

From

Date :27-09-2024

Serene Constructions LLP

36ACVFS7909P1ZV

2nd Floor, 5-4-187/3 and 4, Soham Mansion,

M.G. Road, Secunderabad,

Rangareddy, Telangana, 500003

To

Assistant Commissioner Of State Tax

Ramgopalpet-Ranigunj 2 Circle,

Begumpet Division

Reg: Order-In-Original: ZD360424090532F dated: 30-04-2024.

Sub: Request for rectification of Order-In-Original vide Ref: ZD360424090532F dated: 30-04-2024 since such order-In-Original was passed without jurisdiction and is bad in law and procedure and is also against the Doctrine of Res-Judicata contemplated in section 11 of the Code of Civil Procedure, 1908.

Dear Sir/Madam,

1. Serene Constructions LLP (hereinafter referred as “Applicant”), having its principal place of business at 2nd Floor, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad, Rangareddy, Telangana, 500003 is registered with Goods and Services Tax Act, 2017 vide GSTIN NO: 36ACVFS7909P1ZV, humbly requests your goodself to rectify the Order-In-Original passed vide Ref: ZD360424090532F dated: 30-04-2024. Since, the proceedings and Order passed under Section 73 of CGST Act,2017 are Void-Ab-initio for the reason being hit by Doctrine of Res-Judicata contemplated in section 11 of the Code of Civil Procedure, 1908 and Doctrine of Estoppel.
2. The Applicant is filing the present rectification of order request against the impugned Order-in-Original issued with reference no. ZD360424090532F (herein after referred to as Order II) dated 30-04-2024 by the Learned Assistant Commissioner of State Tax, Ramgopalpet-Ranigunj 2 Circle, Begumpet Division. Copy of the impugned Order-in-Original is enclosed as **Annexure-1**.
3. Firstly, The applicant was in receipt of notice dated 12-11-2021 vide reference ZD361121006113A (herein after referred to as **Notice I**) in form DRC-01 u/s 73 of the CGST Act, 2017 for period, F.Y. 2018-19. (Copy of the said notice is attached as **Annexure 2**).

4. Such Show cause notice was issued demanding an amount of Rs. 28,56,434/- on account of 3 reasons as listed in the Table 1 given below.

Table 1

Amount in Rupees

S No.	Issue	CGST	SGST	IGST	Total
1	The excess input tax credit (ITC) claimed on account of non-reconciliation of information.	3,29,319	3,29,319	0	6,58,638
2	Non-reconciliation of outward supplies reported in GSTR 1 with GSTR-09.	-	21,92,575	0	21,92,575
3	ITC to be reversed on non-business transactions and exempt supplies	2,610	2,610	0	5,221
	Total	3,31,929	25,24,504	0	28,56,434

5. On 12-11-2021, the applicant filed its reply to the said notice on the GST common portal against the above notice, the reply is acknowledged vide ARN ZD361121069039J. Copy of the said reply is attached as **Annexure 3**.
6. On 29-04-2024, an order-in-original vide reference number ZD360424081301P (herein after referred to as **Order I**) was issued, against the above **Notice I**, dropping the demand of **Rs 28,56,434/-** accepting the submissions made by the applicant.
7. On 31-01-2024, Show Cause Notice with reference no. ZD3601240468973 (herein after referred to as **Notice II**) was uploaded on the GST common portal and no separate communication was made to applicant. (Copy of the said notice is enclosed as **Annexure 4**.) Such Show cause notice was issued demanding an amount of Rs. 30,53,701/- on account of 2 alleged discrepancies as listed in the Table 2 given below.

Table 2

Amount in Rupees

S No.	Issue	CGST	SGST	IGST	Total
1	Non-reconciliation of outward supplies reported in GSTR 1 with GSTR-09.	-	22,00,000	0	22,00,000
2	The excess input tax credit (ITC) claimed on account of non-reconciliation of information.	3,54,667	3,54,667	1,44,367	8,53,701
	Total	3,54,667	25,54,667	1,44,367	30,53,701

8. As per the GST common portal 3 reminders were uploaded dated 05-03-2024, 18-03-2024, 04-04-2024, However, no separate communication was sent to the applicant. Details of reminders are provided hereunder.

