



H N A & Co LLP
Chartered Accountants

(Formerly known as Hiregange & Associates LLP)

Date: 18-03-2025

To
The Joint Commissioner (Appeals-II),
HQRS office, 7th Floor, GST Bhavan,
LB stadium Road, Basheerbagh,
Hyderabad-500004

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 OIO No. 24/2024-25 (GST-Adjn) dated 19.04.2024 relating to **M/s. Silver Oak Villas LLP.**

ii. GSTN: 36AAACZ2062L2Z4

1. With reference to the above, we have been authorized by M/s. Silver Oka Villas LLP 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 AD360325017111P dated 12-03-2025.
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

CA Lakshman Kumar K.

Partner

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

GSTIN/UIN/Temporary ID

Date of filing

Time of filing

Place of filing

Name of the Taxpayer

Address

AD360325017111P

36ADBFS3288A2Z7

12/03/2025

19:16

Hyderabad

SILVER OAK VILLAS LLP

2ND FLOOR, 5-4-187/3 AND 4,
SOHAM MANSION, M.G ROAD,
SECUNDERABAD, Rangareddy,
Telangana, 500003

Name of the person who is filing Appeal

SOHAM MODI

Amount of pre-deposit

₹ 1000862

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

Period: From - 12/03/2025 To - 12/03/2025

Sr.No	Date of deposit/ Debit	Time of deposit	Reporting date (by bank)	Reference No.	Tax Period, if applicable	Description	Transaction Type (Debit/ Credit)	Integrated Tax Amount Debited / Credited (₹)					Integrated Tax Balance (₹)						
								Tax	Interest	Penalty	Fee	Others	Total	Tax	Interest	Penalty	Fee	Others	Total
1	-	-	-		-		Opening Balance	-	-	-	-	-	-	0	0	0	0	0	0
2	12/03/2025	-	-	DC-603250027873	Mar-19		Debit	0	0	0	0	0	0	0	0	0	0	0	0
3	-	-	-	-	-		Closing Balance	-	-	-	-	-	-	0	0	0	0	0	0

Sr.No	Date of deposit/ Debit	Time of deposit	Reporting date (by bank)	Reference No.	Tax Period, if applicable	Description	Transaction Type (Debit/ Credit)	Central Tax Amount Debited / Credited(₹)						Central Tax Balance(₹)																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																								
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Sr.No	Date of deposit/ Debit	Time of deposit	Reporting date (by bank)	Reference No.	Tax Period, If applicable	Description	Transaction Type (Debit/ Credit)	CESS Amount Debited / Credited (₹)					CESS Balance (₹)										
								Tax		Interest		Penalty	Fee	Others	Total	Tax		Interest		Penalty	Fee	Others	Total
1	-	-	-	-	-	Opening Balance	-	-	-	-	-	-	-	-	-	-	-	-	-	0			
2	12/03/2025	-	-	DC3463250027873	Mar-19	Payment of Demand under Appeal	Debit	0	0	0	0	0	0	0	0	0	0	0	0	0			
3	-	-	-	-	-	Closing Balance	-	-	-	-	-	-	-	-	-	-	-	-	-	0			

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

- 1 GSTIN/Temporary ID/UIN - 36ADBFS3288A2Z7
2 Legal Name - SILVER OAK VILLAS LLP
3 Trade Name - SILVER OAK VILLAS LLP
4 Address - 2ND FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, M.G ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003
- Order Type - Demand Order
- 5 Order No - ZD3605240051401 Order Date - 19/04/2024
6 Designation and address of the officer passing the order appealed against Assistant Commissioner and RAMGOPALPET- III:SECUNDERABAD:SECUNDERABAD:HYDER ABAD:CBIC
Demand Id - ZD3605240051401
7 Date of communication of the order to be appealed against - 19/04/2024
8 Name of the authorised representative - SOHAM MODI[ABMPM6725H]

Category of the case under dispute -

1	Others - Excess claim of ITC & Under declaration of ineligible ITC under section 17(5)
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9 Details of Case under dispute

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

Description		Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Amount of Dispute	Tax/Cess	5004305	5004305	0	0	10008610	10008610
	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	

- (v) Market value of seized goods - Refer to Annexure
- 10 Whether the appellant wishes to be heard in person - Yes/No Refer to Annexure
11 Statement of facts - Refer to Annexure
12 Grounds of appeal - Refer to Annexure
13 Prayer - Refer to Annexure

14 Amount Of Demand created/ admitted/ disputed

Description	Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Amount of demand created (A)	Tax/Cess	5004305	5004305	0	10008610	10008610
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other Charges	0	0	0	0	
Amount of demand admitted (B)	Tax/Cess	0	0	0	0	0
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other Charges	0	0	0	0	
Amount of dispute (C)	Tax/Cess	5004305	5004305	0	10008610	10008610
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other Charges	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	1000862
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other charges	0	0	0	0	
Pre-deposit (10% of Disputed Tax/Cess)	Tax/Cess	500431	500431	0	1000862	

(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	500431	500431	0	1000862	1000862
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other Charges	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
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other Charges	0	0	0	0	

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

Refer to Annexure

17 If 'Yes' in item 16 -

(a) Period of delay -

Refer to Annexure

(b) Reason for delay -

Refer to Annexure

Upload Supporting Documents (Relied upon), if any -

ANX-1	Annexure I-V part 1_11zon.pdf
ANX-1.2	Annexure I-V part 2.pdf
ANX-3	Annexure VI-VII.pdf
ANX-4	Annexure VIII.pdf

Verification

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

Place: Hyderabad

Date: 12/03/2025

Name of the Applicant

SILVER OAK VILLAS LLP



H N A & Co LLP
Chartered Accountants

(Formerly known as Hiregange & Associates LLP)

Date: 12.03.2025

To
The Joint Commissioner (Appeals-II),
HQRS office, 7th Floor, GST Bhavan,
LB stadium Road, Basheerbagh,
Hyderabad-500004.

Dear Sir,

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

Ref: Form DRC-07 OIO No. 24/2024-25 (GST-Adjn) dated 19.04.2024 relating to

M/s. Silver Oak Villas LLP.

1. We have been authorized by M/s. Silver Oak Villas LLP to submit an Appeal against the above referred Order and represent before your good office and to do necessary correspondence in the above referred matter. A copy of authorization is attached to the Appeal.
2. In this regard, we are herewith submitting the Appeal memorandum against the order passed by the Joint commissioner, Telangana in Form APL-01 in duplicate along with authorization and annexures.
3. Further, in relation to the Pre-requisite to the pre-deposit @10% of the tax demanded Rs.10,00,860/-, u/s 107 of the CGST Act, 2017 an amount of Rs. 10,00,860/- is discharged through Electronic Cash 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

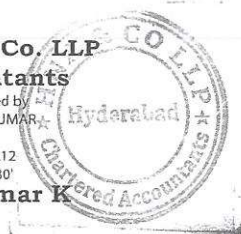
LAKSHMAN

KUMAR

KADALI

CA Lakshman Kumar K
Partner

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LAKSHMAN KUMAR
KADALI
Date: 2025.03.12
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4th Floor, West Block, Srida Anushka Pride, R.No. 12, Banjara Hills, Hyderabad,
Telangana - 500 034. INDIA.

