O/c

H N A & Co LLP
Chartered Accountants
(Formerly known as Hiregange & Associates LLP)

Date: 10-03-2025

To
The Appellate Joint Commissioner Punjagutta (ST),
Commissioner of Commercial Taxes Department,
C.T Complex, Nampally, Hyderabad-500001

Dear Sir,

Sub: Filing of attested copy of DRC – 07 and appeal in Form GST APL – 01.

Ref: i. Appeal filed online against the Order Ref No. ZD361224000975I dated 02.12.2024 pertaining to **M/s. GV Research Centers Private Limited.**

ii. GSTN: 36AAHCG4562D1ZP

1. With reference to the above, we have been authorized by M/s. GV Research Centers Private Limited to submit an appeal against the above-referred Order and represent in the appeal proceedings before your good office and to do necessary correspondence. A copy of the authorization is attached to the appeal.
2. In this regard, it is submitted that we have already filed an appeal memorandum online in Form GST APL-01 along with authorization and annexures against the above referred order and is acknowledged vide provisional acknowledgement number AD3603250017955 dated 03-03-2025.
3. Further, we are hereby submitting the physical copy of the Appeal memorandum along with annexures and online filing acknowledgements for easy reference. Therefore, request you to take the same on record and admit the appeal.

Kindly acknowledge the receipt of the above and post the matter for hearing at the earliest.

Thanking You,
Yours truly
For M/s. H N A & Co. LLP
Chartered Accountants
LAKSHMAN KUMAR KADALI
Digitally signed by LAKSHMAN KUMAR KADALI Date: 2025.03.10 14:56:21 +05'30'
CA Lakshman Kumar K.
Partner

Office of the Appellate Joint Commissioner (ST)
11 MAR 2025
Punjagutta Division, Hyderabad.

Enclosures:

1. Provisional Acknowledgement along with APL-01 form filed online.
2. Copies of Complete Appeal Memorandum.
3. Copy of electronic Cash/Credit ledger.

4th Floor, West Block, Srida Anushka Pride, R.No. 12, Banjara Hills, Hyderabad, Telangana - 500 034. INDIA.
040 2331 8128, 3516 2881 | sudhir@hnaindia.com | www.hnallp.com
Bengaluru | Hyderabad | Visakhapatnam | Gurugram (NCR) | Mumbai | Pune | Chennai | Guwahati | Vijayawada | Kolkata | Raipur | Kochi | Indore | Ahmedabad | Coimbatore

Provisional Acknowledgement for submission of Form of Appeal

Your appeal has been successfully submitted against	**AD3603250017955**
GSTIN/UIN/Temporary ID	36AAHCG4562D1ZP
Date of filing	03/03/2025
Time of filing	17:11
Place of filing	Hyderabad
Name of the Taxpayer	GV RESEARCH CENTERS PRIVATE LIMITED
Address	Soham mansion, 5-4-187/3, MG Road, MG Road, Secunderabad, Hyderabad, Telangana, 500003
Name of the person who is filing Appeal	SOHAM MODI
Amount of pre-deposit	₹ 245492

It is a system generated acknowledgement and does not require any signature.

FORM GST APL-01

[Refer Rule 108(1)]

Appeal to Appellate Authority

1	GSTIN/Temporary ID/UIN -	36AAHCG4562D1ZP
2	Legal Name -	GV RESEARCH CENTERS PRIVATE LIMITED
3	Trade Name -	GV RESEARCH CENTERS PRIVATE LIMITED
4	Address -	Soham mansion, 5-4-187/3, MG Road, MG Road, Secunderabad, Hyderabad, Telangana, 500003
	Order Type -	Demand Order
5	Order No - ZD361224000975I Order Date -	02/12/2024
6	Designation and address of the officer passing the order appealed against	Deputy Commissioner and Telangana
	Demand Id -	ZD361224000975I
7	Date of communication of the order to be appealed against -	02/12/2024
8	Name of the authorised representative -	SOHAM MODI[ABMPM6725H]

Category of the case under dispute -

1	Others - Excess claim of ITC in GSTR-3B when compared to GSTR-2A

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 - 01/04/2020 To -	31/03/2021

(iv) Amount under Dispute

Description		Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Amount of Dispute	Tax/Cess	1227452	1227452	0	0	2454904	2700394
	Interest	0	0	0	0	0	
	Penalty	122745	122745	0	0	245490	
	Fees	0	0	0	0	0	
	Other Charges		0	0	0	0	

(v)	Market value of seized goods -	Refer to Annexure
10	Whether the appelant 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	1227452	1227452	0	0	2454904	2700394
	Interest	0	0	0	0	0	
	Penalty	122745	122745	0	0	245490	
	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	1227452	1227452	0	0	2454904	2700394
	Interest	0	0	0	0	0	
	Penalty	122745	122745	0	0	[illegible]	
	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	245492
	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	122746	122746	0	0	245492	

(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	122746	122746	0	0	245492	245492
	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

Annexure to GST APL - 01 - CL and APL-01.pdf

Upload Supporting Documents (Relied upon), if any -

Annexures	Final annexures_pagenumber_11zon.pdf

Verification

☑ I, SOHAM MODI , hereby solomenly 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: 03/03/2025

Name of the Applicant
GV RESEARCH CENTERS PRIVATE LIMITED

Electronic Credit ledger

GSTIN - 36AAHCG4562D1ZP

Legal Name - GV RESEARCH CENTERS PRIVATE LIMITED

Period: From -03/03/2025 To - 03/03/2025

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	1585551	125179	5116	1715846
1	03/03/2025	DI3603250002596	Mar-21	Payment of Demand under Appeal	Debit	0	122746	122746	0	245492	0	1462805	2433	5116	1470354
-	-	-	-	Closing Balance	-	-	-	-	-	-	0	1462805	2433	5116	1470354

H N A & Co LLP
Chartered Accountants
(Formerly known as Hiregange & Associates LLP)

Date: 03-03-2025

To
The Appellate Joint Commissioner-Punjagutta (ST),
Commissioner Of Commercial Taxes Department,
C.T Complex, Nampally, Hyderabad-500 001

Dear Sir/Madam,

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

Ref: Form DRC-07 OIO Vide Ref. **ZD361224000975I** dated 02.12.2024 relating to **M/s. GV Research Centers Private Limited.**

1. We have been authorized by M/s. GV Research Centers Private Limited 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 against the above referred order dated 02-12-2025 in form APL-01 along with the authorization and annexures.