Type	Reference Number	Issue Date
REMINDER	ZD360424006853H	04/04/2024
REMINDER	ZD360324025479A	18/03/2024
REMINDER	ZD3603240079966	05/03/2024

9. On 30-04-2024, the adjudicating authority has passed Order-In-Original with reference no. ZD360424090532F on best judgement basis, confirming the demand raised in the show cause notice. Again, such order was merely uploaded under “**Additional notices and orders**” on the common GST portal. No other communication was received by the applicant.
10. On 25-08-2024, the Applicant received a call from the department mentioning about the notice issued for F.Y. 2019-20, under the tab “**Additional notices and orders**”, it is upon receipt of such call the applicant logged in and checked the “Additional Notices and orders” tab on the common portal to realise that **Notice II** vide reference number ZD3601240468973 was issued and impugned **Order II** on best judgement basis was already passed for F.Y. 2018-19. As stated, the applicant was not aware of the notice and accordingly was prevented by the sufficient cause to provide replies to the said notice.
11. The demands raised in **Order II** are arising on account of two alleged discrepancies, namely
- Non-reconciliation of outward supplies reported in GSTR 1 with GSTR-09.
 - The excess input tax credit (ITC) claimed on account of non-reconciliation of information.

The above two issues have already been adjudicated and decided in favour of the applicant vide **Order I**. Since the matter is already adjudicated, a fresh notice and adjudication on same issues is void-ab-initio and bad-in-law. Para wise comparison of the discrepancies dealt under both the proceedings are discussed herewith.

12. With respect to the tax liability of Rs. 22,00,000 /- created on account of non-reconciliation of outward supplies reported in GSTR 1 with GSTR-09 it is brought on record that the difference was already assessed in the para 1 of the **Notice I**. Details of demand raised in **Notice I** and **Notice II** on account of non-reconciliation of outward supplies reported in GSTR 1 with GSTR-09 is provided below.

Notice I

S.No	Issue	SGST	CGST	Total
1	2	3	4	5
1	Tax on Outward supplies declared in GSTR-01 for the FY.	2453000.31	2453000.31	4906000.62
2	Less tax on Outward supplies arrived in GSTR- 09 at box 1A(1)+1A(2)	260425.00	2460425.00	2720850.00
3	Difference (1-2)	2192575.31	0	2185150.62

Notice II

S.No	Issue	SGST	CGST	Total
1	2	3	4	5
1	Tax on Outward supplies declared in GSTR-01 for the FY.	2460425.00	2460425.00	4920850.00
2	Less tax on Outward supplies arrived in GSTR- 09 at box 1A(1)+1A(2)	260425.00	2460425.00	2720850.00
3	Difference (1-2)	2200000.00	0	2200000.00

13. On comparison of the above two demands, it can be noted that the numbers populated for outward supplies declared in GSTR 1 are inconsistent in both the notices. However, during the submissions made against Notice I, it was clarified by the applicant that it has inadvertently entered values under Table 4(A) of GSTR 9 under the head SGST as Rs 2,60,425/- instead of Rs 24,60,425/-, but the taxes paid under the head SGST is Rs 24,60,425/- and the same could also be established in table 9 of GSTR 9 of F.Y. 2018-19.

14. The screen shot of relevant portion table 9 of GSTR -9 is provided below and GSTR 9 for F.Y. 2018-19 is attached as **Annexure 5**.

Pt. IV	Details of tax paid as declared in returns filed during the financial year						
9	Description	Tax Payable (₹)	Paid Through Cash (₹)	Paid Through ITC (₹)			
				Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6	7
A	Integrated Tax	0.00	0.00	0.00	0.00	0.00	
B	Central Tax	24,60,425.00	5,43,994.00	17,19,121.00		3,45,810.00	
C	State/UT Tax	24,60,425.00	7,85,044.00		16,87,621.00	1,36,260.00	
D	Cess	0.00	0.00				0.00
E	Interest	0.00	0.00				
F	Late Fees	230.00	230.00				
G	Penalty	0.00	0.00				
H	Other	0.00	0.00				

15. In lieu of above submission, it was established by the learned officer, observed and concluded in para 2 of Order I that *“On verification of GSTR-3B, GSTR1 and GSTR-9 it is noticed that the tax payer wrongly entered values under Table 4(A) as Rs.2,60,425/- instead of Rs.24,60,425/- in SGST portion but taxes paid accordingly. Hence, the above demand is dropped.”*
16. However, while passing the impugned Order II, the same learned officer confirmed a of demand for Rs 22,00,000/- for difference on account of non-reconciliation of outward supplies reported in GSTR 1 with GSTR-09 on best judgement basis.
17. With respect to the tax liability of Rs. 8,53,701 /- created on account of excess input tax credit (ITC) claimed on account of non-reconciliation of information, it is brought on record that the difference was already assessed in the para 1 of the Notice I. Details of demand raised in Notice I and Notice II on account of such excess input tax credit claim is provided below.

