

Villas Orchid LLP

Dated 03.08.2024

To,
The Joint Commissioner (Appeals- II) Of Central Tax,
Hqrs Office, 7th Floor, L.B. Stadium,
Basheerbagh, Hyderabad - 500004.

Dear Sir,

Sub: Application for condonation of delay in filing the Appeal.

Ref: Appeal against Order In Original No. 25/2024-25(GST-Adjn) dated 19.04.2024 pertaining to M/s. Villa Orchids LLP.

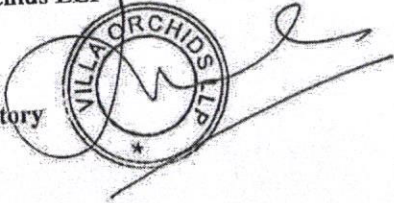
1. As per Section 107 of CGST Act, 2017, an appeal against the order of the adjudicating authority shall be filed within 3 months from the date of receipt of the order. In the instant case, the order was received on 24.04.2023 through post, thereby, the due date for filing the appeal falls on 24.07.2024.
2. In this regard, we would like to submit that we were in receipt of various Orders for different entities registered under GST. However, we have inadvertently missed the present Order in the course of making an appeal against other orders of different entities. Later, after filing an appeal against such different orders, it has come to notice that there is an Order pending for This entity i.e., the present Order dated 19.04.2024 and we are herewith filing the same. However, due to unintentional ignorance, there is an unintentional delay in filing the Appeal.
3. The actual due date of filing the appeal is on 24.07.2024 whereas the present appeal is being filed on 03.08.2024. As explained in the above paragraphs, the delay is unintentional and we have made sincere efforts to file the appeal within the time limit.
4. Hence, we humbly request your good self to consider the same and allow the application for condonation of delay.

We sincerely regret the inconvenience caused in this regard. Kindly acknowledge receipt of this letter and do the needful.

Thanking You,
Yours faithfully,

For M/S Villa Orchids LLP

Authorized Signatory

A circular stamp with the text "VILLA ORCHIDS LLP" around the perimeter and a star at the bottom. Overlaid on the stamp is a handwritten signature in black ink.



H N A & Co LLP
Chartered Accountants

(Formerly known as Hiregange & Associates LLP)

Date: 19.08.2024

To

The Joint Commissioner of Central Tax (Appeals-II),
HQRS Office, 7th Floor,
L.B. Stadium, Basheerbagh,
Hyderabad, Telangana- 500004.

Dear Sir,

Sub: Filing of appeal against the Order dated 19.04.2024

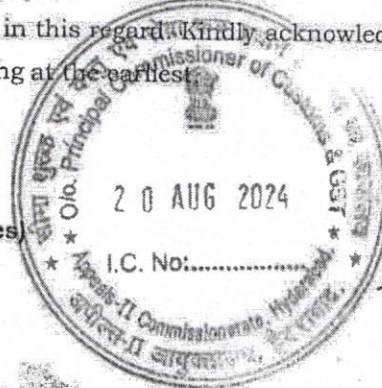
Ref:

- Order issued vide DIN: 20240456YO0000888FD5 dated 19.04.2024 pertaining to **M/s. Villa Orchids LLP** passed for the FY 2018-19 by Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad Salike Senate, D. No. 2-4-416 & 417, Ramgopal Pet, MG Road, Secunderabad, Telangana.
 - GSTIN: 36AANFG4817C1Z1H.
- We have been authorized by M/s. Villa Orchids LLP to submit an appeal against the above-referred Order dated 19.04.2024 to represent before your good office to do necessary correspondence in the above-referred matter. A copy of the authorization is attached to the appeal.
 - In this regard, we would like to submit that the above referred Order has not uploaded in GST Portal. So, we made pre- deposit payment against the disputed amount through DRC-03 having ARN No. AD3608240062580 dated 16.08.2024. (Copy of DRC-03 dated 16.08.2024 as **Annexure- V**).
 - We are herewith submitting the appeal against the above-referred Order dated 19.04.2024 in Form APL-01 along with authorization and annexures.
- We shall be glad to provide any other information in this regard. Kindly acknowledge the receipt of the appeal and post the matter for hearing at the earliest.

