

FORM GST APL-01*[Refer Rule 108(1)]***Appeal to Appellate Authority**

1 GSTIN/Temporary ID/UIN - 36AAHFB7046A1ZT
2 Legal Name - B & C ESTATES
3 Trade Name - B&C ESTATES5
4 Address - 2nd floor, 5-4-187/3 and 4, soham mansion,
mg road, secunderabad, Rangareddy,
Telangana, 500003

Order Type -

Demand Order

5 Order No - ZD360424063212Q Order Date - 26/04/2024
6 Designation and address of the officer passing the order appealed against
Assistant Commissioner and Begumpet
STU-2: Begumpet: Telangana
Demand Id - ZD360424063212Q
7 Date of communication of the order to be appealed against - 26/04/2024
8 Name of the authorised representative - SOHAM MODI[ABMPM6725H]

Category of the case under dispute -

1	Incorrect admissibility of input tax credit of tax paid or deemed to have been paid
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9 Details of Case under dispute

(i) Brief issue of case under dispute - Refer to Annexure
(ii) Description and clarification of goods/ services in dispute - Refer to Annexure
(iii) Period of Dispute - From - 01/04/2018 To - 31/03/2019

(iv) Amount under Dispute

Description		Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Amount of Dispute	Tax/Cess	639346	639346	0	0	1278692	1406562
	Interest	0	0	0	0	0	
	Penalty	63935	63935	0	0	127870	
	Fees	0	0	0	0	0	
	Other Charges	0	0	0	0	0	

(v) Market value of seized goods - Refer to Annexure

10 Whether the appellant wishes to be heard in person - Yes/No Refer to Annexure
11 Statement of facts - Refer to Annexure
12 Grounds of appeal - Refer to Annexure
13 Prayer - Refer to Annexure

14 Amount Of Demand created/ admitted/ disputed

Description		Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Amount of demand created (A)	Tax/Cess	639346	639346	0	0	1278692	1406562
	Interest	0	0	0	0	0	
	Penalty	63935	63935	0	0	127870	
	Fees	0	0	0	0	0	
	Other Charges	0	0	0	0	0	
Amount of demand admitted (B)	Tax/Cess	0	0	0	0	0	0
	Interest	0	0	0	0	0	
	Penalty	0	0	0	0	0	
	Fees	0	0	0	0	0	
	Other Charges	0	0	0	0	0	
Amount of dispute (C)	Tax/Cess	639346	639346	0	0	1278692	1406562
	Interest	0	0	0	0	0	
	Penalty	63935	63935	0	0	127870	
	Fees	0	0	0	0	0	
	Other Charges	0	0	0	0	0	

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

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

(a) Details of payment required

Description		Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Admitted Amount	Tax/Cess	0	0	0	0	0	127870
	Interest	0	0	0	0	0	
	Penalty	0	0	0	0	0	
	Fees	0	0	0	0	0	
	Other charges	0	0	0	0	0	
Pre-deposit (10% of Disputed Tax/Cess)	Tax/Cess	63935	63935	0	0	127870	

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

Description		Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Amount Paid	Tax/Cess	63935	63935	0	0	127870	127870
	Interest	0	0	0	0	0	
	Penalty	0	0	0	0	0	
	Fees	0	0	0	0	0	
	Other Charges	0	0	0	0	0	

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

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

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

Refer to Annexure

17 If 'Yes' in item 16 -

(a) Period of delay -

Refer to Annexure

(b) Reason for delay -

Refer to Annexure

Upload Supporting Documents (Relied upon), if any -

Annexures 1-3	Annexure 1-3.pdf
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Verification

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

Place: Hyderabad

Date: 23/07/2024

Name of the Applicant

B & C ESTATES



H N A & Co LLP
Chartered Accountants

(Formerly known as Hiregange & Associates LLP)

Date: 23.07.2024

To

**The Joint Commissioner Of State Tax (Appeals),
Punjagutta Division, 5th Floor,
C.T Complex, Nampally, Hyderabad-500001.**

Dear Sir,

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

Ref: Form DRC-07 OIO Vide Ref. No. ZD360424063212Q dated 26.04.2024 relating to
M/s. B & C Estates.