Notice I

S.No	Description	SGST	CGST	IGST	CESS	Total
1	2	3	4	5	6	7
1	ITC in the year as per Table 8A of GSTR-09	1201195.00	1201195.00	241949.00	0.00	2644339.00
2	ITC from ISD table 4A (4)	0.00	0.00	0.00	0.00	0.00
3	ITC from imports table 4A (1) +4A (2)	0.00	0.00	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	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	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	0.00	0.00
7	Reversals in Table 4B of GSTR-3B	0.00	0.00	0.00	0.00	0.00
8	ITC Available for use in the same year (S.No 1+2+3+4+5-6-7)	1201195.00	1201195.00	241949.00	0.00	2644339.00
9	ITC used in same year as per 4C of GSTR-3B	1555862.00	1555862.00	386316.00	0.00	3498040.00
10	Net excess used (S.No 9-8)	354667.00	354667.00	144367.00	0.00	853701.00

Notice II

S.No	Issue	Table No. in GSTR-09	SGST	CGST	Total
1	2	3	4	5	6
1	Excess claim of ITC declared in GSTR-09	8D	329319.38	329319.38	658638.76
2	Add excess claim of IGST on imports in GSTR-09	8I	0.00	0.00	0.00
3	Total excess claimed of ITC as per GSTR-09		329319.38	329319.38	658638.76

18. It is submitted that in both these notices a comparison is drawn between invoices uploaded by suppliers in their respective form GSTR-1, credit of which reflects in form GSTR-2A of the applicant versus ITC claimed by the applicant in its form GSTR 3B.

19. During the course of submissions made in **Notice I**, it was submitted by the applicant that a substantial difference between GSTR 2A and GSTR 3B is on account of late reporting of invoices by one of its suppliers M/s. **Pointec Associates**, GSTN: 36AAJFP7241H1Z2. Such invoices pertaining to F.Y. 2018-19, were uploaded in GSTR 1 return of May-2019 and Aug-2019, as a result of which the same is not auto-populating in the GSTR 2A report of applicant in F.Y. 2018-19. Details of such invoices uploaded by the supplier are provided below:

Inv. Number	Inv. Date	Invoice value	Rate	Taxable Value	CGST	SGST	Total Tax	GSTR-1/IFF/GS TR-5 Filing Date	GSTR-1/IFF/GS TR-5 Filing Period	GSTR-3B Filing Status
59	15-02-2019	23,52,196	18	19,93,386	1,79,405	1,79,405	3,58,810	10-Aug-19	May-19	Y
POINTEC/62/18-19	02-03-2019	9,59,397	18	8,13,048	73,174	73,174	1,46,349	23-Sep-19	Aug-19	Y
POINTEC/78/18-19	20-03-2019	11,00,232	18	9,32,400	83,916	83,916	1,67,832	23-Sep-19	Aug-19	Y
				Total	3,36,495	3,36,495	6,72,990			

Screen shots from Portal is provided below:

GSTIN - 36ACVFS7909P1ZV

Legal Name - SERENE CONSTRUCTIONS LLP

Trade Name - SERENE CONSTRUCTIONS LLP

FY - 2019-20

Return Period - May

B2B Invoices - Supplier Details

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GSTIN of Supplier	Supplier Name	GSTR-1/5 Filing status	GSTR-1/5 Filing Date	GSTR-1/5 Filing Period	GSTR-3B filing status
36AADCR2047Q1ZZ	REFLECTIONS ELECTRICALS PRIVATE LIMITED	Y	31-Jul-19	May-19	Y
36BNCPR1098B1Z3	SREE SAI SHARANYA ENTERPRISES	Y	25-Jan-20	May-19	Y
36ACQFS2044C1Z7	SUMMIT SALES LLP	Y	19-Jun-19	May-19	Y
36AAJFP7241H1Z2	POINTEC ASSOCIATES	Y	10-Aug-19	May-19	Y
36AAIFV6997M1Z1	M/S VASANT ENTERPRISES	Y	08-Jun-19	May-19	Y