3. Further, in relation to the Pre-requite to the pre-deposit 10% of the tax demanded Rs. 24,54,904/-, u/s 107 of The CGST Act, 2017 an amount of Rs. 2,45,492/- 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

CA Lakshman Kumar K
Partner

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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 APPELLATE JOINT COMMISSIONER-PUNJAGUTTA (ST), COMMISSIONER OF COMMERCIAL TAXES DEPARTMENT, C.T COMPLEX, NAMPALLY, HYDERABAD-500 001

(1) GSTIN/ Temporary ID/UIN-	36AAHCG4562D1ZP
(2) Legal Name of the Appellant	M/s. GV RESEARCH CENTERS PRIVATE LIMITED
(3) Trade name, if any-	M/s. GV RESEARCH CENTERS PRIVATE LIMITEDLLP
(4) Address	5-4-187/3 And 4, Soham Mansion, M.G Road, Secunderabad, Rangareddy, Telangana, 500003
(5) Order No. — OIO: Ref No: ZD361224000975I	Order Date — 02.12.2024
(6) Designation and address of the officer passing the order appealed against	Deputy Commissioner (ST)-III, Secunderabad Division
(7) Date of communication of the order appealed against	02.12.2024
(8) Name of the authorized representative	CA. Lakshman Kumar K, C/o: H N A & Co. LLP, Chartered Accountants, 4th 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.Excess claim of ITC in GSTR-3B when compared to GSTR-2A.
ii. Description and classification of goods/services in dispute	NA
iii. Period of dispute	April 2020 to March 2021
iv. Amount under dispute	

Description	Central tax	State/UT tax	Integrated tax	Cess
a. Tax/Cess	12,27,452/-	12,27,452/-	NA	NA
b. Interest	NA	NA	NA	NA
c. Penalty	1,22,745/-	1,22,745/	NA	NA
d. Fees	NA	NA	NA	NA

GV RESEARCH CENTERS PVT. LTD. SEC'BAD

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 of demand / Refund	Particulars		CGST	SGST	IGST	Cess	Total amount
	Amount of demand created (A)	a) Tax/Cess	12,27,452/-	12,27,452/-	NA	NA	24,54,904/-
		b) Interest	u/s 50	u/s 50	NA	NA	u/s 50
		c)Penalty	1,22,745/-	1,22,745/	NA	NA	2,45,490/-
		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	12,27,452/-	12,27,452/-	NA	NA	24,54,904/-
		b) Interest	u/s 50	u/s 50	NA	NA	u/s 50
		c)Penalty	1,22,745/-	1,22,745/	NA	NA	2,45,490/-
		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	1,22,746 /-	1,22,746 /-	NA	NA	2,45,492 /-

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	1,22,746	Cash Ledger	NA	1,22,746	NA	NA	NA
		NA	Credit Ledger	NA	NA	NA	NA	NA
3	State/UT tax	1,22,746	Cash Ledger	NA	NA	1,22,746	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. GV Research Centers Private Limited (hereinafter referred as "Appellant") located at 5-4-187/3, Soham mansion, MG Road, MG Road, Secunderabad, Hyderabad, Telangana – 500003 is *inter alia* engaged in the leasing of the constructed property on rent for labs and are registered with Goods and Services Tax department vide GSTIN No: 36AAHCG4562D1ZP.

B. For carrying out the above referred activities, Appellant has been receiving various inputs and input services for construction of commercial complex and have been availing the ITC of GST charged by the suppliers. The details of the availment are disclosed in the monthly returns.

C. Appellant has been receiving various Input goods and services during the normal course of business on which ITC is being availed for the GST charged on them. The appellant has been filing the GST returns by claiming the ITC on all its inwards supplies through GSTR – 3B.

D. Appellant had received Show Cause Notice issued u/sec 73 vide reference No. ZD3602220020258 dated 05.02.2022 for the period April 2020 to March 2021, proposing to demand CGST of Rs. 12,27,452/- and SGST Rs. 12,27,452/- alleging excess ITC claimed in Form GSTR-3B as compared to Form GSTR-2A. (Copy of SCN is enclosed at **Annexure-I)**

E. Appellant submitted detailed written reply in Form GST DRC-06 dated 17.01.2023 denying the excess claim of ITC. (Copy of Reply to SCN is enclosed as **Annexure-II)**

F. However, Ld. Adjudicating Authority has issued impugned order vide reference no. ZD361224000975I dated 02.12.2024 confirming entire demand of para no. 1 of SCN regarding excess claim of ITC of CGST Rs. 12,27,452/- and SGST Rs. 12,27,452/- along with penalty u/s 73 of the CGST Act, 2017.

Aggrieved by the impugned order, the Appellant prefers this appeal before the Hon'ble Appellate Authority on the Grounds mentioned below and any other or further grounds to be pleaded before the Appellate Authority during the Hearing.

RESEARCH CENTERS PVT. LTD. SEC'BAD

ANNEXURE-B

GROUNDS OF APPEAL

1. Appellant submits that the impugned order is ex-facie illegal and untenable in law since the same is contrary to provisions of law and judicial decisions. Details under headings:
   a. **Order is invalid**
   b. **No excess availment of input tax credit**
      (1) Rule 36(4) introduced w.e.f October 2019 – Buffer of 10%/5% provided
      (2) Absence of Statutory Provision Mandating Matching Prior to January 2022
      (3) ITC cannot be denied when mechanism of Form GSTR-2A was not fully functional
      (4) ITC cannot be denied in case of bona fide transactions and where tax has been paid to the supplier
      (5) Non-payment by Supplier in Form GSTR-3B – Beyond the control of the Appellant
      (6) Requesting 30 days' time for submission of declarations - Circular No.193/05/2023 – GST

   c. **Interest & Penalties are not imposable**

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 TGST Act, 2017.

In Re: Impugned order is invalid

Order is not in accordance with law

3. Appellant submits that the impugned order has been issued demanding tax of Rs. 24,54,904/- towards differences between the amounts declared in GSTR-3B and GSTR-09 which shows that the issue is relating to discrepancy in returns filed by the Appellant.

4. In this regard, 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 if 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.

5. However, in the instant case Appellant has not received any notice in FORM GST ASMT-10 requiring the Appellant to provide explanation for the discrepancy noticed in the returns. Instead, the proper officer has directly issued show cause notice in Form GST DRC-01 under Section 73 which shows that the impugned notice has been issued without following the procedure prescribed in Section 61 of CGST Act, 2017 and Rule 99 of CGST Rules, 2017.