040 2331 8128, 3516 2881

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Form GST APL – 01

Form of Appeal to Appellate Authority

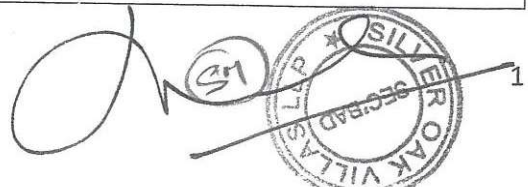
[Under Section 107(1) of Central Goods and Service Tax Act, 2017]

[See rule 108(1)]

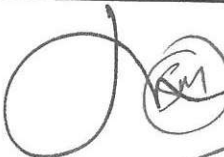
BEFORE THE JOINT COMMISSIONER (APPEALS-II), HORS OFFICE, 7TH FLOOR, GST BHAWAN, LB STADIUM ROAD, BASHEERBAGH, HYDERABAD-

500004

(1) GSTIN/ Temporary ID/UIN-	36AAACZ2062L2Z4		
(2) Legal Name of the Appellant	M/s. Silver Oak Villas LLP		
(3) Trade name, if any-	M/s. Silver Oak Villas LLP		
(4) Address	2nd Floor, U-22, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad, Hyderabad, Telangana – 500003		
(5) Order No.	24/2024-25 (GST- Adjn)	Order Date	19.04.2024
(6) Designation and address of the officer passing the order appealed against	Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad. Salike Senate, D.No: 2-4-416 & 417, Ramgopalpet, M.G. Road, Secunderabad – 500003.		
(7) Date of communication of the order appealed against	24.04.2024		
(8) Name of the authorized representative	CA. Lakshman Kumar. K C/o: H N A & Co. LLP (Formerly known as Hiregange & Associates LLP), Chartered Accountants, 4 th Floor, West Block, Srida Anushka Pride, Above Himalaya Book Store, Road No. 12, Banjara Hills, Hyderabad-500034 Email: Laxman@hnaindia.com Mob: +91 89781 14334		
(9) Details of the case under dispute			
i. Brief issue of the case under dispute	a. Excess claim of Input Tax Credit b. Under declaration of ineligible Input Tax Credit u/s 17(5).		



ii. Description and classification of goods/services in dispute			NA				
iii. Period of dispute			April 2018 to March 2019				
iv. Amount under dispute							
Description		Central tax	State/UT tax	Integrated tax	Cess		
a. Tax/Cess		50,04,305/-	50,04,305/-	NA	NA		
b. Interest		NA	NA	NA	NA		
c. Penalty		NA	NA	NA	NA		
d. Fees		NA	NA	NA	NA		
e. Other charges		NA	NA	NA	NA		
v. Market value of seized goods				NA			
(10) Whether the appellant wishes to be heard in person				Yes			
(11) Statement of Facts				Annexure - A			
(12) Grounds of Appeal				Annexure - B			
(13) Prayer				To set aside the impugned order to the extent aggrieved and grant the relief sought			
(14) Amount of Demand Created, admitted and disputed							
Particulars of demand created/Refund	Particulars		CGST	SGST	IGST	Cess	Total amount
	Amount of	a)Tax/Cesses	50,04,305/-	50,04,305/-	NA	NA	1,00,08,610/-
	demand	b)Interest	u/s 50	u/s 50	NA	NA	-
	create	c)Penalty fill the	u/s 73(9)	u/s 73(9)	NA	NA	-
	d	d)Fees	NA	NA	NA	NA	NA
	(A)	e)Other charges	NA	NA	NA	NA	NA
	Amount of	a)Tax/Cesses	NA	NA	NA	NA	NA



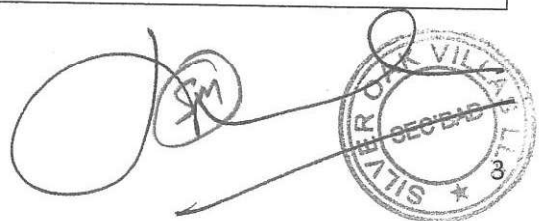

	demand admitted (B)	b)Interest	NA	NA	NA	NA	NA
		c)Penalty	NA	NA	NA	NA	NA
		d)Fees	NA	NA	NA	NA	NA
		e)Other charges	NA	NA	NA	NA	NA
	Amount of demand disputed (C)	a)Tax/Cesses	50,04,305/-	50,04,305/-	NA	NA	1,00,08,610/-
		b)Interest	NA	NA	NA	NA	-
		c)Penalty	NA	NA	NA	NA	NA
		d)Fees	NA	NA	NA	NA	NA
		e)Other charges	NA	NA	NA	NA	NA

(15) Details of payment of admitted amount and pre-deposit:-

a) Details of payment required

Particulars			Central tax	State/UT tax	Integrated tax	Cess	Total
a)Admitted amount	Tax/Cess		NA	NA	NA	NA	NA
	Interest		NA	NA	NA	NA	NA
	Penalty		NA	NA	NA	NA	NA
	Fees		NA	NA	NA	NA	NA
	Other charges		NA	NA	NA	NA	NA
b)Pre-Deposit (10% of disputed tax or 25Cr. Whichever is lower)		Tax/Cess	5,00,430.5/-	5,00,430.5/-	NA	NA	NA

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



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

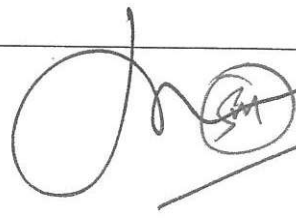
c) Interest, Penalty, Late fee and any other amount payable and paid

Sr.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

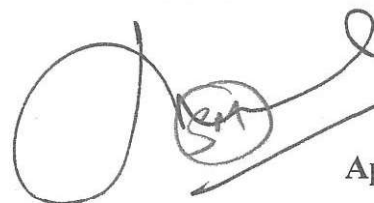
(16) Whether appeal is filed after the prescribed period – No

(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)						

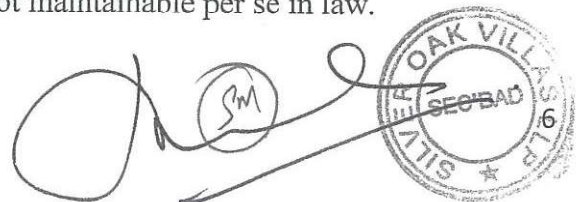



Appellant

ANNEXURE-A

STATEMENT OF FACTS

- A. M/s. Silver Oak Villas LLP (hereinafter referred as "Appellant") located at 2nd Floor, U-22, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad, Hyderabad, Telangana – 500003 is inter alia engaged in the provision of taxable services viz. Works Contract services, construction services in respect of residential villas and are registered with Goods and Services Tax department vide GSTIN No: 36ADBFS3288A2Z7.
- B. Appellant is availing Input Tax Credit (ITC) of taxes paid on inputs and input services and discharging taxes on output liability on timely basis by filing the monthly returns. Appellant has also filed the GSTR-09 for the period 2018-19.
- C. Subsequently, the department has conducted audit for the period July 2017 to March 2019 and on verification of the records the following points were observed and the same was communicated to the Appellant vide Final Audit Report No. 707/2020-21-GST dated 11.06.2021. (Copy of Final Audit Report is enclosed as Annexure VI)
- i. *Short payment of GST during the period 2017-18 and 2018-19 (Rs. 22,11,128/-)*
 - ii. *Non-payment of GST under RCM on Brokerage/Commission paid to unregistered persons (Rs. 2,22,792/-)*
 - iii. *Interest for Rs. 911/- on delayed filing of GSTR-3B returns for the month August 2017*
 - iv. *Short payment of GST in F.Y. 2017-18 and 2018-19*
 - v. *Irregular credit availed and reversed*
 - vi. *Irregular credit taken in the month of September, 2018*
- D. In response to the above final audit report, Appellant has filed the detailed reply along with appropriate annexures stating the reasons as to why there is no short payment of GST on the part of the Appellant (Copy of reply dated 21.03.2021 & 07.09.2021 is enclosed as Annexure V).
- E. Subsequently, Appellant was is in receipt of the Show Cause Notice vide Ref No. C.No.V/01/GST/81/2020-GR.12/CIR-I dated 12.01.2022 and proposed the demands (Copy of SCN is enclosed as Annexure IV):
- F. In response to the SCN dated 12.01.2022, the Appellant furnished reply vide submissions dated 28.02.2023 filed on 01.03.2023 & and also filed additional submissions dated 08.09.2023 thereby stating that the demands proposed vide the SCN has already been discharged and thus the demands proposed are not maintainable per se in law.



G. To the utter surprise of the Appellant, Appellant is in receipt of the impugned SCN No. 39/2023-24 dated 28.12.2023 proposing the following demands which were the very same demands that were already proposed in the show cause notice dated 12.01.2022. Copy of SCN No. 39/2023-24 dated 28.12.2023 enclosed as Annexure III.

