

Form GST ASMT 11

[See rule 99(2)]

Reply to the notice issued under section 61 intimating discrepancies in the return

1. GSTIN	36AERPK6958C172	
2. Name	Rajesh Kumar Jayantilal Kadakia	
3. Details of the notice: Notice for intimating discrepancies in the return after scrutiny	Reference No.: ZD3606220398728	Date: 07-06-2022
4. Tax Period:	2021-22	
5. Reply to the discrepancies: Provided in Annexure to form ASMT-11		
Sr. No.	Discrepancy	Reply
1.	ITC to be reversed on non-business transactions & exempt supplies	
2.	Under declaration of Ineligible ITC	

6. Amount admitted and paid, if any

Act	Tax	Interest	Others	Total

7. Verification-

I, Soham Satish Modi hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorised Signatory



Name XXXXXXXXXX

Designation XXXXXXXXXX

Date: 09/06/2025

Advocate. Soham Satish Modi



Reply to the Notice:

8. Rajesh Kumar Jayantilal Kadakia (hereinafter referred as “Noticee”) is engaged in renting of commercial property and is registered with Goods and Services Tax department vide GSTIN No: 36AERPK6958C1Z2. In response to the above, Noticee herein makes the below submissions.

Submissions

9. Noticee submits that they deny all the allegations made in Show Cause Notice (SCN) as they are not factually/legally correct.
10. Noticee 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. Similarly, the provisions of CGST Act, 2017 are adopted by IGST Act, 2017 thereby the reference to CGST provisions be considered for IGST purpose also, wherever arises.
11. The current notice in Form GST ASMT-10 points out the following discrepancies.

Sl.No.	Discrepancy	CGST	SGST	Amount
1	ITC to be reversed on non-business transactions & exempt supplies	50,310	50,310	1,00,621
2	Under declaration of Ineligible ITC	95,123	95,123	1,90,247
	Total	1,45,434	1,45,434	2,90,868

Para 1: ITC to be reversed on non-business transactions & exempt supplies

12. This para points out that the noticee has not made apportionment of common ITC in accordance with the provisions laid down under Rule 42 and 43 read with Section 17 of the CGST Act, 2017 for the ITC claimed by it in GST returns.

Sl.No	Particulars	Taxable Value	CGST	SGST
1	Total supplies	5,39,70,323		
2	Exempt supplies	2,57,63,343		
3	Proportion of common ITC which has to be reversed to the extent of exempt supply (2/1above)	0.477361		
4	Common input tax credit		1,05,393	1,05,393
5	ITC to be reversed		50,310	50,310
6	ITC reversed as per GSTR 3B		0	0
7	Difference/Excess ITC claimed		50,310	50,310

13. It is submitted that while adjudicating the matter, the authority has relied upon the exempt and non-GST turnover reported in GSTR-3B returns. However, it is pertinent to highlight that as per Section 44 of the CGST Act, 2017, GSTR-9 (annual return) is a reconciliatory statement filed annually, which captures the consolidated and accurate figures for the entire financial year, after reconciling with books of accounts and periodic returns.
14. It is also submitted that the Hon'ble High Court of Madras, in the case of *Sri Shanmuga Hardwares Electricals v. State Tax Officer* [W.P. No. 2938 of 2023, dated 07.02.2023], held that the figures disclosed in GSTR-9 must be duly considered by the adjudicating authority, especially in cases of mismatch or clarification.
15. Accordingly, the correct figures for Exempt and Non-GST turnover as per GSTR-9 filed for the F.Y. 2021-22 is provided below as an extract and such GSTR-9 is attached as **Annexure 1**.

Pt. II	Details of Outward and inward supplies made during the financial year					
Sr.No	Nature of Supplies	Taxable Value(₹)	(Amount in ₹ in all tables)			
			Central Tax(₹)	State Tax / UT Tax(₹)	Integrated Tax(₹)	Cess(₹)
	1	2	3	4	5	6
5	Details of Outward supplies made during the financial year on which tax is not payable					
A	Zero rated supply (Export) without payment of tax	0.00				
B	Supply to SEZs without payment of tax	0.00				
C	Supplies on which tax is to be paid by the recipient on reverse charge	0.00				
D	Exempted	84,68,766.31				
E	Nil Rated	0.00				
F	Non-GST supply (includes 'no supply')	1,45,41,933.00				
G	Sub total (A to F above)	2,30,10,699.31				
H	Credit Notes issued in respect of transactions specified	0.00				

16. Therefore, it is submitted that the figures mentioned in GSTR-9, being final and reconciled with the audited financials, the actual value of exempt and non-GST supplies are provided hereunder and audited financial Statement is attached as **Annexure 2**.