B2B Invoice Summary

Uploaded by Supplier

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Invoice No.	Invoice Date	Invoice Type	Place Of Supply	Supply attract Reverse Charge	Total Invoice Value (₹)	Total Taxable Value (₹)	Integrated Tax (₹)	Central Tax (₹)	State/UT Tax (₹)	CESS (₹)	Source
59	15-02-2019	R	Telangana	N	23,52,196.00	19,93,386.40	0.00	1,79,404.78	1,79,404.78	0.00	

GSTIN - 36ACVFS7909P1ZV

FY - 2019-20

Legal Name - SERENE CONSTRUCTIONS LLP
Return Period - August

Trade Name - SERENE CONSTRUCTIONS LLP

B2B Invoices - Supplier Details

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GSTIN of Supplier	Supplier Name	GSTR-1/5 Filing status	GSTR-1/5 Filing Date	GSTR-1/5 Filing Period	GSTR-3B filing status
36AAEFA2074L1ZG	AKASH STEELS	Y	11-Sep-19	Aug-19	Y
36ACQFS2044C1Z7	SUMMIT SALES LLP	Y	19-Sep-19	Aug-19	Y
36AAJFP7241H1Z2	POINTEC ASSOCIATES	Y	23-Sep-19	Aug-19	Y
36AHIPK6441Q1ZQ	M/S SAI VISHAL ENTERPRISES	Y	10-Dec-19	Aug-19	Y
36ARPPK9655D2ZA	SRI LAXMI GANESH STEELS & HARDWARE	Y	16-Sep-19	Aug-19	Y

B2B Invoice Summary

Uploaded by Supplier

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Invoice No.	Invoice Date	Invoice Type	Place Of Supply	Supply attract Reverse Charge	Total Invoice Value (₹)	Total Taxable Value (₹)	Integrated Tax (₹)	Central Tax (₹)	State/UT Tax (₹)	CESS (₹)	Source
POINTEC/62/18-19	02-03-2019	R	Telangana	N	9,59,396.64	8,13,048.00	0.00	73,174.32	73,174.32	0.00	
POINTEC/78/18-19	20-03-2019	R	Telangana	N	11,00,232.00	9,32,400.00	0.00	83,916.00	83,916.00	0.00	

20. A screen shot of the actual numbers reported as tax liability on outward supplies as generated from the “tax liability and input comparison” report is provided hereunder.

Tax Period	Tax liability declared in GSTR-3B during the month [as per table 3.1(a)]				Tax liability declared in GSTR-1 (other than reverse charge supply) during the month [as per table 4A, 4C, 5, 6C, 7, 9A, 9B, 9C, 10, 11]			
	IGST	CGST	SGST/UTGST	CESS	IGST	CGST	SGST/UTGST	CESS
1	2	3	4	5	6	7	8	9
Apr-18	2,83,873.00	92,573.50	92,573.50	0.00	2,83,872.78	89,321.04	89,321.04	0.00
May-18	2,89,213.00	76,667.00	76,667.00	0.00	2,89,208.98	76,658.85	76,658.85	0.00
Jun-18	3,50,948.88	70,975.08	70,975.08	0.00	3,50,344.08	70,975.08	70,975.08	0.00
Jul-18	4,22,278.50	72,705.75	72,705.75	0.00	4,22,278.50	72,705.75	72,705.75	0.00
Aug-18	3,74,346.54	72,680.52	72,680.52	0.00	3,74,346.54	72,680.52	72,680.52	0.00
Sep-18	3,04,272.00	83,998.00	83,998.00	0.00	3,04,272.00	83,998.00	83,998.00	0.00
Oct-18	2,21,015.00	59,586.00	59,586.00	0.00	2,21,015.00	59,586.00	59,586.00	0.00
Nov-18	3,58,737.00	75,320.50	75,320.50	0.00	3,58,737.00	75,320.50	75,320.50	0.00
Dec-18	2,82,464.00	62,487.00	62,487.00	0.00	2,84,444.00	62,487.00	62,487.00	0.00
Jan-19	4,48,553.00	1,06,126.50	1,06,126.50	0.00	4,48,553.00	1,05,946.50	1,05,946.50	0.00
Feb-19	3,32,490.00	87,613.00	87,613.00	0.00	3,32,485.08	87,611.67	87,611.67	0.00
Mar-19	3,32,261.00	73,574.50	73,574.50	0.00	3,32,261.00	73,574.50	73,574.50	0.00
Total	40,00,451.92	9,34,307.35	9,34,307.35	0.00	40,01,817.96	9,30,865.41	9,30,865.41	0.00