6. In this regard, reliance is placed on M/s. Vadivel Pyrotech Pvt Ltd Vs Assistant Commissioner (ST), Circle-II, CTD, Sivakasi West 2022 (10) TMI 784 – Madras High Court wherein it was held that *"6. To a pointed question as to whether Form ASMT 10 which 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 09.05.2022 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 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." Therefore, Appellant submits that the impugned order is liable to be set aside on this ground alone.

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

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Non-speaking order

8. Appellant submits that the impugned order has been passed without considering the reply filed by the Appellant dated 17-01-2023 in true prospective. The provisions and the judicial precedents relied upon by the Appellant in the written reply dated 17-01-2023 are neither considered nor distinguished. Therefore, Appellant submits that the impugned order is a non-speaking order which is liable to be set-aside.

9. Appellant places reliance in case of **Jay Jay Mills (India) Pvt Ltd Vs State Tax Officer 2020 (41) GSTL 304(Mad)**, wherein it was held that the statutory authorities are bound to consider the claim made and pass a reasoned order. In the present case, the order confirming the demand is unreasoned order, therefore the same is a non-speaking order. Consequently, the basis to confirm the demand is not legally sustainable.

10. Appellant also places reliance in case of **Nutan Ispat and power Pvt Ltd Vs State of Chattisgarh -2020 (37) GSTL 285 (Chattisgarh)**, wherein it was held that,

> *"It is by now a well settled position of law that the Appellate Authority while deciding the Appeal is duty bound to consider the grounds of challenge. The Appellate Authority is also required to pass a reasoned and speaking order considering and dealing with those grounds. The impugned Order in the instant case, which is the order passed by the Appellate Authority, seems to be more of an order passed by the Assessing Authority rather than an order passed by the Appellate Authority. In the opinion of this Court, the Appeal has not been justifiably decided and therefore the same deserves to be remitted back to the Appellate Authority for passing of a reasoned and speaking order dealing with the grounds raised in the Appeal challenging the order passed by the Assessing Authority on 20-8-2018"*

11. Appellant submits that in case of **In East Coast Railway and Another v. Mahadev Appa Rao and Others with K. Surekha v. Mahadeo Appa Rao and Others [(2010) 7 SCC 678]**, the Hon'ble Supreme Court in very categorical terms has held that arbitrariness in making of an order by an authority can manifest itself in different forms. Every order passed by a public authority must disclose due and proper application of mind by the persons making the order. Application of mind

is best demonstrated by disclosure of mind by the authority making the order and disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable. In the absence of reasons in support of the order it is difficult to assume that the authority had properly applied its mind before passing of the order.

12. Appellant submits that the relied upon provisions and judicial decisions were not at all considered nor distinguished, therefore the basis of confirming the demand is not proper. Therefore, Appellant humbly submits that the impugned order is liable to be set-aside.

Demand was confirmed based on assumptions and presumptions

13. 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 CGST Act, 2017 as in force during the FY 2020-21. 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.

14. Appellant submits that the entire order seems to have been issued with revenue bias without appreciating the statutory provisions, the intention of the same. 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.

GV RESEARCH CENTERS PVT. LTD. SECBAD

Order is vague and lack of details

15. 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).

16. 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.

In Re: No excess availment of input tax credit

Rule 36(4) introduced w.e.f October 2019 – Buffer of 10%/5% provided:

17. Without prejudice to the other submissions, Appellant wishes to submit that the CBIC vide Notification No. 49/2019- Central Tax dated 09.10.2019 read with Notification No. 75/2019 – Central Tax dated 26.12.2019 inserted sub-section (4) in Rule 36 of the CGST Rules, 2017.

18. As per Rule 36(4) of CGST Rules, 2017 as originally introduced, *Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed **20 per cent of the eligible credit** available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.*

19. The said buffer provided under Rule 36(4) of the CGST Rules, 2017 was subsequently reduced to **10% w.e.f. 01.01.2020** and **5% w.e.f. 01.01.2021** The

Appellant wish to submit that merely based on the introduction of Rule 36(4) of the CGST Rules, 2017 there cannot be a condition for availment of ITC, in the absence of any such condition under the GST law.

20. Further, nowhere under the provisions of Section 16 or any other applicable provision (which was operative) of the CGST Act, 2017 there is a condition for matching of invoices with Form GSTR-2A/2B, for the purpose of availment. It is settled principle of law, that rules cannot override the statute. In cases where the contrary is proved, the said rule would be struck down as ultra vires.

21. In this regard, the Appellant wish to place reliance in the case of **BABAJI KONDAJI GARAD ETC. v. THE NASIK MERCHANTS CO-OPERATIVE BANK LTD., NASIK [1983 (10) TMI 270 – Supreme Court],** which was ignored while passing the impugned order. The Apex Court ruled as follows

If there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the bye-law if not in conformity with the statute in order to give effect to the statutory provision the rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with.

22. Without admitting to the requirement of matching of ITC with GSTR-2A for the said period, even otherwise, a buffer of 10%/5% is provided to the assesse on the eligible credit. Considering, the buffer available, the credit availed by the Appellant during the disputed period is well within the eligible credit as provided in the ibid rule.

23. Summary of the same is as follows:

Period	ITC in Form GSTR-2A	Buffer provided as per Rule 36(4)	Eligible ITC
April 2020 – December 2020 (10% Buffer)	27,03,946	2,70,394	29,74,340
January 2021 - March 2021 (5% Buffer)	19,78,566	1,97,856	21,76,422
Eligible ITC for FY 2020-21	**46,82,512**	**4,68,251**	**51,50,763**

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24. On considering the above buffer table, the actual difference between Form GSTR-3B and Form GSTR-2A for the FY 2020-21 is as follows:

Particulars	Amount
Eligible ITC for FY 2020-21 (as per above table)	51,50,763
ITC availed in Form GSTR-3B	67,28,210
Difference	**15,77,447**

25. From the above table, the Appellant hereby wishes to submit that on considering the buffer of 10% and 5% provided under Rule 36(4) of the CGST Rules, 2017, the Appellant had actually short availed the credit in Form GSTR-3B for the FY 2020-21. (A copy of the Updated GSTR-2A is enclosed as **annexure-III)**

26. Considering the above judicial precedents and the provisions of law effective during the disputed period, the impugned order demanding recovery of Input Tax Credit on account of non-reflection in Form GSTR-2A is improper and arbitrary. Therefore, Appellant submits that the entire demand in the impugned order is liable to be set aside.

i. <u>Absence of Statutory Provision Mandating Matching Prior to January 2022</u>

27. The Appellant wish to submit that there was no requirement to match ITC with Form GSTR-2A under Section 16 of the CGST Act, 2017, prior to January 2022. Further, the Appellant wishes to submit that Section 16(2) of the CGST Act, 2017 prescribes certain conditions to be complied for the purpose of availment of ITC. In the said conditions, the Government vide Finance Act 2021 has inserted Section 16(2)(aa) of the CGST Act, 2017 **w.e.f. 01.01.2022** thereby making the requirement to match ITC with Form GSTR-2A a condition for availment of ITC.