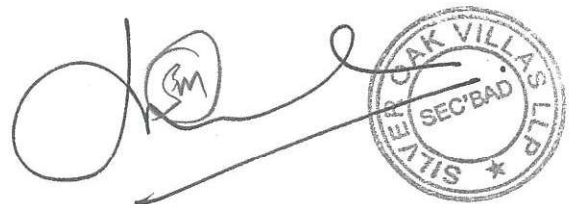
- i. *an amount of Rs.1,00,08,610/- (CGST: Rs.50,04,305/- & SGST: Rs.50,04,305/- (Rupees One Crore Eight Thousand Six Hundred and Ten only), as discussed supra in Para 2.1 should not be demanded from them under section 73(1) of the CGST Act, 2017/TSGST Act, 2017.*
- ii. *interest at the applicable rate should not be demanded from them on tax demanded at (i) above under section 50 of CGST Act, 2017/TSGST Act, 2017.*
- iii. *Penalty should not be imposed on them demands at (i) above under Section 73 of CGST Act, 2017 read with Section 122 (2)(a) of CGST Act, 2017/TSGST Act, 2017.*

H. In response, the Appellant filed their submissions online vide DRC-06 on 19.02.2024 (Copy enclosed as Annexure II) inter alia highlighting that records are already audited, and issues were raised in SCN dated 12.01.2022.

I. To the utter astonishment of the Appellant, the adjudicating authority without considering the facts mentioned in the reply that the issues raised were already addressed in the previous SCN and all required evidences have been provided, has passed the present Order-In-Original vide No. 24/2024-25 (GST-Adjn) dated 19.04.2024, along with DRC 07 having reference no. ZD3605240051401 dated 02.05.2024 confirming the tax demand as proposed in SCN along with interest and penalty (Copy of the Impugned Order-In-Original is enclosed as Annexure I).

J. Aggrieved with the OIO dated 19.04.2024, Appellant has filed a Writ Petition before this Hon'ble High Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India. Subsequently, the Hon'ble High Court has advised the Appellant to seek remedy from the Appellate Authority by filing an Appeal.

Aggrieved by the impugned order, which is contrary to facts, law and evidence, apart from being contrary to a catena of judicial decisions and beset with grave and incurable legal infirmities, the appellant prefers this appeal on the following grounds (which are alternate pleas and without prejudice to one another) amongst those to be urged at the time of hearing of the appeal.



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ANNEXURE-B
GROUND OF APPEAL

1. Appellant submits that the impugned order is ex-facie illegal and untenable in law since the same is contrary to facts and judicial decisions.
2. Appellant submits that the provisions (including Rules, Notifications & Circulars issued thereunder) of both the CGST Act, 2017 and the Telangana GST Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act, 2017 would also mean a reference to the same provision under the Telangana GST Act, 2017. Similarly, the provisions of CGST Act, 2017 are adopted by IGST Act, 2017 thereby the reference to CGST provisions be considered for IGST purposes also, wherever arises.

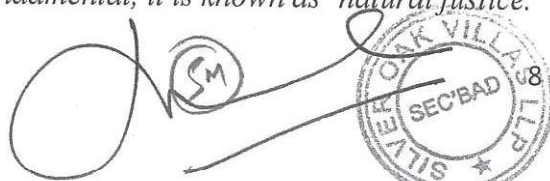
In Re: Impugned Order is not valid:

Violation of principles of natural justice

3. Appellant submits that the impugned order has confirmed the demand without considering the various meritorious submissions made by the Appellant which shows that the same has been passed in violation of principles of natural justice, therefore, the same is not valid and needs to be set aside on this count alone. In this regard, Appellant submits that the Hon'ble Supreme Court in case of **Dharampal Satyapal Limited Vs DC of Gauhati 2015 (320) ELT 3 (SC)** held that.

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

19. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi-judicial bodies, has assumed different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must be given to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as 'natural justice.'



The principles of natural justice developed over a period of time, and which is still in vogue and valid even today were: (i) rule against bias, i.e., nemo iudex in causa sua; and (ii) opportunity of being heard to the concerned party, i.e., audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is duty to give reasons in support of decision, namely, passing of a 'reasoned order.'

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

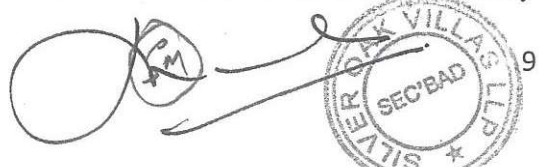
(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

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

5. Appellant submits that it is the duty of authority who is passing the order to prove beyond doubt that why and how a particular submission made by the Appellant was not applicable and not acceptable. However, in this case, the impugned order has rejected the submissions made without giving a proper reason. The impugned order is not reasoned order and hence not valid. Reliance is placed on **Sant Lal Gupta Vs Modern Coop.G.H.Society Ltd. — 2010 (262) E.L.T. 6 (S.C.)** wherein it was held that *"The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."*

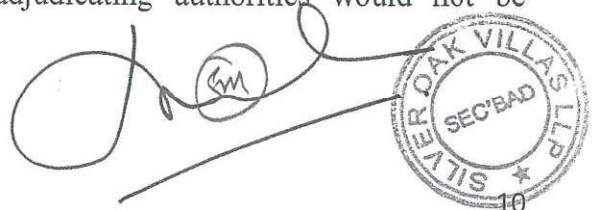
The present demand is already raised in previous SCN dated 12.01.2022

6. Without prejudice to the above submissions, Noticee submits that the the department has already conducted audit for the period July 2017 to March 2019 audit *inter alia* verified the returns, ie., GSTR-3B & GSTR-2A & and made certain observations which were finally

 9

culminated into issuance of earlier SCN dated 12.01.2022 *inter alia* vide Paras 71-113 under the head “No irregular availment of ITC” of such SCN has raised the demand alleged ITC on comparison of GSTR-3B & GSTR-2A for FY 2018-19.

7. Thus, previous SCN dated 12.01.2022 has raised very same demands that were raised in the impugned SCN. Thereby, the present demand is clearly duplicated, unwarranted and requires to be dropped outrightly.
8. Furthermore, the returns verification is one of the basis features of GST audit by the department as evident from the Para 5.5.4 & 5.8.3 of GST Audit Manual, 2019 issued by CBIC (Relevant extracts are enclosed as annexure VII). Therefore, the demand proposed vide the impugned SCN is completely duplicated, fallacious and devoid of any merit.
9. Appellant further submits that in response to the previous SCN dated 12.01.2022, the Appellant has filed the submissions dated 28.02.2023 & additional submissions dated 08.09.2023. (Copy of the submissions are enclosed as Annexure-VIII). Thus, when the demands on the same issue has already been scrutinized and proposed then there was no necessity to raise the very same demands covering same period and same issue again in the present SCN.
10. Appellant submits that reopening of the already adjudicated assessment is not permitted in law. In this regard, Appellant places reliance on **UOI v. Vicco Laboratories 2007 (218) E.L.T. 647 (SC)**.
11. Further, it is submitted that two assessments are not permissible in law for the same period, especially on the same issue and same period. In this regard, Appellant places reliance on the following judicial pronouncements:
 - a. **Duncans Industries Ltd. v. CCE 2006 (201) E.L.T. 517 (SC)**.
 - b. **Ambey Mining Pvt. Ltd. vs. Commissioner of State Tax, Dhurwa 2023 (76) G.S.T.L. 191 (Jhar.)** wherein the Hon’ble HC quashed the two show cause notices by two different authorities for the same period on the same issue.
 - c. **V.S. Enterprises vs. State of UP 2022 (56) G.S.T.L. 287 (All.)** wherein Hon’ble HC held that multiple adjudication orders passed for overlapping tax periods involving same dispute by different adjudicating authorities would not be sustainable.



Handwritten signature and circular stamp of Silver Oak Villas LLP. The stamp contains the text "SILVER OAK VILLAS LLP" and "SEC'Y".