1. We have been authorized by M/s. B & C Estates to submit an Appeal against the above referred Order and represent before your good office and to do necessary correspondence in the above referred matter. A copy of authorization is attached to the Appeal.
2. In this regard, we are herewith submitting the Appeal memorandum against the order passed by the Deputy commissioner, Telangana in Form APL-01 in duplicate along with authorization and annexures.
3. Further, in relation to the Pre-requisite to the pre-deposit @10% of the tax demanded Rs. 12,78,692/-, u/s 107 of The CGST Act, 2017. For the remaining amount of tax in dispute an amount of Rs. 1,27,869/- is discharged through Electronic Credit Ledger.

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

Thanking You,

Yours faithfully,

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

R. Lakshman Kumar K
CA Lakshman Kumar K
Partner



4th Floor, West Block, Srida Anushka Pride, R.No. 12, Banjara Hills, Hyderabad,
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Form GST APL - 01

Form of Appeal to Appellate Authority

[Under Section 107(1) of the Central Goods and Service Tax Act, 2017]

[See-Rule 108(1)]

**BEFORE THE JOINT COMMISSIONER OF STATE TAX (APPEALS), PUNJAGUTTA
DIVISION, 5th FLOOR, C.T COMPLEX, NAMPALLY, HYDERABAD-500001.**

(1) GSTIN/ Temporary ID/ UIN	36AAHFB7046A1ZT			
(2) Legal Name of the Appellant	M/s. B & C ESTATES			
(3) Trade name, if any-				
(4) Address	5-4-187/3 and 4, 2 nd Floor, soham mansion, MG road, Secunderabad, Rangareddy, Telangana, 500003			
(5) Order No.	Ref. ZD360424063212Q	Order Date	26.04.2024	
(6) Designation and address of the officer passing the order appealed against	The Deputy commissioner (ST), Begumpet Division, Pavani Prestige, Above R.S. brothers, Ameerpet			
(7) Date of communication of the order appealed against	26.04.2024			
(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, Road No. 12, Banjara Hills, Hyderabad-500034 Email: laxman@hnaindia.com Mob: +91 8978114334			
(9) Details of the case under dispute				
i. Brief issue of the case under dispute	Irregular availment ITC of in GSTR-3B as compared to GSTR-2A.			
ii. Description and classification of goods/services in dispute	NA			
iii. Period of dispute	FY 2018-19			
iv. Amount under dispute				
Description	Central tax	State/UT tax	Integrated tax	Cess
a. Tax/Cess	6,39,346	6,39,346	NA	NA
b. Interest	NA	NA	NA	NA
c. Penalty	63,935	63,935	NA	
d. Fees	NA	NA	NA	NA
e. Other charges	NA	NA	NA	NA
TOTAL	7,03,281	7,03,281	NA	NA



M. J. 1

v. Market value of seized goods				NA			
(10)	Whether the appellant wishes to be heard in person			Yes			
(11)	Statement of Facts			Annexure - A			
(12)	Grounds of Appeal			Annexure - B			
(13)	Prayer			To set aside the impugned order to the extent aggrieved and grant the relief sought			
(14) Amount of Demand Created, admitted, and disputed							
Particulars of demand / Refund	Particulars	CGST	SGST	IGST	Cess	Total	
	Amount of demand created (A)	a) Tax/Cess	6,39,436	6,39,436	NA	NA	12,78,692
		b) Interest	NA	NA	NA	NA	NA
		c) Penalty	63,935	63,935	NA	NA	1,27,870
		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	6,39,436	6,39,436	NA	NA	12,78,692
		b) Interest	NA	NA	NA	NA	NA
		c) Penalty	63,935	63,935	NA	NA	1,27,870



	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	63,935	63,935	NA	NA	NA

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

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



4	Cess	NA	Cash Ledger	NA	NA	NA	NA	NA
		NA	Credit Ledger	NA	NA	NA	NA	NA

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

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

(19)