28. The said condition inserted under Section 16(2) of the CGST Act, 2017 reads as follows:

"The details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under Section 37

29. The above amendment makes the position clear that prior to implementation of the said condition, there is no requirement to match ITC with Form GSTR-2A. In

specific, during the disputed period there was no legal requirement to match ITC with Form GSTR-2A.

30. In this regard, the Appellant hereby wish to place reliance on the following judicial precedents, which have held that the law as prevailed during the period of dispute should be considered and not based on law which was introduced at a subsequent date.

a. **THIRUMALAI CHEMICALS LTD. v. UNION OF INDIA [2011 (6) SCC 739]**

"Therefore, unless the language used plainly manifests in express terms or by necessary implication a contrary intention a statute divesting vested rights is to be construed as prospective, a statute merely procedural is to be construed as retrospective and a statute which while procedural in its character, affects vested rights adversely is to be construed as prospective".

b. **M/S CIT v. VATIKA TOWNSHIP PRIVATE LTD. [TS57-SC-2014]**

Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it.

*The obvious basis of the principle against retrospectivity is **the principle of 'fairness'**, which must be the basis of every legal rule. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; **unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation.***

31. Considering that Section 16(2)(aa) of the CGST Act,2017 was introduced only from 01.01.2022, it is clear that there was no requirement to match ITC availed by the registered person with Form GSTR-2A, prior to January 2022. Hence there cannot be a demand to deny ITC on the allegation of mismatch with Form GSTR-2A prior to January 2022. Therefore, Appellant submits that the entire demand in the impugned order is liable to be set aside.

ii. *ITC cannot be denied when mechanism of Form GSTR-2A was not fully functional*

32. Without prejudice to the above submissions, the Appellant wish to submit that at the time of introduction of the CGST Act, 2017 in 01.07.2017 the statute provided a mechanism for filing of returns, which comprised of Form GSTR-1, Form GSTR-1A, Form GSTR-2, Form GSTR-2A and Form GSTR-3. Due to the unpreparedness of the GSTN portal, a simplified return filing mechanism was implemented using Form GSTR-1 and Form GSTR-3B along with Form GSTR-2A. The requirement to file Form GSTR-2 and Form GSTR-3 was deferred.

33. Section 37 of the CGST Act, 2017 (as prevailed during the period of dispute) which provides the mechanism of furnishing details of outward supplies read as follows:

"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, electronically, 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 details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed"

34. Accordingly, Rule 59(3) of the CGST Rules, 2017 provided the manner of communication to the recipient as follows:

"The details of outward supplies furnished by the supplier shall be made available electronically to the concerned registered persons (recipients) in Part A of FORM GSTR- 2A, in FORM GSTR-4A and in FORM GSTR-6A through the common portal after the due date of filing of FORM GSTR-1.

35. In other words, every registered person other than those specified, shall disclose the details of outward supplies made during a tax period in Form GSTR-1 and the same shall be communicated to the recipient of such supplies in Form GSTR-2A as provided in Rule 59(3) of the CGST Rules, 2017.

36. The Appellant wish to submit that Form GSTR-2 as enumerated in the GST statute is a dynamic auto-populated statement containing the details of outward supplies reported in Form GSTR-1 by various suppliers. However, Form GSTR-

2A effective during the time of dispute is a mere statement of inward supplies unlike the mechanism put forth under Section 38 of the CGST Act, 2017.

37. Section 38 of the CGST Act, 2017 provides for the mechanism to be adopted in respect of furnishing of details of inward supplies. The provision reads as follows:

"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 verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37."

38. In other words, Form GSTR-2 as contemplated in the CGST Act, 2017 provided for a mechanism whereby the registered person shall verify, validate, modify or delete if required the details of outward supplies, credit or debit notes disclosed by the supplier in their respective Form GSTR-1. The statute also provided for a mechanism to add the details of inward supplies, credit or debit notes which have been received and not disclosed by the supplier in his Form GSTR-1.

39. The Appellant wish to submit that the mechanism contemplated by the statute in respect of Form GSTR-2 was not effective and the existing Form GSTR-2A/2B is a mere statement reflecting the outward supplies disclosed by the suppliers in their Form GSTR-1 which can only be viewed by the recipient and cannot be altered.

40. Further, Section 42 of the CGST Act, 2017 read with Rule 69 of the CGST Rules, 2017 provides for matching, reversal and reclaim of ITC which reads as follows:

"The details of every inward supply furnished by a registered person (referred as "recipient") for a tax period shall, in such manner and within such time as may be prescribed, be matched —

a) *with the corresponding details of outward supply furnished by the corresponding registered person (referred as "supplier") in his valid return for the same tax period or any preceding tax period;*

41. Rule 71(1) of the CGST Act, 2017 which provides for communication and rectification of discrepancy in claim of input tax credit and reversal of claim of input tax credit reads as follows:

"Any discrepancy in the claim of input tax credit in respect of any tax period, specified in sub-section (3) of section 42 and the details of output tax liable to be added under sub-section (5) of the said section on account of continuation of such discrepancy, shall be made available to the recipient making such claim electronically in FORM GST MIS-1 and to the supplier electronically in FORM GST MIS-2 through the common portal on or before the last date of the month in which the matching has been carried out.

42. In summary, the requirement to match of ITC as contemplated under Section 42 of the CGST Act, 2017 is directly linked to filing Form GSTR-2 under Section 38 of the CGST Act, 2017. The Appellant wish to submit that, when the mechanism of filing Form GSTR-2 in itself not effective, the concept of matching as per Section 42 of the CGST Act, 2017 cannot be enforced during the disputed period.