- d. **Core Health Ltd. Vs. Union of India 2006 (198) E.L.T. 21 (Guj.)** wherein the Hon'ble HC held that *"13. In the circumstances, the respondent authority, especially respondent No. 4, has failed to place any material on record to show, even prima facie, that it is entitled to assume jurisdiction for the purpose of issuance of impugned show cause notice for the same period and relating to the same issue which has already been adjudicated upon in past. Once the respondent authority fails to establish jurisdictional facts for assumption of jurisdiction as a natural corollary the impugned show cause notice cannot be allowed to stand and the same is accordingly quashed and set aside."*

In Re: No excess claim of ITC

12. The impugned Order has confirmed demand of Rs.98,42,090/- vide Para 10.1 towards alleged excess ITC availed in GSTR-3B on comparison of ITC claimed in GSTR-3B with auto-drafted ITC in GSTR-2A/Table 8A of GSTR-9 Returns. It is submitted that this demand was raised in the previous SCN and in any case, such alleged differences between ITC in GSTR-3B Vs GSTR-2A is factually wrong as impugned SCN was based on the old GSTR-2A as on the date of filing annual returns. Once the updated GSTR-2A was considered, the actual difference was quite less than the amount arrived by impugned SCN. In any case, the mismatches were not due to the faults of Appellant but faults, if any of the suppliers of Appellant whom to be investigated first instead of direct recovery from Appellant.
13. In this regard, Appellant submits that while arriving at the above referred demands, the impugned order has not considered the updated GSTR-2A. The ITC declared in Table 8A of GSTR-9 was as per the balance available in GSTR-2A at the time of filing the GSTR-9. However, subsequently, the balance in GSTR-2A was updated to a higher balance. Appellant submits that entries in GSTR-2A are dynamic in nature as they keep changing every time any supplier uploads their details while filing GSTR-1.
14. As per latest GSTR-2A, the ITC available to be claimed amounts to Rs.69,31,197/- each CGST and SGST. However, the impugned Order has considered the ITC available in GSTR-2A to be Rs.55,82,555/- each CGST and SGST. Therefore, the balance of ITC available in GSTR-2A should be considered increased by Rs.13,56,472/- of CGST and Rs.13,56,472/- SGST. The breakup of the said balance is mentioned in the table below:

Tax	Balance in GSTR-2A as on 05.02.2025	GSTR-2A balance as per Department	Difference
CGST	Rs.69,31,197/-	Rs.55,82,555/-	Rs.13,56,472/-
SGST	Rs.69,31,197/-	Rs.55,82,555/-	Rs.13,56,472/-



Total	Rs. 1,38,62,394/-	Rs. 1,11,65,110/-	Rs. 27,12,944/-
--------------	--------------------------	--------------------------	------------------------

15. Based on the above mentioned difference in the GSTR-2A, the ITC claimed excess in GSTR-3B over GSTR-2A stands corrected as follows:

Description	SGST	CGST	Total
ITC in the year as per Table 8A of GSTR-09	69,31,197	69,31,197	1,38,62,394
Reversals in Table 4B of GSTR-3B	26,27,940	26,27,940	52,55,880
ITC available for use in the same year	43,03,257	43,03,257	86,06,514
ITC used in the same year as per 4C of GSTR-3B	78,75,660	78,75,660	1,57,51,320
Net excess used	35,72,403	35,72,403	71,44,806

16. Further, Appellant submits that ITC cannot be denied merely due to non-reflection of invoices in GSTR-2A as all the conditions specified under Section 16 of CGST Act, 2017 has been satisfied. Further, Appellant submits that GSTR-2A cannot be taken as a basis to deny the ITC in accordance with Section 41, Section 42, Rule 69 of CGST Rules, 2017.

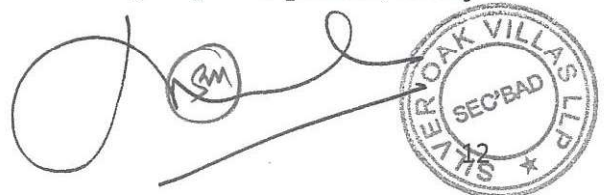
17. Appellant submits that the condition for availment of credit is provided under Section 16(2) of the Central Goods and Service Tax Act, 2017 which do not state that credit availed by the recipient needs to be reflected in GSTR-2A, further order has also not been bought out as to which provision under the Central Goods and Service Tax, 2017 or rules made thereunder requires that credit can be availed only if the same is reflected in GSTR- 2A. Hence, issuance of the order on such allegation, which is not envisaged under the provisions of the CGST/SGST Act. Extract of section 16(2)(c) is given below:

“Section 16(2)(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply;”

18. As seen from Section 16(2)(c), ITC can be availed subject to Section 41 of the GST Act which deals with the claim of ITC and the provisional acceptance thereof.

“Section 41. Claim of input tax credit and provisional acceptance thereof

- 1. Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-*

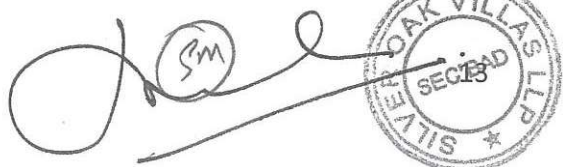


assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

2. *The credit referred to in sub-section (1) shall be utilized only for payment of self-assessed output tax as per the return referred to in the said sub-section"*

From the above-referred section, it is clear that every registered person is entitled to take credit of eligible ITC as self-assessed in his return and the same will be credited to the electronic credit ledger on a provisional basis.

19. In this regard, it is submitted that Section 42, *ibid* specifies the mechanism for matching, reversal, and reclaim of ITC wherein it was clearly stated the details of every inward supply furnished by a registered person shall be matched with the corresponding details of outward supply furnished by the supplier in such manner and within such time as may be prescribed.
20. Further, Rule 69 of CGST Rules, 2017 specifies that the claim of ITC on inward supplies provisionally allowed under Section 41 shall be matched under Section 42 after the due date for furnishing the return in GSTR-03. Further, the first proviso to Rule 69 also states that if the time limit for furnishing Form GSTR-01 specified under Section 37 and Form GSTR-2 specified under Section 38 has been extended then the date of matching relating to the claim of the input tax credit shall also be extended accordingly.
21. The Central Government vide Notification No.19/2017-CT dated 08.08.2017, 20/2017-CT dated 08.08.2017, 29/2017-CT dated 05.09.2017, 44/2018-CT dated 10.09.2018, has extended the time limit for filing GSTR-2 and GSTR-3. Further, vide Notification No.11/2019-CT dated 07.03.2019 stated that the time limit for furnishing the details or returns under Section 38(2) (GSTR-2) and Section 39(1) GSTR 3 for the months of July 2017 to June 2019 shall be notified subsequently.
22. From the above-referred Notifications, it is very clear that the requirement to file GSTR 2 and GSTR 3 has differed for the period July 2017 to June 2019 and subsequently, it was stated the due date for filing would be notified separately. In absence of a requirement to file GSTR-2 and GSTR-3, the matching mechanism prescribed under Section 42 read with Rule 69 will also get differed and become inoperative.
23. Once the mechanism prescribed under Section 42 to match the provisionally allowed ITC under Section 41 is not in operation, the final acceptance of ITC under Rule 70 is not possible thereby the assessee can use the provisionally allowed ITC until the due date for filing GSTR



2 and GSTR 3 is notified. Hence, there is no requirement to reverse the provisional ITC availed even though the supplier has not filed their monthly GSTR-3B returns till the mechanism to file GSTR 2 and GSTR 3 or any other new mechanism is made available.

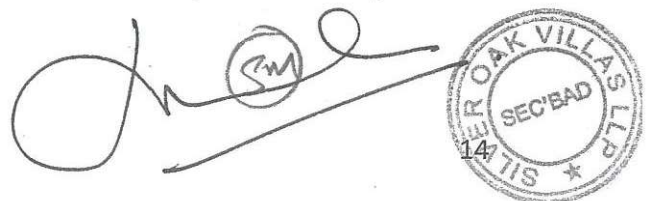
24. Appellant further submits that Finance Act, 2022 has omitted Section 42, 43 and 43A of the CGST Act, 2017 which deals ITC matching concept. Appellant submits that the substituted Section 38 of the CGST Act, 2017 now states that only the eligible ITC which is available in the GSTR-2B (Auto generated statement) can be availed by the recipient. Now, GSTR-2B has become the main document relied upon by the tax authorities for verification of the accurate ITC claims. Hence, omission of sections 42, 43 and 43A has eliminated the concept of the provisional ITC claim process, matching and reversals.

25. Once the mechanism prescribed under Section 42 to match the provisionally allowed ITC under Section 41 is not in operation and has been omitted by the Finance Act, 2022 the effect of such omission without any saving clause means the above provisions was not in existence or never existed in the statute. Hence, request you to drop the proceedings initiated.

26. Appellant submits that Section 38(1) of the CGST Act, 2017 provides as under:

“SECTION 38. Furnishing details of inward supplies. — (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall 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.”

Therefore, the aforesaid provisions mandate for filing of GSTR 2A by incorporating the details of the invoices not declared by the vendors. Further, the ITC so declared is required to be matched and confirmed as per provisions of Sec. 42 and 43 of the CGST Act, 2017. Hence, Appellant submit that on one hand the law allows the recipient to even claim ITC in respect of the invoices for which the details have not been furnished by the vendors. On the other hand, Rule 60 of the CGST Rules, 2017 which deals with the procedure for filing of GSTR 2 in fact does not provide for its filing at all but only provides for the auto-population of the data filed by the vendors in GSTR 2A/2B. The same therefore clearly runs contrary to Sec. 38 discussed above.