Appellant

ANNEXURE-A

STATEMENT OF FACTS

- A. M/s. B & C Estates (hereinafter referred as "Appellant") is located at 5-4-187/3 and 4, 2nd floor, soham mansion, MG road, Secunderabad, Rangareddy, Telangana, 500003 and engaged in provision of taxable supplies viz, work contracts services and registered with GST department vide "36AAHFB7046A1ZT".
- B. Appellant is regularly discharging GST liability and filing periodical returns. Appellant has also filed the Annual Return for the period 2018-19.
- C. Subsequently, deputy commissioner has issued the Demand-Cum-Show Cause Notice vide Ref. No. ZD3611210038014 dated 12.11.2021 for FY 2018-19. (Copy of the Show Cause Notice vide Ref. No. ZD3611210038014 dated 12.11.2021 is enclosed as an **Annexure III**)
- D. Further, appellant has filed the reply to the above stated show cause notice dated 17.12.2021 (Copy of reply to the show cause notice dated 17.12.2021 is enclosed as **Annexure II**)
- E. Appellant has filed reply to the above notice dated 17.12.2021. Subsequently, the Assistant commissioner passed the Order vide Ref. No. ZD360424063212Q dated 26.04.2024 confirming the demand on excess claim of ITC in comparison with GSTR-2A and GSTR-3B and confirmed the demand amount along with interest and penalty as applicable. The relevant extract is provided below : (Copy of Order vide Ref. No. ZD360424063212Q dated 26.04.2024 is enclosed as an **Annexure I**).
- The difference between GSTR-2A and GSTR-3B Rs. 6,39,346/- under SGST and Rs. 639346/- under CGST is not covered by documentary evidence. Hence, tax of Rs. 639346/- under SGST and Rs. 639346/- under CGST is hereby confirmed and payable along with interest and penalty as applicable.*

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.



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 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 purposes also, wherever arises.

In Re: Non-reflection of ITC in GSTR-2A

3. The Appellant submits that the impugned order has disallowed the ITC of Rs. 1,27,870/- (CGST Rs. 6,39,346/- and SGST Rs. 6,39,346/-) stating that the appellant has availed the excess ITC in GSTR-3B for FY 2019-20 in comparison with GSTR-2A and confirmed the demand along with penalty.
4. In this regard, Appellant submits that the difference between the ITC availed in GSTR-3B and updated GSTR-2A is as follows:

Sl. No.	Particulars	CGST	SGST	Total
A	ITC availed as per Table 8B of GSTR-09 for FY 2018-19	90,59,175	90,59,175	1,81,18,350
B	Reversals as per Table 7 of GSTR-09 for FY 2018-19	7,40,047	7,40,047	14,80,094
C	Net ITC availed during the FY 2018-19 (A-B)	83,19,128	83,19,128	1,66,38,256
D	ITC availed as per GSTR-2A stated in impugned order as per updated GSTR-2A	77,24,383	77,24,383	1,54,48,766
E	Non-reflection of ITC in GSTR-2A (C-D)	5,94,745	5,94,745	11,89,490



5. The appellant submits that with respect to net difference of ITC as mentioned in above table amounting to Rs. 11,89,490/- is due to non-reflection of input tax credit in GSTR-2A for FY 2018-19.
6. With respect to ITC not reflected in GSTR-2A, Appellant submits that Appellant is rightly eligible for ITC for the following reasons
- 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 have been satisfied.
 - 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.
 - Appellant further submits that Finance Act, 2022 has omitted Section 42, 43 and 43A of the CGST Act, 2017 which deals ITC matching concept. Appellant submits that the substituted Section 38 of the CGST Act, 2017 now states that only the eligible ITC which is available in the GSTR-2B (Auto generated statement) can be availed by the recipient. Now, GSTR-2B has become the main document relied upon by the tax authorities for verification of 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.
 - 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.
 - The Section 38 read with Rule 60 had prescribed the FORM GSTR 2 which is not made available till 30.09.2022. Notification No. 20 Central Tax dated 10th Nov 2020 has substituted the existing rule to w.e.f. 1.1.2021 meaning thereby the requirement of Form GSTR 2 necessary in order to due compliance of Section 38. In the absence of the said form, it was not possible for the taxpayer to comply with the same. Further, Form GSTR 2 has been omitted vide Notification No. 19/2 Central Tax dated 28.09.2022 w.e.f. 01.10.2022.
 - 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 Appellant 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 order is not correct.
- i. **Appellant further submit that the fact that there is no requirement to reconcile the invoices reflected in GSTR-2A vs GSTR-3B is also evident from the amendment in Section 16 of CGST Act, 2017 vide Section 100 of Finance Act, 2021. Hence, there is no requirement to reverse any credit in the absence of the legal requirement during the subject period.**
- 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 Appellant nor is verifiable by Appellant. Thereby, it can be said that such condition is impossible to perform and it is a known principle that the law does not compel a person to do something which he cannot possibly perform as the legal maxim goes: ***lex non-cogit ad impossibilia***, as was held in the case of:
- *Indian Seamless Steel & Alloys Ltd Vs UOI, 2003 (156) ELT 945 (Bom.)*
 - *Hico Enterprises Vs CC, 2005 (189) ELT 135 (T-LB). Affirmed by SC in 2008 (228) ELT 161 (SC)*

