01/2021	22/03/2021	70	7,000
GSTR-1	Jan-21	11/02/2021	27/04/2021	75	7,500
GSTR-1	Feb-21	11/03/2021	11/05/2021	61	6,100
GSTR-1	Mar-21	11/04/2021	30/06/2021	80	8,000
Total					83,400

37. It is submitted that the adjudicating officer had wrongly imposed late fee @100 per day. Such imposition of late fee @100 per day is in consideration of **notification no. 4/2018** which waives off all such late fee in excess of Rs.25/- per day and in excess of Rs. 10/- per day where there are no outward supplies for any month/quarter in FORM GSTR-1 by the due date under section 47 of the said Act. Therefore, such notification is provided here under for your ready reference: -

Extract of Notification no. 4/2018

In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby waives the amount of late fee payable by any registered person for failure to furnish the details of outward supplies for any month/quarter in FORM GSTR-1 by the due date under section 47 of the said Act, which is in excess of an amount of twenty-five rupees for every day during which such failure continues:

Provided that where there are no outward supplies in any month/quarter, the amount of late fee payable by such registered person for failure to furnish the said details by the due date under section 47 of the said Act shall stand waived to the extent which is in excess of an amount of ten rupees for every day during which such failure continues.

38. Therefore, revised late fees for delay in filing of GSTR 1 is recomputed in table 1 below: -

Nature of return	Period	Due Date of Period	Date of Filing Return	No. of Days Delayed	Late Fee
GSTR-9	2020-21	28-02-2022	21-03-2022	21	2,100
GSTR-9C	2020-21	28-02-2022	21-03-2022	21	2,100
GSTR-1	April-20	11-05-2020	22-09-2020	134	2,680
GSTR-1	May-20	11-06-2020	14-09-2020	95	1,900
GSTR-1	Jun-20	11-07-2020	22-09-2020	73	1,460
GSTR-1	Jul-20	11-08-2020	22-09-2020	42	840
GSTR-1	Aug-20	11-09-2020	10-11-2020	60	1,200
GSTR-1	Sept-20	11-10-2020	23-11-2020	43	2,150
GSTR-1	Oct-20	11-11-2020	27-11-2020	16	800
GSTR-1	Nov-20	11-12-2020	23-01-2021	43	2,150
GSTR-1	Dec-20	11-01-2021	22-03-2021	70	3,500
GSTR-1	Jan-21	11-02-2021	27-04-2021	75	3,750
GSTR-1	Feb-21	11-03-2021	11-05-2021	61	3,050
GSTR-1	Mar-21	11-04-2021	30-06-2021	80	4,000
Total					31,680

39. The Total Late fee is amounting to Rs.31,680 (i.e., CGST=15,840 and SGST=15,840).

40. The recomputed late fees is paid through Form DRC-03 Vide AD3601250042751 Dated: 09/01/2025
DRC-03 is attached as **Annexure 10**.

41. Hence, it is therefore requested to drop all further proceedings in this regard.

Signature of Authorised Signatory