43. The Finance Act, 2022 had omitted Section 42 of the CGST Act, 2017 vide Notification No. 18/2022 - CT dated 28.09.2022 which substantiates the fact that the Government had intended to remove the inoperative provision Section 42 of the CGST Act, 2017. Further, the CBIC had entirely substituted Rule 59 of the CGST Rules, 2017 and also omitted Rule 69 of the CGST Rules, 2017 in order to bring the Act in line with the prevailing practice.

44. As per **Notification No. 11/2019 – Central Tax dated 07.03.2019** the mechanism for matching of credit had been deferred and was not in practice during the period of dispute and the same reads as follows

"The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 and sub-section (1) of section 39 of the said Act, for the months of July, 2017 to June, 2019 shall be subsequently notified in the Official Gazette."

45. In Para 76 of the minutes of the 23rd GST Council meeting held on 10th November 2017 in respect of Agenda item 12(iii) which is "**Simplification of return filing process**" the Council approved the following:

- *To decide subsequently the filing of GSTR-2 and GSTR-3 till March 2018 for all taxpayers;*

- *GSTR-2A delinked from GSTR-1 till March 2018 and no automatic input tax credit reversal on account of any mismatch between GSTR-1 and GSTR-2 till March 2018;*
- *Rolling GSTR-2A to be available to taxpayers for view till March 2018.*

46. The GST Council comprises of the Union Finance Minister as the Chairman and all the State Finance Ministers as its members. The GST Council has also provided a clear mandate that ITC would not be liable to be reversed, merely on account of mismatch of ITC with Form GSTR-2A till March 2018. In case of any ambiguity prevailing in law, the intention of the legislature should be analysed in interpreting the provisions of the statute as held by the Apex Court in the case of **K.P. VARGHESE v. THE INCOME TAX OFFICER [1981 AIR 1922, 1982 SCR (1) 629].**

47. In the case of **SUN DYE CHEM v. ASSISTANT COMMISSIONER (ST), TIRUPUR [2021 (44) G.S.T.L. 358 (Mad.)],** the Madras High Court held as follows:

    Any mismatch between Form GSTR-1 and Form GSTR-2A is to be notified by the recipient by way of a tabulation in Form GSTR-1A. Admittedly, Forms in GSTR-2A and GSTR-1A are yet to be notified as on date. The statutory procedure contemplated for seamless availment is, as on date, unavailable. Undoubtedly, the petitioner in this case has committed an error in filing of the details relating to credit note. What should have figured in the CGST/SGST column has inadvertently been reflected in the IGST column. In the absence of an enabling mechanism, I am of the view that assessees should not be prejudiced from availing credit that they are otherwise legitimately entitled to. The error committed by the petitioner is an inadvertent human error and the petitioner should be in a position to rectify the same, particularly in the absence of an effective, enabling mechanism under statute

48. Therefore, when the matching requirement under Form GSTR-2 in itself was not effective and the specific decision taken by the GST Council, the demand in the impugned order to deny ITC merely due to non-reflection in Form GSTR-2A is ex facie illegal. Therefore, Appellant submits that the entire demand in the impugned order is liable to be set aside.

iii. ITC cannot be denied in case of bona fide transactions and where tax has been paid to the supplier

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49. The impugned order denies ITC on the sole grounds that the invoices are not reflecting in Form GSTR-2A and therefore it was presumed that the Supplier had not paid the tax to the Government. In this regard, the Appellant wish to submit that there is no allegation or dispute in the impugned order with regard to the genuineness of such transactions and also on the fact of payment of tax by the Appellant to such suppliers.

50. In such a scenario, the Appellant hereby submits that the default of the supplier, if any, should be considered as an offence / contravention in the hands of the supplier and not to impact the eligibility of ITC in the hands of the recipient. The onus would be on the Department to recover the said tax dues from the supplier and not burden the recipient, by virtue of denying the otherwise eligible ITC.

51. In this regard, the Appellant wish to place reliance to the case of **SUNCRAFT ENERGY PVT. LTD.** ***VERSUS*** **ASSISTANT COMMISSIONER, STATE TAX [(2023) 9 CENTAX 48 (CAL.)]** where the Hon'ble High Court of Calcutta held that the authorities have to make enquiry against the supplier more particularly before demanding the recipient to reverse the ITC held as follows.

> *"Therefore, before directing the Appellant to reverse the input tax credit and remit the same to the government, the first respondent ought to have taken action against the fourth respondent the selling dealer and unless and until the first respondent is able to bring out the exceptional case where there has been collusion between the Appellant and the fourth respondent or where the fourth respondent is missing or the fourth respondent has closed down its business or the fourth respondent does not have any assets and such other contingencies, straight away the first respondent was not justified in directing the Appellant to reverse the input tax credit availed by them. Therefore, we are of the view that the demand raised on the Appellant dated 20-2-2023 is not sustainable."*

52. It is pertinent to note that the Department had filed appeal against the said Order before the Hon'ble Supreme Court, wherein the Appeal was dismissed and accordingly the order of the High Court was restored. Therefore, Appellant submits that the entire demand in the impugned order is liable to be set aside.

53. Further, reliance is placed in the recent ruling of the Hon'ble High Court of Kerala in the case of **DIYA AGENCIES v. STATE TAX OFFICER [(2023) 10 Centax 266 (Ker.)]** wherein it was held that credit cannot be denied in the hands of the recipient merely on account of non-reflection in Form GSTR-2A and the Department should proceed against the Supplier for the same. The relevant paragraph in the Judgment reads as below:

"7. From the perusal of Exhibit P-1 impugned assessment order for the assessment year 2017-18 dated 24-5-2022 it is evident that the petitioner's claim for higher input tax has been denied only on the ground that the said amount was not mentioned in the GSTR 2A. ***If the seller dealer (supplier) has not remitted the said amount paid by the petitioner to him, the petitioner cannot be held responsible.*** *Whether the petitioner has paid the tax amount and the transactions between the petitioner and seller dealer are genuine are the matter on facts and evidence. The petitioner has to discharge the burden of proof regarding the remittance of tax to the seller dealer by giving evidence as mentioned in the Judgment of the Supreme Court in The State of Karnataka v. M/s. Ecom Gill Cofee Trading Private Limited (supra).*