Thereby it can be said that the condition which is not possible to satisfy, need not be satisfied and shall be considered as deemed satisfied.



- l. In the same context, Appellant also wish to place reliance on the decision in case of Arise India Limited vs. Commissioner of Trade and Taxes, Delhi - 2018-TIOL-11-SC-VAT and M/s Tarapore and Company Jamshedpur v. State of Jharkhand - 2020-TIOL-93-HC-JHARKHAND-VAT.
- 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 Appellant is rightly eligible for ITC.
- p. Appellant submit that under the earlier VAT laws there were provisions similar to Section 16(2) ibid which have been held by the Courts as unconstitutional.
- q. Appellant wish to rely on recent decisions in case of
 - **Philips Auto Agencies (India) Pvt. Ltd versus State Tax Officer, Central Board Of Indirect Taxes And Customs, State Of Kerala, Commissioner Of State Tax - WP(C) NO. 9312 OF 2024 – Kerala 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**
 - **Henna Medicals Versus State Tax Officers, Deputy Commissioner (Arrear Recovery) Office Of The Joint Commissioner, State Goods And Service Tax Kannur, Union Of India, Central Board Of Indirect Taxes & Customs, State Of Kerala- 2023 (10) TMI 98 - Kerala High Court**
 - **D.Y. Beathel Enterprises Vs State Tax officer (Data Cell), (Investigation Wing), Tirunelveli 2021(3) TMI 1020-Madras High Court**
 - **Bhagyanagar Copper Pvt Ltd Vs CBIC and Others 2021-TIOL-2143-HC-Telangana-GST**
 - **LGW Industries limited Vs UOI 2021 (12) TMI 834 -Calcutta High Court**



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- Bharat Aluminium Company Limited Vs UOI & Others 2021 (6) TMI 1052 – Chattishgarh High Court;
- Sanchita Kundu & Anr. Vs Assistant Commissioner of State Tax 2022 (5) TMI 786 - Calcutta High Court;

7. Appellant submits that based on the above submissions, it is clear that the ITC availed by the taxpayer is rightly eligible. Hence, the impugned notice to that extent needs to be dropped.

In Re: Interest under section 50 is not applicable:

8. Appellant submits that the impugned order has demanded an interest u/s 50 of CGST Act, 2017. In this regard, Appellant submits that when the principal amount is not payable there is no question of payment of interest. In this regard, reliance is placed on the Judgment of the Hon'ble Supreme Court in the case of **Pratibha Processors Pvt. Ltd 1996 (88) ELT 12 (SC)**.

In Re: Penalty under section 73 and 122(2)(a) is not imposable:

9. Appellant submits that the impugned order has demanded penalty of Rs. 20,000/- in IGST u/s 73(8) of the CGST Act, 2017.

10. Appellant submits that the impugned order vide Para 12 has imposed the penalty u/s 122(2)(a) of the CGST Act, 2017. The relevant extract is reproduced below:

"11. Section 122 – Penalty for certain offences.

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

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

11. In this regard, Appellant submits that penalty u/s 122(2)(a) is not payable in the present case. Section 122(2)(a) attracts only when a registered person has not paid the tax or short paid or erroneously refunded or wrongly availed/utilised the input tax credit. As the Appellant is not required to pay any liability as the ITC available as per GSTR-2A is in excess of ITC availed in GSTR-3B there cannot be no additional liability imposed on the same and hence the order to that extent needs to be set aside.



M. 30

12. Appellant submits that Appellant is of the vehement belief that the input availed by Appellant is not required to reverse and there is no short payment of GST, 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 interest and penalty as held by the Supreme Court in **Prathiba Processors Vs UOI, 1996 (88) ELT 12 (SC)**.