Thanking You
Yours truly

For M/s. H N A & Co. LLP
(Formerly known as M/s. Hiregange & Associates)
Chartered Accountants

R. Lakshman Kumar
CA Lakshman Kumar Kadali
Partner



Shakti

4th Floor, West Block, Srida Anushka Pride, R No. 12, Banjara Hills, Hyderabad,
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Electronic Cash Ledger

GSTIN - 36AANFG4817C1ZH

Name(Legal) - VILLA ORCHIDS LLP

Period: From - 16/08/2024 To - 19/08/2024

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								0	0	0	0	0	0
2	16/08/2024	11:01:05	16/08/2024	R2422956413550		Amount deposited	Credit	0	0	0	0	0	0	0	0	0	0	0	0
3	16/08/2024			DC3608240043298	Mar-19	Voluntary payment	Debit	0	0	0	0	0	0	0	0	0	0	0	0
4						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	Total
1						Opening Balance								0	0	0	0	0	0
2	16/08/2024	11.01.26	16/08/2024	RE422956413368		Amount deposited	Credit	1100	0	0	0	0	1100	1100	0	0	0	0	1100
3	14/08/2024			DC3606240043298	Mar-19	Voluntary payment	Debit	1100	0	0	0	0	1100	0	0	0	0	0	0
4						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)	State Tax Amount Debited / Credited(₹)						State Tax Balance(₹)					
								Tax	Interest	Penalty	Fee	Others	Total	Tax	Interest	Penalty	Fee	Others	Total
1	-	-	-	-	-	Opening Balance	-	-	-	-	-	-	-	0	0	0	0	54	54
2	16/06/2024	11:01:06	16/06/2024	R3422956413356	-	Amount deposited	Credit	1100	0	0	0	0	1100	1100	0	0	0	54	1194
3	16/06/2024	-	-	DCB606240042298	Mar-19	Voluntary payment	Debit	1100	0	0	0	0	1100	0	0	0	0	54	54
4	-	-	-	-	-	Closing Balance	-	-	-	-	-	-	-	0	0	0	0	54	54

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	0	
2	14/08/2024	11:01:06	14/08/2024	R2422356413368		Amount deposited	Credit	0	0	0	0	0	0	0	0	0	0	0	
3	16/08/2024			DCR608240043298	Mar-24	Voluntary payment	Debit	0	0	0	0	0	0	0	0	0	0	0	
4						Closing Balance							0	0	0	0	0	0	

Electronic Credit ledger

GSTIN - 36AANFG4817C1ZH

Legal Name - VILLA ORCHIDS LLP

Period: From -16/08/2024 To - 16/08/2024

Sr.No	Date	Reference No.	Tax period, if any	Description	Transaction Type [Debit (DR) / Credit (CR)]	Credit/Debit (₹)					Balance Available(₹)				
						Integrated Tax	Central Tax	State Tax	CESS	Total	Integrated Tax	Central Tax	State Tax	CESS	Total
				Opening Balance							0	4738	4738	0	9476
1	16/08/2024	DI3608240044757	Mar-19	Voluntary payment	Debit	0	4713	4713	0	9426	0	25	25	0	50
				Closing Balance							0	25	25	0	50

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 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:25/2024-25(GST-Adjn)	Order Date	19.04.2024	
(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	25.04.2024 (Through post)			
(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. Under declaration of output tax amounting to Rs.1,03,856/-(CGST Rs.51,928/- and SGST Rs.51,928/-) 2. Under declaration of ineligible ITC amounting to Rs. 12,404/-(CGST Rs.6,202/- and SGST Rs.6,202/-)			
ii. Description and classification of goods/services in dispute	NA			
iii. Period of dispute	April 2018 to March 2019			
iv. Amount under dispute				
Description	Central tax	State/UT tax	Integrated tax	Cess
a. Tax/Cess	58,130/-	58,130/-	NA	NA
b. Interest	u/s 50	u/s 50	NA	NA
c. Penalty	73(9)	73(9)	NA	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

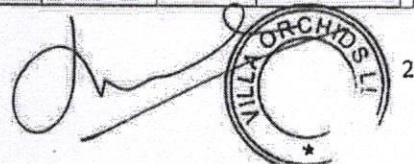
(14) Amount of Demand Created, admitted, and disputed

Particulars	CGST	SGST	IGST	Cess	Total amount
Amount of demand created (A)					
a) Tax/Cess	58,130/-	58,130/-	NA	NA	1,16,260/-
b) Interest	u/s 50	u/s 50	NA	NA	NA
c) Penalty	73(9)	73(9)	NA	NA	NA
d) Fees	NA	NA	NA	NA	NA
e) other charges	NA	NA	NA	NA	NA
Amount of demand admitted (B)					
a) Tax/Cess	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/Cess	58,130/-	58,130/-	NA	NA	1,16,260/-
b) Interest	u/s 50	u/s 50	NA	NA	NA
c) Penalty	73(9)	73(9)	NA	NA	NA
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	5,813	5,813	NA	NA	11,626/-

 2

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	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

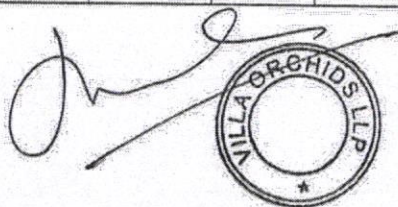
(17) If 'Yes' in item 16 –

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
(19)						