8. In view thereof, I find that the impugned Exhibit P-1 assessment order so far denial of the input tax credit to the petitioner is not sustainable, and the matter is remanded back to the Assessing Officer to give opportunity to the petitioner for his claim for input tax credit. If on examination of the evidence submitted by the petitioner, the assessing officer is satisfied that the claim is bonafide and genuine, the petitioner should be given input tax credit. ***Merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of the input tax credit.***

54. In this regard, reliance can be also placed on the following judicial precedents, wherein the benefit of availment of credit has been allowed in case of default by the supplier

a. **LOKENATH CONSTRUCTION PVT LTD VS GOVERNMENT OF WEST BENGAL [(2024) 18 Centax 97 (Cal.)]** wherein the Hon'ble High Court of Calcutta held as follows:

"The order impugned in the writ petition dated 28-12-2023 is set aside as well as the show-cause notice dated 22-8-2023 is set aside with a direction to the authorities to first proceed against

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the supplier and only under exceptional circumstances as clarified in the press release issued by the Central Board of Indirect Taxes and Customs (CBIC) and then only proceedings can be initiated against the appellant".

b. **ST. JOSEPH TEA COMPANY LTD. v. THE STATE TAX OFFICER [2020-TIOL-1441-HC-Kerala-GST]** held that ITC cannot be denied on the sole ground that the invoice is not reflected in Form GSTR-2A. If it is proved that the applicable GST has been discharged by the supplier, even when the invoice was not reported in Form GSTR-1, ITC cannot be denied in the hands of the recipient.

c. **M/S. D.Y.BEATHEL ENTERPRISES v. THE STATE TAX OFFICER (DATA CELL) [2021 (3) TMI 1020 - MADRAS HIGH COURT]**
I am unable to appreciate the approach of the authorities. When it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him.

d. In the case of **AKSHAYAA YARN VS THE ASSISTANT COMMISSIONER [2022 TIOL 83 HC MAD-VAT]**, the Hon'ble Madras High court held that
"If the petitioner had availed input tax credit validly based on the invoice issued by the supplier, question of demanding tax from the petitioner will not arise if other conditions stipulated under the Rules were complied by the petitioner. Merely because the supplier failed to disclose the turnover in the return would not mean the input tax credit would be required to be recovered from the respondent. There are no merits in these Writ Petitions."

e. In the case of **MURUGAN GARMENTS VS. THE ASSISTANT COMMISSIONER (CT) [2017 (3) TMI 47 – MADRAS HIGH COURT]** and also in the case of **INFINITI WHOLESALE LIMITED VS. THE ASSISTANT COMMISSIONER [2015 (1) TMI 590 – MADRAS HIGH COURT]**, the Hon'ble Madras High Court held that
"So long as the purchasing dealer has complied with the requirements as given under rule 10(2), the claim of the purchasing dealer cannot, by any length of reasoning, be denied by the Revenue. The mere fact that the Revenue had not made an assessment on the assessee's vendor, per se,

cannot stand in the way of the assessing officer considering the claim of the assessee under section 19 of the Tamil Nadu Value Added Tax Act."

f. **PINSTAR AUTOMOTIVE INDIA PVT. LTD. V. ADDITIONAL COMMISSIONER [W.P.No.8493 of 2023]**
An additional factor is that where the tax liability has been met by way of reversal of ITC and similarly recovery is effected from the supplier as well, this would amount to a double benefit to the revenue. Thus, while the Department may reverse credit in the hands of the purchaser, this has to be a protective move, to be reversed and credit restored if the liability is made good by the supplier. Thus, the substative liability falls on the supplier and the protective liability upon the purchaser. A mechanism must be put in place to address this situation.

g. **ARISE INDIA LIMITED v. CTT [2017 (10) TMI 1020]** the Delhi High Court dealt with a similar provision under Delhi VAT Act, wherein the Court held that *ITC cannot be denied to a bona-fide and diligent purchaser where the seller did not deposit tax to the Government account. The Court also held that such a provision is violative of Article 14 of the Constitution in as much as it treats both the bona-fide purchaser and mala-fide purchaser alike.*

h. In the case of **ON QUEST MERCHANDISING INDIA PVT. LTD. v. GOVERNMENT OF NCT OF DELHI & ORS. [2017-TIOL-2251-HC-Del-VAT],** Section 9(2)(g) of the Delhi Value Added Tax Act, 2004 which had similar condition as that of Section 16(2)(c) of the CGST Act, 2017 was challenged and the High Court read down the provision to the extent of impossibility.

i. **MINA BAZAR V. STATE TAX OFFICER-1 [(2023) 12 Centax 274 (Ker.)]** wherein the Hon'ble High Court of Kerala Held as follows:
"The matter is remitted back to the file of ***the Assessing Authority to examine the evidence of the petitioner irrespective of the Form GSTR 2A for petitioner's claim of the input tax credit****. After examination of the evidence placed by the petitioner/ assessee, the Assessing Authority shall pass fresh orders in accordance with the law".*

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j. **GOPARAJ GOPALAKRISHNAN PILLAI V. STATE TAX OFFICER-1 [(2023) 11 Centax 203 (Ker.)]** wherein the Hon'ble High Court of Kerala Held as follows:

*"The present Writ Petition is allowed. Impugned order Ext.P1(A) for denial of input tax credit to the petitioner to the extent of 19,830/- is hereby set aside and the matter is remitted back to the Assessing Office to give one opportunity to the petitioner for giving evidence and documents in support of his claim for input tax credit which has been denied vide order Ext.P1(A). **If on examination of the evidence and documents submitted by the petitioner, the Assessing Officer is satisfied that the claim is bonafide and genuine, the petitioner should be given credit of input tax** which has been denied by the order".*

55. Considering the above submission, it can be concluded that ITC cannot be denied when GST has been paid to the supplier. Further, when there is no dispute on the genuineness of the said transaction, the recipient cannot be held liable for the tax that he has already paid to the supplier. Therefore, Appellant submits that the entire demand in the impugned order is liable to be set aside.

iv. Non-payment by Supplier in Form GSTR-3B – Beyond the control of the Appellant

56. The impugned order demands the input tax credit availed along with interest and penalty on the presumption that the Supplier had not paid the taxes to the Government in Form GSTR-3B.