13. Further, the 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".

14. Appellant submits that the impugned order vide para 12 has imposed the penalty u/s 73 of the CGST Act, 2017. The relevant extract is reproduced below: -

"9. Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful- misstatement or suppression of facts.-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful- misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3).....

...

...

(8).....



(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund."

15. 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 not availed any excess ITC in GSTR-03B. Hence, the penalty under Section 73(11) is not applicable in the instant case.

16. 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.

17. 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.

18. The Appellant submits that the impugned order has imposed a penalty under section 73, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act. The relevant provision which implies that as per provisions of Section 75(13) of the CGST Act, 2017, for easy reference the extract is reproduced here: -

"(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act."

It is clear from the above provision that if a penalty imposed under section 73 then no penalty under any other provision shall be imposed under this act. Hence, penalty under two sections i.e., under section 73 and under section



122(2)(a) cannot be imposed simultaneously and the demand under this proceeding needs to be set aside.

19. Appellant would like to submit further that in addition to above, Appellant submits that where an authority is vested with discretionary powers, discretion has to be exercised 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 notices 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."

20. Appellant further 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 notice 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."

21. 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.

22. 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.

23. Appellant submits that from all the above submissions, it is clear that imposition of penalties is not warranted therefore the impugned order needs to be set aside.

24. Appellant submits that the GST is still under the trail and error phase and the assessee are facing genuine difficulties and the same was also held by various courts by deciding in favour of assessee. Therefore, the imposition of penalty during the initial trial and error phase is not warranted and this is a valid reason for setting aside the penalties. In this regard, reliance is placed on :



1. Bhargava Motors Vs UOI 2019 (26) GSTL 164 (Del) wherein it was held that *"The GST system is still in a 'trial and error phase' as far as its implementation is concerned. Ever since the date the GSTN became operational, this Court has been approached by dealers facing genuine difficulties in filing returns, claiming input tax credit through the GST portal. The Court's attention has been drawn to a decision of the Madurai Bench of the Madras High Court dated 10th September, 2018 in W.P. (MD) No. 18532/2018 (Tara Exports v. Union of India) [2019 (20) G.S.T.L. 321 (Mad.)] where after acknowledging the procedural difficulties in claiming input tax credit in the TRAN-1 form that Court directed the respondents "either to open the portal, so as to enable the petitioner to file the TRAN-1 electronically for claiming the transitional credit or accept the manually filed TRAN-1" and to allow the input credit claimed after processing the same, if it is otherwise eligible in law"*
 2. The Tyre Plaza Vs UOI 2019 (30) GSTL 22 (Del)
 3. Kusum Enterprises Pvt Ltd Vs UOI 2019-TIOL-1509-HC-Del. GST
25. The Appellant submits that, as submitted supra, there was confusion that existed at such a point in time and the issue involved interpretation of provisions and law is at nascent stages. Therefore, the penalties cannot be imposed. Relied on CCE Vs Gujarat Narmada Fertilizers Co. Ltd 2009 (240) E.L.T 661 (S.C).
26. In view of the above, it is requested that a lenient view may be adopted, and the penalty be waived.
27. Appellant further submits that penalty under Section 73(9) can be imposed only when there is short payment of tax and the same is not applicable to irregular ITC. This is clearly evident from the differentiation made in Section 73(1) between short payment of tax, irregular availment of ITC, and erroneous refund. Hence, the penalty proposed under Section 73 is not applicable with respect to demand proposed under the category of irregular availment of ITC.
28. The appellant submits that from all the above submissions, it is clear that imposition of penalties is not warranted therefore the impugned order needs to be set aside.