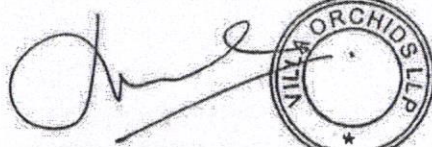


Appellant

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 during the FY 2018-19.
- C. On verification of records by the Telangana state GST Authorities few discrepancies were found and the same is communicated through the issuance of DRC-01A. Subsequently, the Appellant is in receipt of the present Show Cause Notice for the period 2018-19 asking to show cause as to why (A copy of Show cause Notice is enclosed as **Annexure-III**)
- An amount of Rs.1,03,856/- (Rupees one lakh three thousand and eight fifty-six only) towards under declaration of output tax should not be demanded from them under Section 73 of the CGST Act, 2017/TGST Act, 2017 read with section 20 of IGST Act 2017.
 - an amount of Rs. 50,17,912/-(Rupees fifty lakhs seventeen thousand nine hundred and twelve only) being excess ITC availed on account of non-reconciliation of information should not be demanded from them under Section 73 of the CGST Act,2017/TGST Act, 2017 read with section 20 of IGST Act 2017.
 - an amount of Rs. 12,404/-(Rupees twelve thousand four hundred and four only) being under declaration of ineligible ITC should not be demanded from them under Section 73 of the CGST Act,2017/TGST Act, 2017 read with section 20 of IGST Act 2017.
 - Interest on the amounts at SI.No. (i) (ii)& (iii) should not be recovered from them under Section 50 of the CGST Act,2017/TGST Act 2017 read with Section 20 of IGST Act,2017
 - Penalty should not be imposed on SI.No. (i) (ii)& (iii) under Section 122(2)(a) of the CGST Act,2017/TGST Act 2017 read with section 73(9) of CGST Act 2017/TGST Act 2017 read with Section 20 of IGST Act,2017
- D. Appellant has filed reply to the above show cause notice on 29.01.2024 (Copy of Reply to SCN is enclosed as **Annexure-II**)
- E. The learned Adjudicating authority considering the partial submissions made by the Appellant have confirmed the demand by issuing an order in Form GST DRC – 07 vide OIO: 25/2024-25(GST-Adjn) dated 19.04.2024. (Copy of Order in Form GST DRC – 07 is enclosed as **Annexure-I**)
- an amount of Rs.1,03,856/- (Rupees one lakh three thousand and eight fifty-six only) towards under declaration of output tax should not be demanded from them under Section 73 of the CGST Act, 2017/TGST Act, 2017 read with section 20 of IGST Act 2017.



- ii. an amount of Rs. 12,404/-(Rupees twelve thousand four hundred and four only) being under declaration of ineligible ITC should not be demanded from them under Section 73 of the CGST Act,2017/TGST Act, 2017 read with section 20 of IGST Act 2017;
- iii. Interest on the amounts at SI.No. (i) (ii) should not be recovered from them under Section 50 of the CGST Act,2017/TGST Act 2017 read with Section 20 of IGST Act,2017
- iv. Penalty should not be imposed on SI.No. (i) (ii) under Section 122(2)(a) of the CGST Act,2017/TGST Act 2017 read with section 73(9) of CGST Act 2017/TGST Act 2017 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 stamp. The stamp contains the text "VILLA ORCHIDS LLP" around the perimeter and a small star at the bottom center.

ANNEXURE-B

GROUND OF APPEAL

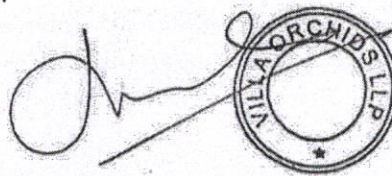
1. Appellant submits that the impugned order is ex-facie illegal and untenable in law since the same is contrary to facts and judicial decisions.
2. Appellant submits that the provisions (including Rules, Notifications & Circulars issued thereunder) of both the CGST Act, 2017 and the Telangana GST Act, 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 Telangana GST Act, 2017. Similarly, the provisions of the CGST Act, 2017 are adopted by the IGST Act, 2017 thereby the reference to CGST provisions be considered for IGST purposes also, wherever it arises.

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

3. The impugned order has demanded an amount of Rs.1,03,856/- (CGST Rs.51,928/- and SGST Rs.51,928/-) for under the declaration of output tax liability in GSTR-9 when compared to turnover declared in GSTR-1 & GSTR-3B for the FY 2018-19
4. In this regard, the Appellant submits that the Appellant has identified that there was under declaration of tax liability while filing monthly GSTR-3B and the same was identified at the time of filing the GSTR-09 return of FY 2018-19 and has paid the such under declared amount through form DRC-03. (Copy of filed DRC-03 is enclosed as **Annexure-IV**)
5. Further, the Appellant provides that since the tax is paid on 31.12.2020 i.e., before 31.03.2025, there shall be no liability of interest liability for the FY 2018-19 in accordance with the relief granted in the 53rd GST Council Meeting. Therefore, once the GST Council recommendation in relation to the interest demand waiver gets notified, there will be no interest liability and hence, the impugned order needs to be dropped to the extent.