57. In this regard, without prejudice to the above submissions, the Appellant wish to submit that Section 16(2) of the CGST Act, 2017 puts forth certain conditions to be satisfied by the registered person in order to avail ITC. The said specific conditions (as prevailed during the disputed period) reads as follows:

   a) The registered person is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.
   b) The registered person has received the goods or services or both.
   c) Subject to the provisions of [section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

d) <u>he has furnished the return under section 39</u>

58. However, there is no mechanism put forth in the Statute to make the recipient aware on payment of tax by the Supplier. The condition imposed with regard to payment of tax by the supplier, to make the recipient eligible to avail his due benefit is against the legal principle of *"Lex non cogit ad impossibilia"* (i.e., the law does not compel anyone to do anything vain or impossible).

59. Since the availment of benefit depends on the fulfilment of condition by another person i.e., the supplier, the possibility of fulfilling the condition in the hands of the recipient is almost impossible. This would lead to vexatious denial of benefit in the hands of the recipient. Therefore, the said condition imposed under Section 16(2)(c) of the CGST Act, 2017 is irrational and unreasonable. Therefore, Appellant submits that the entire demand in the impugned order is liable to be set aside.

60. In this regard, the Appellant wish to place reliance on the following judicial precedents which have held that law cannot compel another to do an act which is impossible.

   a. **R.S. INFRA-TRANSMISSION LTD. V. STATE OF RAJASTHAN [2018 (4) TMI 1800 - RAJASTHAN HIGH COURT]**

   "It will be impossible for the petitioner to prove that the selling dealer has paid tax or not as while making the payment, the invoice including tax paid or not he has to prove the same and the petitioner has already put a summary on record which clearly establish the amount which has been paid to the selling dealer including the purchase amount as well as tax amount. In that view of the matter, we are of the opinion that Rule 18 if it is accepted, then the respondents will to take undue advantage and cause harassment"

   b. INDIAN SEAMLESS STEEL AND ALLOYS LTD. v. UNION OF INDIA [2003 (156) E.L.T. 945 (Bom.)]

   It is also a well settled principle of law that the law does not compel a man to do that which he cannot possibly ***do*** and the said principle is well expressed in legal maxim "lex non *cogit ad impossibilia*" which is squarely attracted to the facts and circumstances of the present case. The unforeseen circumstances beyond the control of the petitioners if resulted

in non-payment of excise duty, such circumstance cannot be construed to mean that it failed to pay the excise duty on the due date.

c. COMMISSIONER OF CUSTOMS (IMPORTS) v. HICO ENTERPRISES [2008-TIOL-246-SC-CUS]

The legal maxim LEX NON COGIT AD IMPOSSIBILIA can be invoked and benefit of the same be given to the transferee of the licence for claiming exemption under the Notification. The transferee cannot be called upon to fulfil the condition (v)(a) of the Notification No. 203/92-Cus. It is the original licencee, who has to satisfy the above referred condition, but not the transferee of the licence.

61. In light of the above, the impugned order demanding recovery of Input Tax Credit on account of non-payment of tax by the Supplier is improper and arbitrary and the said condition in Section 16(2) of the CGST Act, 2017 should be set aside on grounds of impossibility.

In Re: Interest and penalties are not imposable:

62. Without prejudice to the foregoing, the 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 Pratibha Processors Vs. UOI, 1996 (88) ELT 12 (SC)**.

63. Appellant submits that the impugned order demands interest under Section 50 of CGST Act, 2017. In this regard, it is pertinent to examine Section 50 of CGST Act, 2017 which is extracted below for ready reference

*(1)'Every person who is **liable to pay tax** in accordance with the provisions of this Act or the Rules made thereunder, but failed to **pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid,** pay on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council'*

*(2)the interest under sub-section(1) shall be calculated, in **such manner as may be prescribed**, from the day succeeding the day on which such tax was due to be paid*

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

64. Appellant submits that the impugned order demands that interest rate prescribed under Section 50 is applicable. In this regard, Appellant submits that the Finance Act, 2022 vide Section 110 has amended Section 50(3) which is in accordance with the GST Council in its 45th meeting GST Council Meeting has clearly stated that the interest in cases of ineligible ITC availed and utilized should be charged at 18% w.e.f. 01.07.2017. The press release evidencing the same is as under *"In the spirit of earlier Council decision that interest is to be charged only in respect of net cash liability, section 50 (3) of the CGST Act to be amended retrospectively, w.e.f. 01.07.2017, to provide that interest is to be paid by a taxpayer on "ineligible ITC availed and utilized" and not on "ineligible ITC availed". It has also been decided that interest in such cases should be charged on ineligible ITC availed and utilized at 18% w.e.f. 01.07.2017."*

65. It is further submitted that ITC was not utilized and have been maintained sufficient balance of ITC in the electronic credit ledger throughout the subject period. The copy of Electronic credit ledger is enclosed as annexure __.

66. As we had not availed any benefit out of the ITC availed inadvertently, the imposition of interest on such ITC is not correct. As the credit was reversed before the utilization, the interest liability does not arise. In this regard, reliance is further placed on:
    a. Commissioner Cus., C.E. & S.T. v. Bharat Dynamics Ltd. 2016 (331) E.L.T. 182 (A.P.) wherein it was held that *"6. From the findings arrived at by the Tribunal as reproduced above, it is obvious that in March, 2010, the appellant in accordance with the relevant provision of law, did seek clarification from the department to know whether the goods on clearance to the respondent-assessee are exempted from payment of Excise duty in terms of the notification and only in the absence of such clarification from the department, they took CENVAT credit during the intervening period i.e. from September, 2010 to March, 2011. It is also clearly observed that after getting clarification from TRU in April, 2011, the appellant reversed the entire amount of Cenvat*

credit. In that view of the matter, the specific contention put forth by the learned standing counsel that the respondent-assessee, without any eligibility, has taken the Cenvat credit, as such, they are liable to pay interest, is not sustainable."

b. CCE & ST, LUT Bangalore Vs. Bill Forge Pvt. Ltd—2012 (26) S.T.R. 204 (Kar.) wherein it was held that *"21. Interest is compensatory in character, and is imposed on an assessee, who has withheld payment of any tax, as and when it is due and payable. The levy of interest is on the actual amount which is withheld and the extent of delay in paying tax on the due date. If there is no liability to pay tax, there is no liability to pay interest. Section 11AB of the Act is attracted only on delayed payment of duty i.e., where only duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person liable to pay duty, shall in addition to the duty is liable to pay interest. Section do not stipulate interest is payable from the date of book entry, showing entitlement of Cenvat credit. Interest cannot be claimed from the date of wrong availment of CENVAT credit and that the interest would be payable from the date CENVAT credit is taken or utilized wrongly."*

c. B. Girijapathi Reddy & Company v. Commissioner — 2016 (344) E.L.T. 923 (Tri-Hyd);

d. Ganta Ramanaiah Naidu v. Commissioner — 2010 (18) S.T.R. 10 (Tribunal)

e. J.K. Tyre& Industries Ltd. Vs. CCE x., Mysore—2016(340) E.L.T 193 (Tri.-LB);

f. Commissioner v. Strategic Engineering (P) Ltd. — 2014 (310) E.L.T. 509 (Mad.);

g. Commissioner v. Bombay Dyeing and Mfg. Co. Ltd. — 2007 (215) E.L.T. 3 (S.C.);