27. The Section 38 read with Rule 60 had prescribed the FORM GSTR 2 which is not made available till 30.09.2022. Notification No. 20 Central Tax dated 10th Nov 2020 has substituted the existing rule to w.e.f. 1.1.2021 meaning thereby the requirement of Form GSTR 2 necessary in order to due compliance of Section 38. In the absence of the said form, it was not possible for the taxpayer to comply with the same. Further, Form GSTR 2 has been omitted vide Notification No. 19/2 Central Tax dated 28.09.2022 w.e.f. 01.10.2022.
28. Further, it is submitted that Section 42 clearly mentions the details and procedure of matching, reversal, and reclaim of input tax credit with regard to the inward supply. However, Section 42 and Rule 69 to 71 have been omitted w.e.f. 01.10.2022.
29. Appellant submits that the Rule 70 of CGST Rules 2017 which prescribed the final acceptance of input tax credit and communication thereof in Form GST MIS-1 and Rule 71 prescribes the communication and rectification of discrepancy in the claim of input tax credit in form GST MIS-02 and reversal of claim of input tax credit. Further, Rule 70 has been omitted vide Notification No. 19/2022 Central Tax dated 28.09.2022 w.e.f 01.10.2022.
30. It is submitted that neither the form has been prescribed by the law nor the same has been communicated to the Appellant therefore it is not possible to comply with the condition given in Section 42 read with Rule 69, Rule 70 and 71. Hence, the allegation of the impugned order is not correct.
31. Appellant submits that as Section 41 allows the provisional availment and utilization of ITC, there is no violation of section 16(2)(c) of GST Act 2017, therefore, the ITC availed by Appellant is rightly eligible. Hence, request you to drop the proceedings initiated.
32. The above view is also fortified from the press release dated 18.10.2018 wherein it was stated that *"It is clarified that the furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and the facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act. The apprehension that ITC can be availed only on the basis of reconciliation between FORM GSTR-2A and FORM GSTR-3B conducted before the due date for filing of return in FORM GSTR-3B for the month of September 2018 is unfounded as the same exercise can be done thereafter also."*


15



From this, it is clear that input tax credit can be availed even if the same is not indicated in Form GSTR 2A and hence the order issued is contrary to the same.

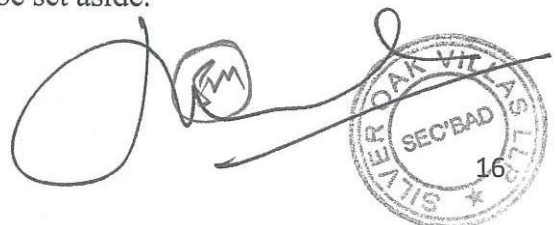
33. Without prejudice to the above, Appellant submits that even if the matching mechanism is in place, the unmatched ITC amount will get directly added to the electronic liability ledger of the assessee under sub-section (5) of Section 42 and there is no requirement to reverse the ITC availed.

34. Appellant submits that only in exceptional cases like missing dealer etc. the recipient has to be called for to pay the amount which is coming out from Para 18.3 of the minutes of 28th GST Council meeting held on 21.07.2018 in New Delhi which is as under:

"18.3---- He highlighted that a major change proposed was that no input tax credit can be availed by the recipient where goods or services have not been received before filing of a return by the supplier. This would reduce the number of pending invoices for which input tax credit is to be taken. There would be no automatic reversal of input tax credit at the recipient's end where tax had not been paid by the supplier. Revenue administration shall first try to recover the tax from the seller and only in some exceptional circumstances like missing dealer, shell companies, closure of business by the supplier, input tax credit shall be recovered from the recipient by following the due process of serving of notice and personal hearing. He stated that though this would be part of IT architecture, in the law there would continue to be a provision making the seller and the buyer jointly and severally responsible for recovery of tax, which was not paid by the supplier but credit of which had been taken by the recipient. This would ensure that the security of credit was not diluted completely."

Thereby, issuing the order without checking with our vendors the reason for non-filing of the returns etc. runs against the recommendations of the GST council.

35. Without prejudice to above, Appellant submits that even if there is differential ITC availed by the Appellant, the same is accompanied by a valid tax invoice containing all the particulars specified in Rule 36 of CGST Rules based on which Appellant has availed ITC. Further, Appellant submits that the value of such supplies including taxes has been paid to such vendors thereby satisfying all the other conditions specified in Section 16(2) of the CGST Act, 2017. As all the conditions of Section 16(2) are satisfied, the ITC on the same is eligible to the Appellant hence the impugned order needs to be set aside.



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36. Appellant submits that the fact of payment or otherwise of the tax by the supplier is neither known to us nor is verifiable by us. Thereby it can be said that such condition is impossible to perform and it is a known principle that the law does not compel a person to do something which he cannot possibly perform as the legal maxim goes: *lex non-cogit ad impossibilia*, as was held in the case of:

- a. *Indian Seamless Steel & Alloys Ltd Vs UOI*, 2003 (156) ELT 945 (Bom.)
- b. *Hico Enterprises Vs CC*, 2005 (189) ELT 135 (T-LB). Affirmed by SC in 2008 (228) ELT 161 (SC)

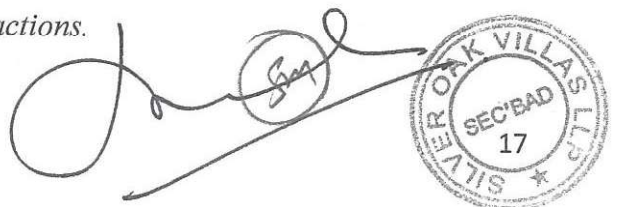
Thereby it can be said that the condition, which is not possible to satisfy, need not be satisfied and shall be considered as deemed satisfied.

37. Appellant submits that Section 76 of CGST Act, 2017 provides the recovery mechanism to recover the tax collected by the supplier but not paid to the government. Further, Section 73 and 74 also provides the recovery mechanism to recover the GST collected by way of issue of order. In this regard, Appellant submits that the revenue department cannot straight away deny the ITC to the recipient of goods or services without exercising the above referred powers.

38. Appellant further submits that without impleading the supplier the department cannot deny ITC to the recipient. Further, Section 16(2) of CGST Act, 2017 states that if the tax is not remitted by the supplier the credit can be denied and to ascertain the same, the department should implead the supplier first. In the instant case, no such act is initiated by the department against the supplier instead proposed to deny the ITC to the recipient which is not correct.

39. Appellant submits that if the department directly takes action against the recipient in all cases, then the provisions of Section 73, 74 and 76 would be rendered *otiose*, which is not the legislative intent. Further, we would like to submit that the department cannot be a mute spectator or maintain sphinx like silence or dormant position. In this regard, Appellant wish to rely on recent Madras High Court decision in case of M/s. **D.Y. Beathel Enterprises Vs State Tax officer (Data Cell), (Investigation Wing), Tirunelveli** 2021(3) TMI 1020-**Madras High Court** wherein it was held that

“12. Therefore, if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer. In the case on hand, the respondent does not appear to have taken any recovery action against the seller / Charles and his wife Shanthi, on the present transactions.