21. In lieu of above submission, it was established by the learned officer, and observed and concluded in para 1 of Order I that “On verification of GSTR-2A and GSTR-1 of supplier it is noticed that certain invoices of financial year 2018-19 the supplier has reported the invoices in the month May’2019 & August ‘2019 in their GSTR-1 return of financial year 2019-20 in time only but the same was not reflected in GSTR2A &GSTR-9. Hence, **the above demand is dropped.**”
22. However, while passing the impugned Order II, the same learned officer confirmed a demand for Rs 8,53,701/- for excess input tax credit (ITC) claimed on account of non-reconciliation of information declared in GSTR-09 on best judgement basis.
23. Hence, the applicant submits that the discrepancies pertaining to F.Y.2018-19 dealt and decided under current proceedings and Order-In-Original vide Ref: ZD360424090532F dated: 30-04-2024 were already dealt and decided vide Order-In-Original vide ZD360424081301P dated 29-04-2024. Therefore, the current Order-In-Original dated: 30-04-2024 is void-ab-initio since same subject matter is tried again by the same authority under the current proceeding. A summary comparison of discrepancies dealt under both the proceedings is provided in the Table 1 given below:

Table 3: Summary Comparison of Proceeding

1 st Proceedings		2 nd Proceedings	
Notice I (- Annexure 1)		Notice II (Annexure 2)	
Financial Year	2018-19	Financial Year	2018-19
SCN Ref no.	ZD361121006113A	SCN Ref no.	ZD3601240468973
SCN Date	12-11-2021	SCN Date	31-01-2024
Discrepancies dealt		Discrepancies dealt	
Para 1	The excess input tax credit (ITC) claimed on account of non-reconciliation of information declared in GSTR-09 amounting to Rs.6,58,638/-	Para 2	Scrutiny of ITC availed: The excess input tax credit (ITC) claimed on account of non-reconciliation of information declared in GSTR-09 amounting to Rs.8,53,701/-
Para 2	Reconciliation of GSTR-01 with GSTR-09: The outward supplies turnover declared in GSTR-01 is greater than net outward supplies information furnished in GSTR-09 amounting to Rs.21,85,150/-	Para 1	Reconciliation of GSTR-01 with GSTR-09: The outward supplies turnover declared in GSTR-01 is greater than net outward supplies information furnished in GSTR-09 amounting to Rs.22,00,000/-
Para 3	ITC to be reversed on non-business transactions & exempt supplies Rs.5,221.84/-		
Order I		Order II	
Order Ref no.	ZD360424081301P	Order Ref no.	ZD360424090532F
Order date	29-04-2024	Order date	30-04-2024
Order	Order for Dropping the proceedings (Annexure 3)	Order	Order for Determination of tax on best judgement basis (Annexure 4)
Para 1	On verification of GSTR-2A and GSTR-1 of supplier it is noticed that certain invoices of financial year 2018-19 the supplier has reported the invoices in the month May'2019 & August '2019 in their GSTR-1 return of financial year 2019-20 in time only but the same was not reflected in GSTR2A &GSTR-9. Hence, the above demand is dropped.	Para 1	Accordingly, a show cause notice issued to the Tax payer and issued (3) reminders along with personal hearing mentioned in the references cited. The Tax payer was given ample time but they have failed to furnish the details/ written objection called for even after several telephonic reminders for the reasons best known to them. Hence it is construed that they have no valid books of accounts maintained, as such there is no other alternative. Therefore, in view of the limitation prescribed for assessment as per section 73(10) of SGST Act 2017 to complete their assessment to the best of judgment for the amount proposed in the show cause notice hereby confirmed total tax liability of Rs. 2554667/- under SGST, Rs. 354667/- under CGST and Rs. 144367/- under IGST
Para 2	On verification of GSTR-3B, GSTR1 and GSTR-9 it is noticed that the tax payer wrongly entered values under Table 4(A) as 260425.00 instead of 2460425.00 in SGST portion but taxes paid accordingly. Hence, the above demand is dropped.	Para 2	
Para 3	On verification of bank statement, the tax payer has received Interest income from bank hence, the above demand is dropped.		