67. Appellant further wishes to rely on **Commercial Steel Engineering Corporation v. State of Bihar — 2019 (28) G.S.T.L. 579 (Pat.)** wherein it was held that *"The Assistant Commissioner of State Taxes has somewhere got confused to treat the transitional credit claimed by the dealer as an availment of the said credit when in fact an availment of a credit is a positive act and unless carried out for reducing any tax liability by its reflection in the return filed for any financial year, it cannot be a case of either availment or utilization. It is rightly argued by Mr. Kejriwal that even if the respondent no.3 was of the opinion that the petitioner was not entitled to such transitional credit at best, the claim could be rejected but such rejection of the claim*

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for transitional credit does not bestow any statutory jurisdiction upon the assessing authority to correspondingly create a tax liability especially when neither any such outstanding liability exists nor such credit has been put to use."

68. From the above referred submissions, it is clear that no interest is applicable when the credit is reversed before utilization. Further, the same was also clarified in the 45th GST Council Meeting wherein it was recommended to state that interest is applicable only on utilization and is not applicable on mere availment. Hence, Appellant submits that the demand of interest under section 50 is liable to be set aside.

69. Appellant has bonafide belief that the compliance made by them is legally permissible. And it is a settled proposition of law that when the assessee acts with a bonafide belief especially when there is doubt as to statute and not yet understood by the common public, there cannot be levy to penalty. Therefore, Appellant submits that the demand of penalty in the impugned order is liable to be set aside.

70. Further, Penalty, as the word suggests, **is punishment for an act of deliberate deception by the assessee with the intent to evade duty by adopting any of the means mentioned in the section.** Bona fide belief cannot be reason for imposition of the severe penalty. In this regard wishes to place a reliance on **Rajasthan Spinning & Weaving Mills [2009 (238)** E.L.T. **3 (S.C.) & Commissioner of Central Excise, Vapi Vs Kisan Mouldings Ltd 2010 (260) E.L.T 167 (S.C).**

71. Appellant submits that the Supreme Court in case of CIT Vs Reliance Petro Products Pvt Ltd (SC) 2010 (11) SCC (762) while examining the imposition of penalties under Section 271(1)(c) of Income Tax Act, 1961 held that penalties are not applicable in similar circumstances.

72. Appellant submits that from the above-referred decision of the Supreme Court, penalties cannot be imposed merely because the assessee has availed excess ITC over and above GSTR-2A which was not accepted or was not acceptable to the revenue when the assessee has acted on the bonafide belief that the ITC is not reversible. In the instant case also, Appellant has not availed any excess ITC on the bonafide belief that the same is eligible to be claimed which was not accepted

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by the department. Therefore, in these circumstances, the imposition of penalties is not warranted and the same needs to be dropped.

73. 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.

74. In addition to above, Appellant submits that where an authority is vested with discretionary powers, discretion has to be exercised by application of mind and by recording reasons to promote fairness, transparency and equity. In this regard the reliance is placed on the judgement of hon'ble Supreme Court in the case of **Maya Devi v. Raj Kumari Batra dated 08.09.2010 [Civil Appeal No.10249 of 2003]** wherein it was held that *"14. It is in the light of the above pronouncements unnecessary to say anything beyond what has been so eloquently said in support of the need to give reasons for orders made by Courts and statutory or other authorities exercising quasi-judicial functions. All that we may mention is that in a system governed by the rule of law, there is nothing like absolute or unbridled power exercisable at the whims and fancies of the repository of such power. There is nothing like a power without any limits or constraints. That is so even when a Court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well recognized and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity."*

75. 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. Penalty is not a source of Revenue.*** *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 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 for 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 penalty. Therefore, on this ground it is requested to drop the penalty proceedings.

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76. 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."*

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

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

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

For M/s. GV Research Centers Private Limited

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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 excess claim of Input tax credit.

c) To hold that there is no liability to pay the interest and penalty.

d) To provide any other consequential relief.

Signature

VERIFICATION

I, Soham Satish Modi, Satish Modi Authorized Signatory of M/s. GV Research Centers Private Limited 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: 03-03-2025

Signature

BEFORE APPELLATE JOINT COMMISSIONER-PUNJAGUTTA (ST), COMMISSIONER OF COMMERCIAL TAXES DEPARTMENT, C.T COMPLEX, NAMPALLY, HYDERABAD-500 001

Sub: Proceedings under Appeal against order no. ZD361224000975I dated 02.12.2024 issued to M/s GV Research Centers Pvt. Ltd.

I, Soham Satish Modi , Partner of M/s. GV Research Centers Pvt. Ltd. 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/We do hereby agree to ratify and confirm acts done by our above-authorized representative or his substitute in the matter as my/our own acts as if done by me/us for all intents and purposes.

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

Executed this 3rd day of March 2025 at Hyderabad

GV RESEARCH CENTERS PVT. LTD. SEC'BAD

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 35Q of the Central Excise Act, 1944. 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: 03.03.2025

Address for service:
H N A & Co. LLP,
Chartered Accountants,
3rd Floor, Inwinex Tower,
D No. 8, 2 277, Above Aptronix,
Road Number 2, Banjara Hills,
Hyderabad 500 034

For H N A & Co. LLP
Chartered Accountants

H N A & CO LLP Hyderabad Chartered Accountants

R. Lakshman Kumar

Lakshman Kumar K
Partner (M. No. 241726)

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

S.No.	Name	Qualification	Membership No.	Signature
1	Sudhir V S	CA	219109	
2	Srimannarayana S	CA	261612	
3	Revant Krishna	CA	262586	
4	Akash Heda	CA	269711	
5	P Manikanta	CA	277705	
6	Shiva Mohan Reddy	CA	267701	
7	Asha Latha	CA	280346	
8	Kansara Rajan	CA	285334	