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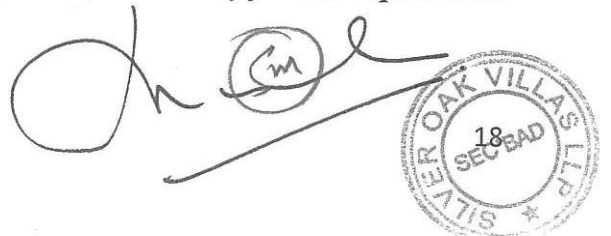
13. *The learned counsel for the petitioners draws my attention to the SCN, dated 27.10.2020, finalising the assessment of the seller by excluding the subject transactions alone. I am unable to appreciate the approach of the authorities. When it has come out that the seller has collected tax from the 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.*

14. *That apart in the enquiry in question, the Charles and his Wife ought to have been examined. They should have been confronted."*

40. Appellant submits that the Input tax credit should not be denied only on the ground of the transaction not been reflected in GSTR-2A. In this regard, Appellant wish to place reliance on the judgement of Hon'ble Kerala High Court in the case of St. Joseph Tea Company Ltd., Paramount Enviro Energies Versus the State Tax Officer, Deputy Commissioner, State GST Department, Kottayam, State Goods and Service Tax Department, Goods and Service Tax Network Ltd. (2021 (7) TMI 988 - Kerala High Court) wherein it was held that "7. *In the circumstances, the only possible manner in which the issue can be resolved is for the petitioner to pay tax for the period covered by provisional registration from 01.07.2017 to 09.03.2018 along with applicable interest under Form GST DRC-03 dealing with intimation of payment made voluntarily or made against the show cause notice (SCN) or statement. If such payment is effected, the recipients of the petitioner under its provisional registration (ID) for the period from 01.07.20217 to 09.07.2018 shall not be denied ITC only on the ground that the transaction is not reflected in GSTR 2A. It will be open for the GST functionaries to verify the genuineness of the tax remitted, and credit taken. Ordered accordingly."*

41. Appellant further submits that for the default of the supplier, the recipient shall not be penalized therefore the impugned order shall be dropped. In this regard, reliance is placed on **On Quest Merchandising India Pvt Ltd Vs Government of NCT of Delhi and others 2017-TIOI-2251-HC-DEL-VAT** wherein it was held that

"54. *The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department*

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would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC."

42. Appellant further submits that in case of Hon'ble Karnataka High Court in a writ petition filed by **M/s ONXY Designs Versus The Assistant Commissioner of Commercial Tax Bangalore 2019(6) TMI 941** relating to Karnataka VAT has held that *"It is clear that the benefit of input tax cannot be deprived to the purchaser dealer if the purchaser dealer satisfactorily demonstrates that while purchasing goods, he has paid the amount of tax to the selling dealer. If the selling dealer has not deposited the amount in full or a part thereof, it would be for the revenue to proceed against the selling dealer"*

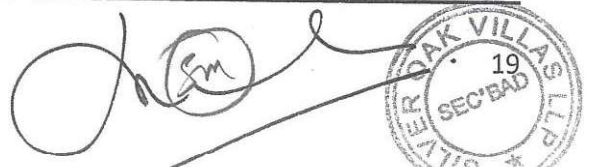
43. Appellant submits that under the earlier VAT laws there were provisions similar to Section 16(2) *ibid* which have been held by the Courts as unconstitutional. Some of them are as follows

- a. **Arise India Limited vs. Commissioner of Trade and Taxes, Delhi - 2018-TIOL-11-SC-VAT** was rendered favorable to the assessee. This decision was rendered in the context of section 9(2) (g) of the Delhi Value Added Tax Act, 2004 which is a similar provision wherein the credit availment of the recipient is dependent on the action taken by the supplier.
- b. **M/s Tarapore and Company Jamshedpur v. the State of Jharkhand - 2020-TIOL-93-HC-JHARKHAND-VAT** This decision was rendered in the context of section 18 (8)(xvii) of Jharkhand Value Added Tax Act, 2005 similar to the above provision.

The decisions in the above cases would be equally applicable to the present context of Section 16(2) *ibid*

44. Appellant further submits that the fact that there is no requirement to reconcile the invoices reflected in GSTR-2A vs GSTR-3B is also evident from the proposed amendment in Section 16 of GST Act, 2017 in Finance Act, 2021 as introduced in Parliament. Hence, there is no requirement to reverse any credit in absence of the legal requirement during the subject period.

45. Similarly, it is only Rule 36(4) of CGST Rules, 2017 as inserted w.e.f. 09.10.2019 has mandated the condition of reflection of vendor invoices in GSTR-2A with Adhoc addition of the 20% (which was later changed to 10% & further to 5%). At that time, the CBIC vide Circular 123/42/2019 dated 11.11.2019 categorically clarified that the

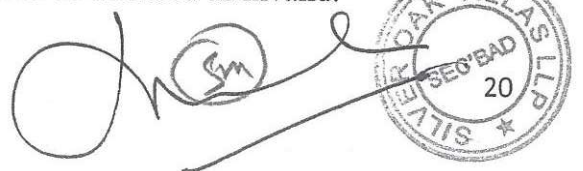
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matching u/r. 36(4) is required only for the ITC availed after 09.10.2019 and not prior to that. Hence, the denial of the ITC for non-reflection in GSTR-2A is incorrect during the subject period.

46. Appellant submits that Rule 36(4), ibid restricts the ITC on the invoices not uploaded by the suppliers. However, such restrictions were beyond the provisions of CGST Act, 2017 as amended more so when Section 42 & 43 of CGST Act, 2017 which requires the invoice matching is kept in abeyance and filing of Form GSTR-2 & Form GSTR-3 which implements the invoice matching in order to claim ITC was also deferred. Thus, the restriction under Rule 36(4), ibid is beyond the parent statute (CGST Act, 2017) and it is ultra vires. In this regard, reliance is placed on the Apex Court decision in the case of Union of India Vs S. Srinivasan 2012 (281) ELT 3 (SC) wherein it was held that *"If a rule goes beyond the rule making power conferred by the statute, the same has to be declared ultra vires. If a rule supplants any provision for which power has not been conferred, it becomes ultra vires. The basic test is to determine and consider the source of power which is relatable to the rule. Similarly, a rule must be in accord with the parent statute as it cannot travel beyond it."* (Para 16) .

Once any rule is ultra vires, the same need not be followed. Hence, the proposition to deny the ITC stating that invoices not reflected in GSTR-2A require to be set aside.

47. Appellant submits that the aforesaid Rule can be considered to be valid only if the provisions of the Act envisage such restriction. Appellant submits that Section 16(2) of the CGST Act, 2017 as presently applicable provides that a registered person shall not be entitled to ITC unless he satisfies the given four conditions. A perusal of the said provisions shall reveal that none of the conditions provides for the furnishing of the details of the invoice in GSTR 1 by the vendors. It may be noted that the actual payment condition under clause (c) cannot be inferred to include the condition of the furnishing of the details in GSTR 1. It is for the simple reason that the furnishing of the details of outward supplies is u/s 37 of the CGST Act, 2017 which is distinct and at present legally not linked with the furnishing of the return and payment of tax u/s 39 of the said Act. In fact, an amendment made u/s 75 by virtue of Finance Act, 2021 to the effect that the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39 and shall permit the direct recovery of the said tax so declared also confirms that the declaration of the details u/s 37 in GSTR 1 do not confirm the payment of tax. Hence, it can be stated that in absence of any provisions in the Act enabling the formulation of Rule 36(4), the same has to be declared as invalid.



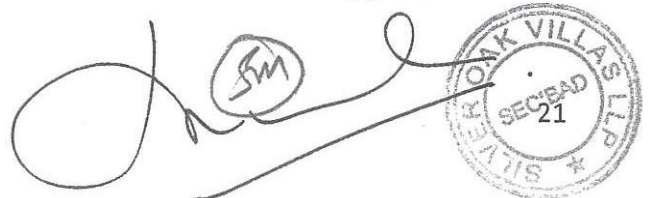
48. The aforesaid view has also been recognized as evident from the rationale for the amendment under discussion (i.e., clause (aa)) as expressly stated in the minutes of the GST Council meeting. The agenda note (supra) clearly has recognized the said gap between the Act and the Rule by stating that the proposed amendment is aimed to “to complete this linkage of outward supplies declared by the supplier with the tax liability, by also limiting the credit availed in FORM GSTR 3B to that reflected in the GSTR2A of the recipient, subject to the additional amount available under rule 36(4)”. Hence the amendment by way of clause (aa) leads to a conclusion that the provisions of Rule 36(4) shall not be valid till the said clause is notified.

49. Appellant submit that Section 38(1) of the CGST Act, 2017 permits the recipient to declare the details of the missing invoices in GSTR 2 and claim the ITC thereof subject to eventual matching. Clause (aa) on the other hand seeks to allow the ITC only if the details are furnished by the vendors. Hence, Appellant submit that the law is asking the recipient to do the impossible by (a) not making the provisional claim of ITC by filing GSTR 2 and asking the vendors to accept the liability and (b) determining the eligibility solely based on filings done by the said vendors which are not in the control of the recipient. Hence, based on the doctrine of supervening impossibility that the ITC of the genuine recipient cannot be denied by virtue of the provisions of clause (aa).