In Re: No ineligible claim of ITC

6. The impugned order has demanded an amount of Rs.12,404/- (CGST Rs. 6,202/- and SGST Rs.6,202/-) along with interest and penalty for under declaration of ineligible ITC for the FY 2018-19 as per Sec17(5) of CGST Act, 2017.
7. In this regard, the Appellant submits that the Appellant has not claimed ineligible ITC as alleged in the order. Further, we submit that clause (ab) of Section 17(5) of the CGST Act, 2017, which restricts ITC on Insurance on motor vehicles was inserted on 1st February 2019. Hence, the said provision is applicable to the FY 2018-19 after 01.02.2019.



8. Further, the Appellant submits that they have not declared ineligible ITC which is restricted under Section 17(5) of the CGST Act, 2017. In this regard, the Appellant submits that Section 17(5) of the CGST Act, 2017 only restricts ITC on motor vehicles used for transportation of passengers having not more than specified seating capacity but doesn't restrict or mention anything except the said condition. The extract of the excerpt is mentioned below:

*"(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-
[(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:-
(A) further supply of such motor vehicles; or
(B) transportation of passengers; or
(C) imparting training on driving such motor vehicles;".*

From the above, the Appellant submits that motor vehicle used for transportation of passengers is only restricted. Hence, we are rightly eligible for ITC on motor vehicles.

9. Concerning the ITC claimed on insurance on motor vehicles, the Appellant submitted clause (ab) of Section 17(5) of CGST Act, 2017 which states as follows:

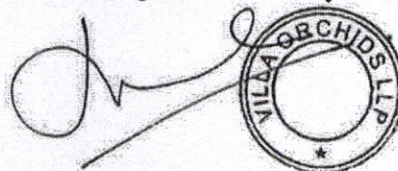
"(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa)"

From the above, the Appellant submits that the above clause is only applicable to motor vehicles used for the transportation of passengers. Since the section and the said clause are also not applicable to us, there is no restriction of ITC on the said transactions mentioned in the order.

10. Further the Appellant would like to submit that above mentioned ITC has been used in the course and furtherance of business and the same is rightly eligible to be claimed. Hence from the above submissions, it is clear that there is no availment of ineligible ITC and requesting you to set aside the proceeding in this regard.

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

11. 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).
12. 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"*.

13. 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"

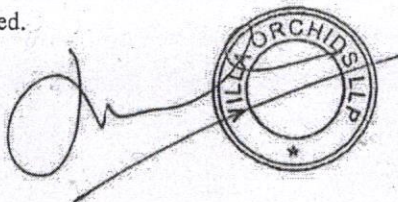
From the above referred sub-section, it is clear that the penalty is applicable only when any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax. However, in the instant case the Appellant has paid the self-assessed tax and there is no delay in payment of tax. Hence, the penalty under Section 73(11) is not applicable in the instant case.

14. Appellant submits that the Supreme Court in the 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.

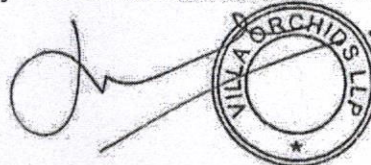
15. Appellant submits that from the above referred decision of the Supreme Court, penalties cannot be imposed merely because the assessee has claimed certain ITC which was not accepted or was not acceptable to the revenue when the assessee has acted on the bonafide belief that the ITC is eligible. In the instant case also, Notice 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.

16. 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.

17. Appellant submits that GST being a new law, the imposition of penalties during the initial years of implementation is not warranted. Further, the 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.



18. In addition to the above, the Appellant submits that where 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."*
19. 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"*
20. 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

21. 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.

In Re: Impugned order is not valid

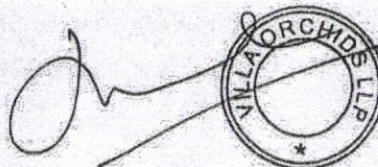
Violation of principles of natural justice

22. The appellant submits that the impugned order was passed without giving any proper reasons and by not considering the submissions made by the appellant. The adjudicating authority did not discuss the submissions made. As such, a non-speaking order is not sustainable in law and is violative of the principles of natural justice. Speaking order means an order which contains the reasoning of the Authority concerned which differs from the interpretation of the Appellant. The failure to provide reasons could lead to a very justifiable complaint that there was a breach of natural justice. A party has a right to know not only the decision but also the reasons in support of the decision. Reasoned orders are necessary if judicial review is to be effective. The condition to record reasons introduces clarity and excludes arbitrariness. The principle requiring reasons to be given, in support of an order is a basic principle of natural justice which must inform every quasi-judicial process and must be observed in its proper spirit and mere pretense of compliance with it could not satisfy the requirement as per law.