In Re: Impugned order is not valid

In Re: SCN was issued without the issuance of ASMT-10 or DRC-01A



29. The appellant submits that SCN and the impugned order were issued based on the scrutiny of the returns furnished by the appellant like TRAN-1, GSTR-1, GSTR-3B, and GSTR-9 which indicated that the issue is related to the discrepancy in returns filed by the appellant.
30. In this regard, the appellant submits that Section 61 read with Rule 99 specifies that scrutiny of the returns shall be done based on the information available with the proper officer and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, under Rule 99(1), informing him of such discrepancy and seeking his explanation thereto. In case the explanation provided by the Appellant is satisfactory, then no further action shall be taken in that regard. If the explanation provided is not satisfactory, then the proper officer can initiate appropriate action under Section 73 or Section 74.
31. Further, as per **Section 73 of the TGST Act read with rule 142(1A) of the TGST Rules**, the proper officer shall, before the service of notice under section 73(1), communicate the details of any tax, interest, and penalty in **Part A Form GST DRC-01A**.
32. However, in the instant case the appellant had not received any notice in **FORM ASMT-10** requiring the appellant to provide an explanation for the discrepancy noticed in the returns and **pre-notice consultation in Form DRC-01A**. Instead, the proper officer has directly issued Form GST DRC-01 under Section 73 which shows that the impugned order has been issued without following the procedure prescribed in Section 61 of CGST Act, 2017 and Rule 99 of CGST Rules, 2017.
33. In this regard, reliance is placed on **Vadivel Pyrotech Pvt Ltd vs. Assistant Commissioner (ST), Circle-II (2022) 1 Centax 286 (Mad.)** wherein the Madras High Court held that
- "6. To a pointed question as to whether Form ASMT 10 ought to have been issued in respect of aspects forming the subject matter of the proceedings in GST DRC-01 culminating in GST DRC-07 in view of the fact that the proceedings are pursuant to scrutiny of assessments, the learned Additional Government Pleader submitted that Form ASMT 10 was not issued other than the one issued on 22-12-2021, which does not cover the issues raised in the impugned proceeding. The learned Additional Government Pleader sought leave to issue notice in Form ASMT 10 in*



respect of the aspects forming the subject matter of the impugned proceedings and thereafter to assess in compliance with the procedure contemplated under the Act including Section 61.

7. Recording the same, the impugned order dated 9-5-2022 is set aside and the matter is remitted back to the Assessing Officer for redoing the assessment. It is open to the Respondent to issue the appropriate Form (Form ASMT 10) and after affording a reasonable opportunity to the petitioner in the manner contemplated under the Act proceed further in accordance with law. The petitioner shall also co-operate in the proceedings."

In Re: Unreasoned order

34. The impugned order in its discussion and findings has failed to consider the submissions. Further, the revenue has proceeded to assume its own facts and has not assigned any reason to disregard the actual facts and submissions made by the appellant. A rundown of the submissions not rebutted by the Ld. Adjudicating Authority.
35. The appellant submits that the SCN has made vague allegations based on a presumption hence, the same should be withdrawn on these grounds alone. In this regard, the detailed submissions are as follows.
36. In this regard, the appellant places reliance on:
- 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, lacking details and/or unintelligible that is sufficient to hold that the appellant was not given proper opportunity to meet the allegations indicated in the show cause notice."
 - Dayamay Enterprise Vs State of Tripura and 3 OR's. 2021 (4) TMI 1203 - Tripura High Court**
 - Mahavir Traders Vs Union of India (2020 (10) TMI 257 - Gujarat High Court)**
 - 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).

Violation of principles of natural justice

37. Appellant submits that the impugned order has confirmed the demand without considering the various meritorious submissions made by the Appellant as referred above which shows that the same has been passed in violation of principles of natural justice, therefore, the same is not valid and needs to be set aside on this count alone. In this regard, Appellant submits that the Hon'ble Supreme Court in case of Dharampal Satyapal Limited Vs DC of Guwahati 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.'



Appellant submits that from the above referred decision of the Hon'ble Supreme Court, it is quite clear that every quasi-judicial authority is required to give reasons while confirming the demands. However, in the instant case the impugned order has not given any reasons as to why the submissions made by the Appellant are not correct. Hence, the impugned order is not correct and the same needs to be set aside.

38. Appellant submits that Section 75(6) of CGST Act, 2017 requires the adjudicating authority to set out all the relevant facts and the basis of his decision while passing any order. For easy reference, the same is extracted as follows.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

This shows that the adjudicating authority is obligated to set out the relevant facts and the basis on which the demand has been confirmed. However, in the instant case the impugned order has been passed without giving any reasons as to why the submissions made by the Appellant are not correct. This shows that the impugned order is violative of Section 75(6) of CGST Act, 2017 and the same needs to be set aside.