50. Appellant submits that based on the above submissions, it is clear that the ITC availed by the taxpayer is rightly eligible and there is no requirement to pay any interest on the same. Hence, the impugned order to that extent needs to be set aside.

51. Appellant wishes to rely on recent decisions in case of:

- a. **Suncraft Energy Private Limited And Another Versus The Assistant Commissioner, State Tax, Ballygunge Charge And Others, 2023 (8) TMI 174 - Calcutta High Court.** The above stated judgement has been reaffirmed by the Hon’ble Supreme Court of India **2024 (80) G.S.T.L. 225 (S.C.)** by dismissing the Special Leave petition filed by the revenue.
- b. **Bhagyanagar Copper Pvt Ltd Vs CBIC and Others 2021-TIOL-2143-HC-Telangana-GST**
- c. **LGW Industries limited Vs UOI 2021 (12) TMI 834-Calcutta High Court**
- d. **Bharat Aluminum Company Limited Vs UOI & Others 2021 (6) TMI**

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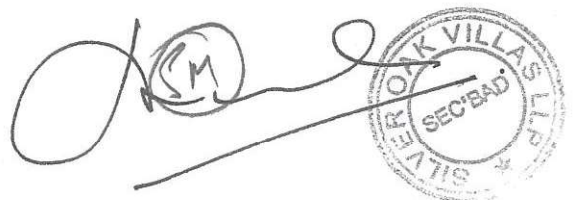
**e. Sanchita Kundu & Anr. Vs Assistant Commissioner of State Tax 2022 (5) TMI
786 - Calcutta High Court**

52. Appellant submits that in the case of **Global Ltd. v. UOI - 2014 (310) E.L.T. 833 (Guj.)** it was held that denial of ITC to the buyer of goods or services for default of the supplier of goods or services, will severely impact working capital and therefore substantially diminishes ability to continue business. Therefore, it is a serious affront to his right to carry on his trade or business guaranteed under Article 19(1)(g) of the Constitution.
53. Appellant submits that the denial of ITC to the buyer of goods or services for default of the supplier of goods or services, is wholly unjustified and this causes the deprivation of the enjoyment of the property. Therefore, this is positively violative of the provision of Article 300A of the Constitution of India - **Central Excise, Pune v. Dai Ichi Karkaria Ltd., SC on 11 August 1999 [1999 (112) E.L.T. 353 (S.C.)]**
54. Appellant submits that the denial of ITC to the buyer of goods or services for default of the supplier of goods or services, clearly frustrates the underlying objective of removal of cascading effect of tax as stated in the Statement of object and reasons of the Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014. it is an established principle of law that it is necessary to look into the mischief against which the statute is directed, other statutes in pari materia and the state of the law at the time.
55. Appellant submits that one also needs to consider that Article 265 of the Constitution which provides that no tax shall be levied or collected except by authority of law. Hence not only the levy but even the collection of the tax shall be only by authority of law.

In Re: There is no under declaration of ineligible ITC and hence, there is no requirement to reverse the ITC:

56. Impugned order has confirmed the demand proposed by the SCN amounting Rs.1,66,520/- confirming that Appellant is required to reverse the ITC. In this regard, it is submitted that Appellant has not availed any ITC on the motor vehicles as confirmed in the impugned order. The ITC availed by the Appellant has been verified during the course of audit and have not pointed the same. Since the audit is already completed, Appellant requests to set aside the impugned order to such extent.

In Re: Interest under Section 50 is not applicable.



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57. Appellant submits that when the principal amount is not payable, there is no question of payment of interest. In this regard, reliance is placed on the Judgment of the Hon'ble Supreme Court in the case of Pratibha Processors Pvt. Ltd Vs UOI 1996 (88) E.L.T. 12 (S.C.).

58. In this regard, the Appellant submits that the impugned order has stated that the Appellant is liable to 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'

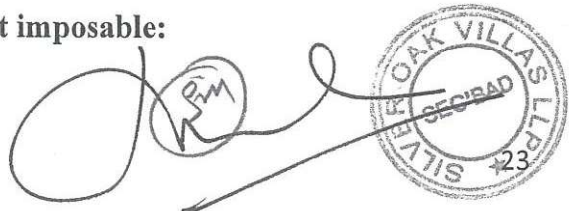
(2) the interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid

(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."

59. In this regard, Appellant submits that Notification No.13/2017-CT dated 28.06.2017 has prescribed the interest rate at 18% in case of failure in payment of GST under Section 50(1) of CGST Act, 2017 and 24% in case of undue or excess claim of ITC under sub-section (3) of Section 50 of CGST Act, 2017.

60. Appellant submits that there is no reference in Section 50 as to how to compute the interest payable. Furthermore, Section 50(2) though envisages the period from which the tax computation has to begin, it empowers the Central Government to prescribe the methodology of computation of interest. However, as on this date, there is no such prescription in the Rules, thereby the interest is not at all applicable. In this regard, Appellant submits that it is a settled position of law that when the mechanism to measure fails, the levy also fails as laid down by Hon'ble Supreme Court in the case of B.C. Srinivasa Shetty 1981 (2) SCC 460. Accordingly, the mechanism to compute interest is not set out therefore the levy of interest also fails.

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

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

"11. Section 122 – Penalty for certain offences.

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

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

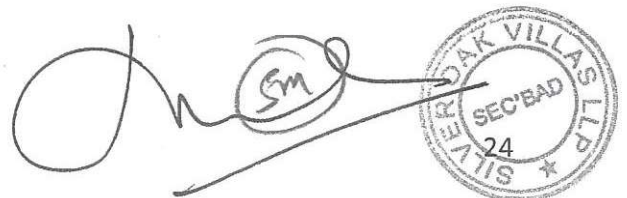
62. In this regard, Appellant submits that penalty u/s 122(2)(a) is not payable in the present case. Section 122(2)(a) attracts only when a registered person has not paid the tax or short paid or erroneously refunded or wrongly availed/utilised the input tax credit. As Appellant is not required to pay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

63. Appellant submits that Appellant is of the vehement belief that the input availed by Appellant is not required to reverse and there is no short payment of GST, therefore, the question of interest and penalty does not arise. Further, it is a natural corollary that when the principal is not payable there can be no question of paying any interest and penalty as held by the Supreme Court in **Prathiba Processors Vs UOI, 1996 (88) ELT 12 (SC)**.

64. Further, Appellant submits that the impugned order had not discharged the burden of proof regarding the imposition of the penalty under CGST Act, 2017. In this regard, wishes to rely on the judgment in the case of **Indian Coffee Workers' Co-Op. Society Ltd Vs C.C.E. & S.T., Allahabad 2014 (34) S.T.R 546 (All)** it was held that "It is unjustified in absence of discussion on fundamental conditions for the imposition of penalty under Section 78 of Finance Act, 1994".

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

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



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

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

(3).....

...

...

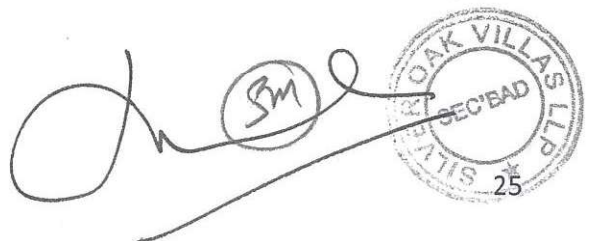
(8).....

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

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

66. From the above-referred sub-section, it is clear that the penalty is applicable only when any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax. However, in the instant case, the Appellant has not availed any excess ITC in GSTR-3B. Hence, the penalty under Section 73(11) is not applicable in the instant case.

67. 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.

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68. Appellant submits that from the above-referred decision of the Supreme Court, penalties cannot be imposed merely because the assessee has claimed certain ITC which was not accepted or was not acceptable to the revenue when the assessee has acted on the bonafide belief that the ITC is eligible. In the instant case also, Appellant has availed the ITC on the bonafide belief that the same is eligible which was not accepted by the department. Therefore, in these circumstances, the imposition of penalties is not warranted and the same needs to be set aside.

69. 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.