23. The appellant submits that it is the duty of the authority who passed the order to prove beyond doubt why and how the submissions made by the Appellant were not applicable and not acceptable. The Appellant would like to rely on the following judicial pronouncements:

i. **Dharampal Satyapal Limited Vs DC of Gauhati 2015 (320) ELT 3 (SC) held that**

"18. Natural justice is an expression of English Common Law. Natural justice is not a single theory - it is a family of views. In one sense administering justice itself is treated as natural justice. It is also called 'naturalist' approach to the phrase 'natural justice' and is related to 'moral naturalism.' Moral naturalism captures the essence of common-sense morality - that good and evil, right, and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.



19. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi-judicial bodies, has assumed different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must be given to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as 'natural justice.' The principles of natural justice developed over a period of time, and which is still in vogue and valid even today were: (i) rule against bias, i.e., nemo iudex in causa sua; and (ii) opportunity of being heard to the concerned party, i.e., audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is duty to give reasons in support of decision, namely, passing of a 'reasoned order.'

- ii. **Sant Lal Gupta Vs Modern Co-op.G.H.Society Ltd. - 2010 (262) E.L.T. 6 (S.C.)** wherein it was held that "The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."
- iii. **M/s Chennai Citi Centre Holdings Pvt Ltd Vs the Designated Committee under the Sabka Vishwas Legacy Dispute Resolution scheme, 2019. 2021-TIOL-1711-HC-MAD-ST**
- iv. **M/s. Arcelormittal Nippon Steel India Ltd. Versus Assistant Commissioner 2021 (12) TMI 227 - Gujarat High Court**
- v. **Aggarwal Dyeing and Printing works V/s State of Gujarat & 2 others 2022 (4) TMI 864 dated 24-02-2022**
- vi. **Surender Kumar Jain V/s Principal Commissioner, Delhi North Zone W.P.(C) 17700/2022 dated 25.01.2023**

24. Appellant finds that the aforesaid observations would squarely apply to the present facts of the case in hand. Thus, the sum and substance of various judgments on the principles of natural justice are to the effect that wherever an order is likely to result in civil consequences it should give its clear reasons.

Demand was confirmed based on assumptions and presumptions

25. 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.

26. 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.

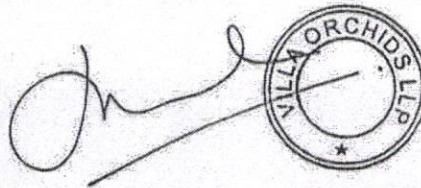
Order is vague and lack of details

27. 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."*
- 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).

28. 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.

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 in the center.

The impugned order is time barred and Notification No. 56/2023-CT dated 28.12.2023 is bad in law for the FY 2018-19:

29. 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 2018-19, the annual return due date falls on 31.12.2020 and the 3-year time limit expires by 31.12.2023 however citing the difficulties caused due to Covid-19, the Government has extended the time limit from 31.12.2023 to 31.03.2024 by exercising the powers u/s. 168A, ibid the time was further extended to 31.03.2024 by the Notification No. 09/2023 dated 31.03.2023 (second extension) and further extended to 31.04.2024 vide Notification No. 56/2023-CT dated 28.12.2023. In this regard, it is submitted that an extension of the time 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 31.03.2024. 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 2018-19 deserves to be dropped as the Show Cause Notice in the instant case is not issued prior to 30.09.2023 as envisaged under Section 73 of CGST Act, 2017.

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

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

For M/s. Villa Orchids LLP

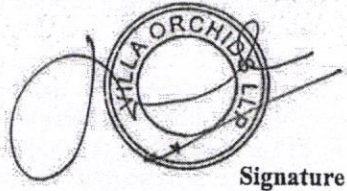


Authorized Signatory

PRAYER

Therefore, it is prayed that

- a) To set aside the impugned order to the extent aggrieved.
- b) To hold that there is no ineligible claim of ITC
- c) To hold that there is no under declaration of output tax liability
- d) To hold that there is violation of principles of natural justice
- e) To hold that there is no liability to pay the interest and penalty.
- f) To provide any other consequential relief.