39. Appellant wish to reply on the following decisions under GST wherein it was held that non-speaking order are invalid.

a. The Hon'ble High Court of Madras in the case of **TVS Motors Company Ltd V. Assistant Commissioner (2018 (16) G.S.T.L. 17 (Mad.))** while examining whether the adjudicating authority has followed the principles of natural justice or not held that *"5. This Court finds that though such a reply has been given, the same has not yet been considered nor adjudicated upon. On a reading of the impugned order, it clearly shows that it is not in the nature of a show cause notice, but a demand by itself whereby the petitioner's claim for transitional credit has been rejected and that they have been directed to reverse the credit along with interest within 15 days from the date of receipt of a copy of the impugned order, failing which, penal action would be initiated for recovery of arrears under Section 79 of the said Act.*

6. The respondent states that the impugned order is only a show cause notice. This Court is unable to agree with the said stand taken by the Learned Senior Panel Counsel appearing for the Revenue, as a show cause notice cannot pre-judge the issue. Had the first respondent issued a notice calling upon the



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M. J. B.

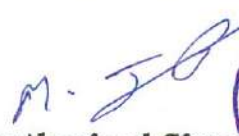
petitioner to state as to why the transitional credit claimed by them cannot be granted or should be directed to be reversed, then it would be a different matter? However, in the impugned proceedings, the first respondent denied the credit and all that has been granted is 15 days' time to reverse the credit, which, according to the first respondent, is inadmissible. These are sufficient grounds to hold that the impugned order is in violation of the principles of natural justice. On this ground alone, the petitioner is entitled to succeed."

- b. Bright Load Logistics Vs Joint Commissioner of Commercial Taxes (Appeals), Davanagere 2021 (48) GSTL 151 (Kar)
- c. Swastik Traders Vs State of UP 2019 (29) GSTL 389 (All)
- d. Kalebudde Logistics Vs Commercial Tax Officer, Hubballi 2021 (48) GSTL 238 (Kar)

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

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

For M/s. B & C Estates.


Authorized Signatory



PRAYER

Therefore, it is prayed that

- a. To set aside the impugned order to the extent aggrieved;
- b. To hold that ITC cannot be denied merely due non reflection of ITC GSTR-2A;
- c. To hold that interest is not applicable;
- d. To hold that penalty is not payable/imposable;
- e. To provide any other consequential relief.



Signature

VERIFICATION

I, Mr. M JAYA PRAKASH, MANAGER, Authorised Signatory of M/s. B & C Estates 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 23.07.2024



Signature

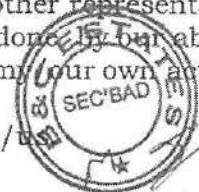
**BEFORE THE JOINT COMMISSIONER OF STATE TAX (APPEALS), PUNJAGUTTA
DIVISION, 5th FLOOR, C.T COMPLEX, NAMPALLY, HYDERABAD-500001.**

Sub: Filing of Appeal against Order Ref. No. ZD360424063212Q dated 26.04.2024 in the case of M/s. B & C Estates.

I, M. JAYAPRAKASH MANAGER, of M/s. B & C Estates hereby authorizes and appoint H N A & Co. LLP (Formerly known as Hiregange & Associates LLP), Chartered Accountants, Hyderabad or their partners and qualified staff who are authorized to act as an authorized representative under the relevant provisions of the law, to do all or any of the following acts: -

- To act, appear and plead in the above-noted proceedings before the above authorities or any other authorities before whom the same may be posted or heard and to file and take back documents.
- To sign, file verify and present pleadings, applications, appeals, cross-objections, revision, restoration, withdrawal, and compromise applications, replies, objections and affidavits etc., as may be deemed necessary or proper in the above proceedings from time to time.
- To Sub-delegate all or any of the aforesaid powers to any other representative and I/We do hereby agree to ratify and confirm acts done by the 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 23 July 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: 23.07.2024

Address or 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**

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



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

S.No.	Name	Qualification	Membership No.	Signature
1	Sudhir V S	CA	219109	
2	Venkata Prasad P	CA/LLB	AP/3511/2023	
3	Srimannarayan S	CA	261612	
4	Akash Heda	CA	269711	
5	Revant Krishna	CA	262586	