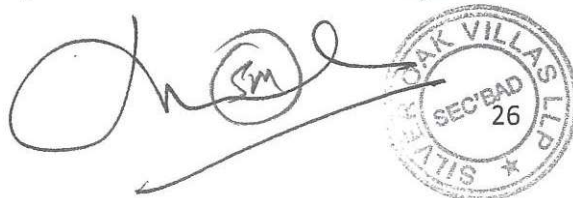
70. Appellant submits that GST being a new law, the imposition of penalties during the initial years of implementation is not warranted. Further, Noticee submits that they are under bonafide belief that ITC availed by them are eligible, thus, penalties shall not be imposed. Further, the government has been extending the due dates & waiving the late fees for delayed filing etc., to encourage compliance and in these circumstances imposition of penalties for claiming ITC on bonafide belief is not at all correct and the same needs to be set aside.

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

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

It is clear from the above provision that if a penalty imposed under section 73 then no penalty under any other provision shall be imposed under this act. Hence, penalty under two sections i.e., under section 73 and under section 122(2)(a) cannot be imposed simultaneously and the demand under this proceeding needs to be set aside.

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



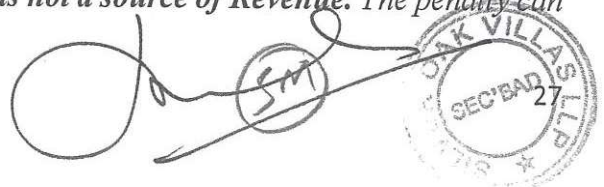
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v. Raj Kumari Batra dated 08.09.2010 [Civil Appeal No.10249 of 2003] wherein it was held that

“14. It is in the light of the above pronouncements unnecessary to say anything beyond what has been so eloquently said in support of the need to give reasons for notices made by Courts and statutory or other authorities exercising quasi-judicial functions. All that we may mention is that in a system governed by the rule of law, there is nothing like absolute or unbridled power exercisable at the whims and fancies of the repository of such power. There is nothing like a power without any limits or constraints. That is so even when a Court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well recognized and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity.”

73. Appellant further submits that the Supreme Court in case of **Hindustan Steel Ltd. v. State of Orissa —1978 [AIR 1970 SC 253]** while dealing with the similar facts wherein a mandatory penalty is prescribed without the concept of mens rea held that *“Under the Act penalty may be imposed for failure to register as a dealer: Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An notice imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out.”*

74. Appellant further submits that it was held in the case of Collector of Customs v. Unitech Exports Ltd. 1999 (108) E.L.T. 462 (Tribunal) that- *“It is settled position that penalty should not be imposed for the sake of levy. The penalty is not a source of Revenue. The penalty can*



Handwritten signature and circular stamp of the Secretary, Board of Advocates, District Court, Villaspur. The stamp contains the text: "SECRETARY, BOARD OF ADVOCATES, DISTRICT COURT, VILLASPUR" and the number "27".

be imposed depending upon the facts and circumstances of the case that there is a clear finding by the authorities below that this case does not warrant the imposition of penalty. The respondent's Counsel has also relied upon the decision of the Supreme Court in the case of *M/s. Pratibha Processors v. Union of India* reported in 1996 (88) E.L.T. 12 (S.C.) that penalty ordinarily levied for some contumacious conduct or a deliberate violation of the provisions of the particular statute." Hence, Penalty cannot be imposed in the absence of deliberate defiance of law even if the statute provides for a penalty.

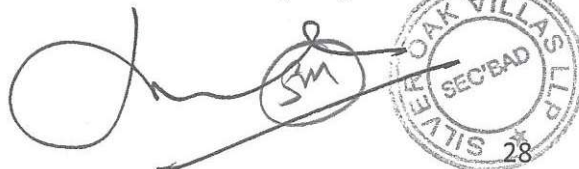
75. Appellant submits that the Supreme Court in case of *Price Waterhouse Coopers Pvt. Ltd Vs Commissioner of Income Tax, Kolkata S.L.P.(C) No.10700 of 2009* held as follows:

"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."

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

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

1. *Bhargava Motors Vs UOI 2019 (26) GSTL 164 (Del)* wherein it was held that *"The GST system is still in a 'trial and error phase' as far as its implementation is concerned. Ever since the date the GSTN became operational, this Court has been approached by dealers facing genuine difficulties in filing returns, claiming input tax credit through the GST portal. The Court's attention has been drawn to a decision of the Madurai Bench of the Madras High Court dated 10th September, 2018 in W.P. (MD) No. 18532/2018 (Tara Exports v. Union of India) [2019 (20) G.S.T.L. 321 (Mad.)] where after acknowledging the procedural difficulties in claiming input tax credit in the TRAN-1 form that Court directed the respondents "either to open the portal, so as to enable the petitioner to file the TRAN-1 electronically for claiming the transitional credit or accept the manually filed TRAN-1" and to allow the input credit claimed after processing the same, if it is otherwise eligible in law"*

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2. The Tyre Plaza Vs UOI 2019 (30) GSTL 22 (Del)
3. Kusum Enterprises Pvt Ltd Vs UOI 2019-TIOL-1509-HC-Del. GST

78. The Appellant submits that, as submitted supra, there was confusion that existed at such point in time and the issue involved interpretation of provisions and law is at nascent stages. Therefore, the penalties cannot be imposed. Relied on CCE Vs Gujarat Narmada Fertilizers Co. Ltd 2009 (240) E.L.T 661 (S.C).

79. In view of the above, it is requested that a lenient view may be adopted, and the penalty be waived.

80. Appellant further submits that penalty under Section 73(9) can be imposed only when there is short payment of tax and the same is not applicable to irregular ITC. This is clearly evident from the differentiation made in Section 73(1) between short payment of tax, irregular availment of ITC, and erroneous refund. Hence, the penalty proposed under Section 73 is not applicable with respect to demand proposed under the category of irregular availment of ITC.

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

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

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

For M/s. Silver Oak Villas LLP



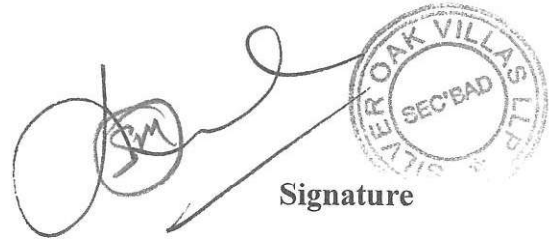
Authorized Signatory



PRAYER

Therefore, it is prayed that-

- a. To set aside the impugned order to the extent aggrieved;
- b. To hold that there is no excess claim of ITC;
- c. To hold that ITC cannot be denied for mere non-reflection in GSTR-2A;
- d. To hold that the ITC is not blocked u/s 17(5);
- e. To hold that interest and penalties are not applicable;
- f. To provide any other consequential relief;



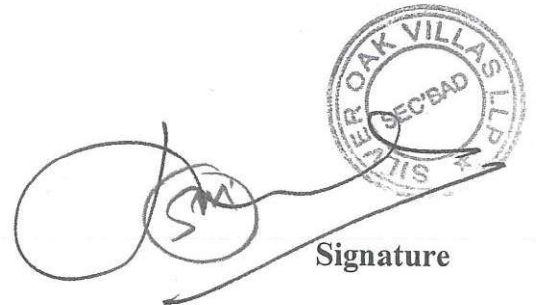
Signature

VERIFICATION

I, Soham Satish Modi , Partner, 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: __.02.2025



Signature

BEFORE THE JOINT COMMISSIONER (APPEALS-II), HQRS OFFICE, 7TH FLOOR, GST BHAWAN, LB STADIUM ROAD, BASHEERBAGH, HYDERABAD-500004

Sub: Filing of Appeal against Order-in-Original No. 24/2024-25 (GST-Adjn) dated 19.04.2024 in the case of M/s. Silver Oak Villas LLP

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

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

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

Executed this on __ February 2025 at Hyderabad.

Signature

I, the undersigned partner of M/s. H N A & Co. LLP, Chartered Accountants, do hereby declare that the said M/s. H N A & Co. LLP is a registered firm of Chartered Accountants, and all its partners are Chartered Accountants holding certificate of practice and duly qualified to represent in above proceedings under Section 116 of the CGST Act, 2017. I accept the above-said appointment on behalf of M/s. H N A & Co. LLP. The firm will represent through any one or more of its partners or Staff members who are qualified to represent before the above authorities.

Dated: __.02.2025

Address for service:

**H N A & Co. LLP,
Chartered Accountants,
4th Floor, West Block, Anushka Pride,
Above Himalaya Book World,
Road Number 12, Banjara Hills,
Hyderabad, Telangana 500034**

**For H N A & Co. LLP
Chartered Accountants**

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

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

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