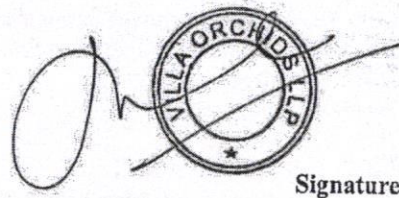
Signature

VERIFICATION

I, SOHAM 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: 25/2024-25(GST-Adjn) dated 19.04.2024 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 03th August 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: 03.08.2024

Address for service:

H N A & Co. LLP

Chartered Accountants,

4th Floor, West Block, Anushka Pride,

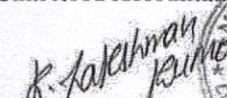
above Lawrence & Mayo,

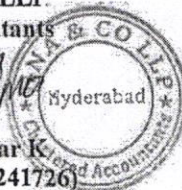
Road Number 12, Banjara Hills,

Hyderabad, Telangana 500034.

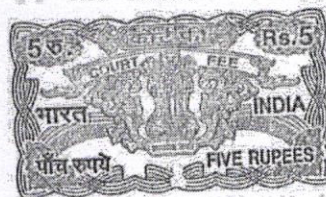
I, Partner/employee/associate of M/s H N A & Co. LLP duly qualified to represent in above proceedings in terms of the relevant law, also accept the above said authorization and appointment.

For HNA & Co. LLP
Chartered Accountants


Lakshman Kumar K
Partner (M.No. 241726)



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	



Annexure-I

Order-In-Original No. 25/2024-25(GST-Adjn) dated 19.04.2024

		
केन्द्रीयकरसहायक आयुक्त कार्यालय,सिकंदरावादमालएवमसेवाकरमण्डल, 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

C.No GEXCOM/ADJN/GST/2903/2023-CGST-DIV-SNBD-COMMRTE-SECUNDERABAD

दिनांक/Date: 19.04.2024

DIN: 20240456Y0000888FD5

ORDER-IN-ORIGINAL No. 25/2024-25 (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 व्यक्ति को जारी किया गया है वह प्रतिनिजी प्रयोग के लिए बिना मूल्य के दी जाती है।

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.

कोई भी व्यक्ति जो केन्द्रीयवस्तु एवम सेवा कर अधिनियम, 2017 की धारा 107 (1) के तहत, इस आदेश से दुखी होता हो तो 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 होने के तीन माह के अंदर अपील दर्ज कर सकता है।

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

केन्द्रीयवस्तु एवम सेवा कर नियम, 2017 के नियम 108 के तहत निर्धारित फॉर्म GST APL-01 में अपील दायर की जाएगी।

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

अपील का आधार और फॉर्म के सत्यापन के रूप में फॉर्म जीएसटीएपीएल 01 में निहित है, केन्द्रीय सामान और सेवा कर नियम, 2017 के नियम 26 में निर्दिष्ट तरीके से हस्ताक्षर किए जाएंगे।

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.

केन्द्रीयवस्तु एवम सेवा कर नियम, 2017 के 108 के उपनियम 1 के तहत अपील भरने के सात दिनों के भीतर आदेश की प्रमाणित प्रति प्रस्तुत की जाएगी।

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

SCNO
27/24



(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, 2017कीधारा 107 (6) केअनुसार, अपीलकतनिकेंद्रीयवस्तु एवम सेवाकरअधिनियम, 2017कीधारा 107 (1) केतहतकोईअपीलदायरनहींकीजाएगी, जबतककिअपीलकतनिभुगताननहींकियाहो-

(ए) पूर्णरूपसे, लगाएगएआदेशसेउत्पन्नकर, ब्याज, जुर्माना, शुल्कऔरजुर्मानाकीराशिकाऐसाहिस्सा, जिसाकिउसकेद्वारास्वीकारकियागयाहै; तथा

(बी) दसप्रतिशतकेबराबरराशि।उक्तआदेशसेउत्पन्नविवादमेंकरकीशेषराशि, जिसकेसंबंधमेंअपीलदायरकीगईहै।

Sub: GST-On account of discrepancies observed during verification of Returns filed by M/s. VILLA ORCHIDS LLP (GSTIN: 36AANFG4817C1ZH) for the FY 2018-19- Issue of Order-in-Original - Regarding.

M/s. VILLA ORCHIDS LLP (here-in-after referred to as "Taxpayer"), situated at 2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, M.G ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003, are engaged in Works Contract Services falling under the HSN 00440410 & 995411. 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 Division, Secunderabad Commissionerate.

2. On verification of the records, by the Telangana State GST authority, the following discrepancies were observed.

2.1. ISSUE 1: Under declaration of output tax.

The tax on outward supplies under declared on reconciliation of data in GSTR-09

2.1.1. It is observed that, the taxpayer has not correctly declared tax on his outward supplies on reconciliation of turnover in GSTR-01, GSTR-3B and GSTR-9 for the financial year 2018-19.