24. On examination of Table 1 given above, it can be clearly established that the department has passed an order for dropping the proceedings dated 29-04-2024 against notice I and adverse order against the notice II dealing with the same alleged discrepancies. Such error in adjudicating clearly qualifies as an error apparent on the face of record and is liable for rectification as enabled by Section 161 of the CGST Act, 2017. An extract of Section 161 of CGST Act, 2017 is provided hereunder for your ready reference:

Extract of Section 161 of CGST Act, 2017.

“Section 161: Rectification of errors apparent on the face of record.75

Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error; arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.”

25. The current application for rectification of error is well within the limitation prescribed under the provision to Section 161 of the CGST Act, 2017. Hence, the applicant humbly requests your goodself to kindly rectify such error made while adjudication of current proceedings.

For Serene Constructions LLP

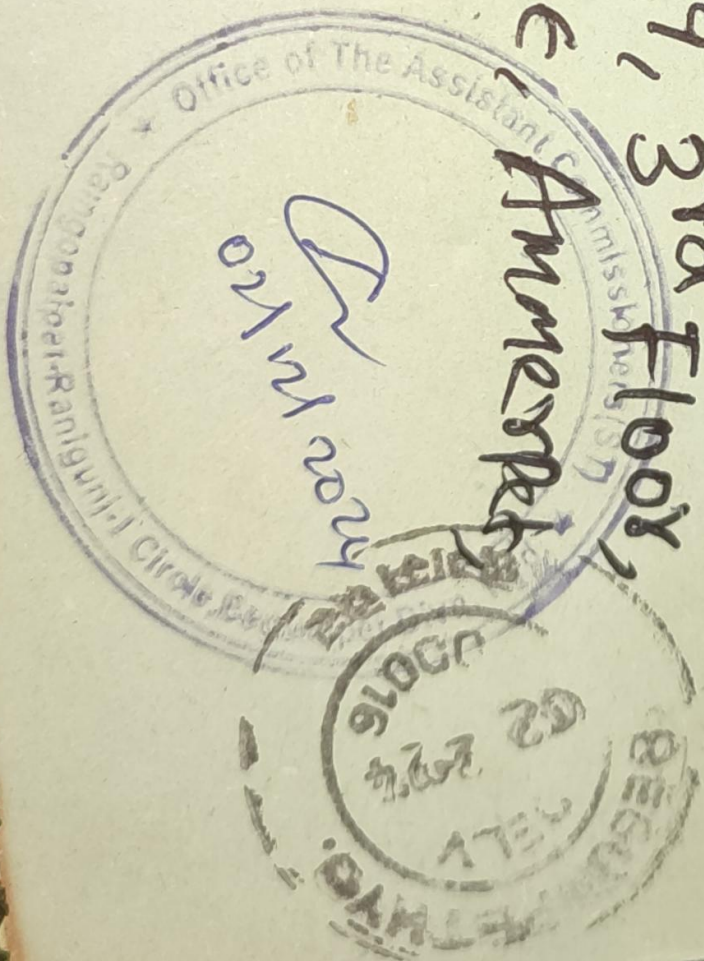
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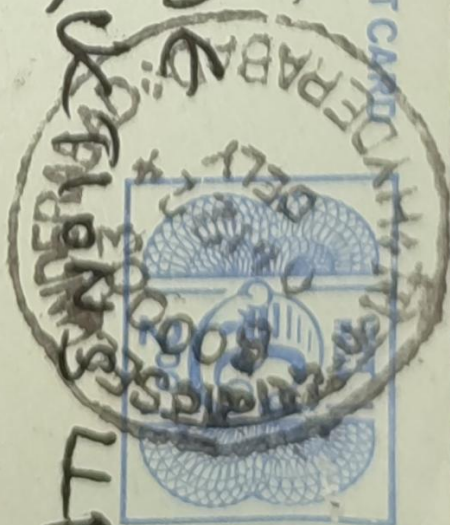
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