2.1.2. The taxpayer has self-assessed the tax liability on outward supply and furnished the details of the same in returns specified under Section 37 of the CGST Act, 2017. In terms of provision of section 59 of the 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'. The taxpayer failed to discharge the self-assessed tax in the returns specified under Section 39 and the taxpayer was to pay taxes liable under Section 9 of the CGST Act, 2017 and therefore, the differential tax of Rs 1,03,856/- as detailed in table below, is liable for recovery under Section 73 of the CGST Act, 2017 along with applicable interest under section 50 and penalty under section 73 of the CGST Act, 2017 read with Section 122(2)(a) of the CGST Act, 2017.

Table-1

Amount: INR

S.No	Issue	Table No. in GSTR-09	SGST	CGST	Total
1	2	3	4	5	6
1	Tax on taxable supplies as declared in GSTR-09	4N	6323140.00	6323140.00	12646280.00
2	Add net increase due to amendments (Increase in amendments (-) decrease in amendments)	10 (-) 11	0.00	0.00	0.00
3	Add tax on deemed supplies	16B	0.00	0.00	0.00
4	Add tax on unreturned goods	16C	0.00	0.00	0.00
5	Pending demands	15G	0.00	0.00	0.00
6	Total output tax liability as per the above in GSTR-09 (S.NO 1+2+3+4+5)		6323140.00	6323140.00	12646280.00
7	Less Total tax paid in cash	9	0.00	0.00	0.00
8	Less Tax paid by adjustment of ITC	8	6271212.00	6271212.00	12542424.00
9	Less differential tax paid on amendments	14	0.00	0.00	0.00
10	Add differential tax paid on amendments related to previous year in current year	(14) of previous FY GSTR-09	0.00	0.00	0.00
11	Net tax payable (S.NO 6-7-8-9+10)		51928.00	51928.00	103856.00

2.2. ISSUE 2: Excess claim of ITC:

The excess input tax credit (ITC) claimed on account of non-reconciliation of information:

2.2.1. Under Section 16(2)(c) of CGST Act, 2017, every registered person shall be entitled to take credit of ITC on supply of goods or services to him subject to the condition that the tax charged in respect of such supply has been actually paid to the Government either in cash or through utilization of ITC admissible in respect of such supply.

2.2.2. It is observed that the taxpayer has not correctly availed input tax on his inward supplies on reconciliation of turnovers in GSTR-09.

Scrutiny of ITC availed:

S.No	Description	SGST	CGST	Total
1	2	3	4	5
1	ITC in the year as per Table 8A of GSTR-09	4804897.00	4804897.00	9609794.00
2	ITC from ISD table 4A (4)	0.00	0.00	0.00
3	ITC from imports table 4A (1) + 4A (2)	0.00	0.00	0.00
4	Inward Supplies liability to reverse charge 4A (3) (other than 4A(1) & 4A(2))	0.00	0.00	0.00
5	ITC brought forward from previous FY to current FY, Table 8C of previous FY GSTR-09	0.00	0.00	0.00
6	ITC carried forward from present FY to subsequent FY, Table 8C of GSTR-09	0.00	0.00	0.00

7	Reversals in Table 4B of GSTR-3B	0.00	0.00	0.00
8	ITC Available for use in the same year (S.No 1+2+3+4+5+6+7)	4804897.00	4804897.00	9609794.00
9	ITC used in same year as per 4C of GSTR-3B	7313853.00	7313853.00	14627706.00
10	Net excess used (S.No 9-8)	2508956.00	2508956.00	5017912.00

3. ISSUE 3: Under declaration of Ineligible ITC:

3.1 Under Section 17(5) of the CGST Act, 2017 input tax credit shall not be available in respect of the list of commodities & services mentioned therein subject to certain conditions.

3.2 It is seen from GSTR-09 and other information that they have claimed ITC on these commodities and therefore the ITC claimed on these commodities or services is proposed to be recovered.

S.No	Commodity/Service	HSN/SAC code	SGST	CGST	Total
1	2	3	4	5	6
1	Motor Vehicles	8702; 8703; 8711	1174.00	1174.00	2348.00
2	Motor Vehicle Insurance Service	997134	5028.00	5028.00	10056.00

S.No	Issue	Table no. in GSTR-09	SGST	CGST	Total
1	2	3	4	5	6
A	Total ineligible ITC u/s 17(5)		6202.00	6202.00	12404.00
B	Ineligible ITC declared	7E or (Sum of 4D(1) of GSTR 3B of all months in FY) which ever is higher	0.00	0.00	0.00
C	Difference/excess ITC claimed	"If (SL.No A - SL.No B > 0) then Lower of (SL.No A - SL.No B) or ((Sum of 4C of GSTR 3B of all months in current FY) - (13-12 of Previous FY GSTR-09) + (13-12 of current FY GSTR-09))"	6202.00	6202.00	12404.00

3.3. From the above, the taxpayer is required to reverse the excess ITC claimed under Section 73 of the CGST Act, 2017 along with applicable interest under section 50 of the CGST Act, 2017 and penalty under section 73 of the CGST Act, 2017 read with Section 122(2)(a) of the CGST Act, 2017.

TOTAL TAX PAYABLE SUMMARY				
Sl. No.	Issue	SGST	CGST	Total
1	2	3	4	5
1	Total Tax due	2567086.00	2567086.00	5134172.00
2	Interest	In terms of Section 50 of the CGST Act, 2017		
3	Penalty	In terms of Section 73 of the CGST Act, 2017		

4. The DRC 01A issued to the taxpayer requesting to pay tax along with interest and applicable penalty. However the taxpayer neither paid dues nor submitted any reply.

5. Therefore, M/s. VILLA ORCHIDS LLP (here-in-after referred to as "Taxpayer"), situated at 2ND FLOOR, 5-4-187/3 and 4, Soham Mansion, M.G Road, Secunderabad, Rangareddy, Telangana, 500003, were issued a Show Cause Notice answerable to the Assistant Commissioner of Central Tax (Adjudicating Authority), Secunderabad GST Division, Secunderabad GST Commissionerate, Salike Senate, D.No.2-4-416&417, Ramgopalpet, MG Road, Secunderabad - 500003 within thirty days from the date of issue of this notice as to why: -

- (i) an amount of Rs.1,03,856/- (CGST: Rs.51,928/- & SGST: Rs.51,928/- (Rupees One Lakh Three Thousand Eight Hundred and Fifty Six only), as discussed supra in Para 2.1 should not be demanded from them under section 73(1) of the CGST Act, 2017/TSGST Act, 2017.
- (ii) an amount of Rs.50,30,316/- (CGST: Rs.25,15,158/- & SGST: Rs.25,15,158/- (Rupees Fifty Lakhs Thirty Thousand Three Hundred and Sixteen only), as discussed supra in Para 2.2 should not be demanded from them under section 73(1) of the CGST Act, 2017/TSGST Act, 2017.
- (iii) interest at the applicable rate should not be demanded from them on tax demanded at (i) & (ii) above under section 50 of CGST Act, 2017/TSGST Act, 2017.
- (iv) Penalty should not be imposed on them demands at (i) & (ii) above under Section 73 of CGST Act, 2017 read with Section 122 of CGST Act, 2017/TSGST Act, 2017.

6. Reply to Show Cause Notice:

The TP has submitted their reply to the SCN on 29.01.2024. The tax payer in his reply stated that in respect of

6.1. ISSUE - 1: Under declaration of output tax

The tax payer submitted that appropriate submissions will be provided in due course time.

6.2 ISSUE -2: The excess input tax credit (ITC) claimed on account of non-reconciliation of information:

The tax payer submitted that the demand was raised in the previous SCN in any case, such alleged differences between ITC in GSTR3B Vs GSTR2A is factually wrong as impugned SCN was based on the old GSTR2A as on the date of filing of annual returns. Once, the updated GSTR2A was considered, the actual difference was quite less than the amount arrived in the SCN. Further,

submitted that ITC cannot be denied merely due non-reflection of invoices in GSTR2A as all the conditions specified under Section 16 have been satisfied. Submitted that GSTR2A cannot be taken as a basis to deny the ITC in accordance with Section 41, Section 42 of CGST Act, 2017, Rule 69 of CGST Rules, 2017. Finally, requested to drop further proceedings initiated in the show cause notice.

6.3. ISSUE - 3: Under declaration of In-eligible ITC

The tax payer submitted that they have not availed ITC of Rs. 12,404/- on motor vehicles as alleged in the show cause notice. On verification of the GSTR2A and GSTR3B for the months of Sep, 2018 and March, 2019 it is noticed that the ITC availed is more in GSTR3B than the ITC available in GSTR2A. In view of the above, it is construed that the tax payer availed the said credit

7. Personal Hearing:

7.1 A Personal Hearing was fixed on 30.01.2024, 15.02.2024 & 28.02.2024 and intimated to the tax payer. Shri Srimannarayana, authorized representative of the company has attended the PH and reiterated the submissions made in their reply dated 16.02.2024 and requested to drop further proceedings.

8. Discussions & Findings :

I have carefully gone through the records of the case, Show Cause Notice, tax payer's reply dated 16.02.2024, submissions made during the course of personal hearing and other material available on record. I now propose to adjudicate the case under the provisions of Section 73 of CGST Act, 2017. There are two issues before me to decide. I shall take up the aforesaid issues one by one for discussion.

8.1. ISSUE- 1: Under declaration Output tax

Section 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, electronically¹ [subject to such conditions and restrictions and] 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 details² [shall, subject to such conditions and restrictions, 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 CHAPTER IX RETURNS