A.	Exempt Supplies	84,68,766
B.	Non-GST Supply (No Supply)	1,45,41,933

17. Further, the noticee submits a break up of exempted and non-GST turnover in the table below.

Sl.No	Particulars	Amount	Type of supply
1	Interest saving bank- HDFC	71	Exempt
2	Interest saving bank- Kotak	64,364	Exempt
3	Interest on CCD's	81,68,544	Exempt
4	Interest FDR Kotak	38,720	Exempt
5	Interest on income tax refund	1,97,067	Exempt
6	Profit on sale of SM Complex	1,41,53,053	Non-GST supply
7	Bad Debits/ Credits written off	508	No Supply
8	Profit on sale of flat	3,88,880	Non-GST supply
	Total	2,30,11,207	

18. With respect to Exempt supplies reported, it is submitted that for the apportionment of credit against non-business transactions & exempt supplies under Section 17 of the CGST Act,2017 read with Rule 42 & 32 of the CGST Rules,2017, The exempt income in the nature of interest should be excluded while arriving at aggregate value of exempt supplies as per Explanation 1 to the Rule 43 of the CGST Rules,2017. An extract of Explanation 1(b) to the Rule 43 of the CGST Rules,2017 is provided hereunder for your ready reference.

“Explanation 1.—For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: —

*(b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of **interest** or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and”*

19. Further, Section 17(3) of the CGST Act,2017 read with clause (b) of paragraph 5 of Schedule II prescribes that the sale of building shall be included in the value of exempt supply.

*“Section 17(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, **subject to clause (b) of paragraph 5 of Schedule II, sale of building.**”*

“Schedule II, Central Goods And Services Tax Act, 2017

5. Supply of services

The following shall be treated as supply of services, namely:—

- (a) *renting of immovable property;*
- (b) *construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, **except where the entire consideration has been received after issuance of completion certificate**, where required, by the competent authority or after its first occupation, whichever is earlier.*

Explanation.—For the purposes of this clause—

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) ; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;”

20. Noticee therefore submits that in consideration of the provisions discussed above, Only Profit on sale of SM Complex and Profit on sale of flat reported in the GSTR 9 annual return qualifies for the apportionment of credit against non-business and exempt supplies.

Sl.No	Particulars	Amount	Type of supply
1	Profit on sale of SM Complex	1,41,53,053	Non-GST supply
2	Profit on sale of flat	3,88,880	Non-GST supply
	Total	1,45,41,933	

21. Therefore, in consideration of the submission made above noticee is liable for reversal of credit under Section 17 of the CGST Act,2017 read with Rule 42 & 43 of the CGST Rules,2017 to the tune of Rs. 59,848/- (CGST-Rs.29,924/- & SGST-Rs. 29,924/-). The computation of such amount to be reversed as per the provisions of Rule 42 & 43 of CGST Rules,2017 is provided hereunder:

		Amount
T	Total input tax involved on inputs and input services in a tax period	210784
T1	Inputs and input services intended to be used exclusively for the purposes other than business	0
T2	Inputs and input services intended to be used exclusively for effecting exempt supplies	0
T3	Inputs and input services on which credit is not available under sub-section (5) of section 17	0
C1	$C1 = T - (T1 + T2 + T3)$	2,10,784

T4	Input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies	0
C2	Common credit C2 = C1 - T4	2,10,784
D1	Input tax credit attributable towards exempt supplies D1= (E÷F) × C2	59,847
E	The aggregate value of exempt supplies during the tax period	1,45,41,933
F	Total turnover in the State of the registered person during the tax period	5,12,17,679

22. Therefore, the amount of credit to be reversed as per Rule 42 & 43 of the CGST Act,2017 is Rs.59,848/- (CGST-Rs. 29,924/- & SGST-Rs. 29,924/-). Such amount is reversed through Form GST DRC-03 vide: AD360525000733C dated: 02-05-2025 attached as **Annexure 3** and a relevant extract is provided below.

FORM GST DRC - 03 [See rule 142(2)&142(3)] Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement												
ARN :AD360525000733C										Date :02/05/2025		
1.	GSTIN				36AERPK6958C1Z2							
2.	Name				RAJESH KUMAR JAYANTILAL KADAKIA							
3.	Cause of Payment				Scrutiny							
4.	Section under which voluntary payment is made				61							
5.	Details of show cause notice, if payment is made within 30 days of its issue				Reference No:ZD3606220398728				Date Of issue:07/06/2022			
6.	Financial Year				2021-2022							
7.	Details of payment made including interest and penalty, if applicable (Amount in Rs.)											
Sr. No.	Tax Period	Act	Place of supply	Tax/Cess	Interest	Penalty,if applicable	Fee	Others	Total	Ledger utilised (Cash/credit)	Debit entry no.	Date of debit entry
1.	APR 2021-MAR 2022	CGST	Telangana	29,924.00	0.00	0.00	0.00	0.00	29,924.00	Cash	DC3605250003410	02/05/2025
2.	APR 2021-MAR 2022	SGST	Telangana	29,924.00	0.00	0.00	0.00	0.00	29,924.00	Cash	DC3605250003410	02/05/2025
8. Reasons, if any - In reference to form GST ASMT-10 vide reference No: ZD3606220398728 dated:07-06-2022, Para 1: ITC reversed as per rule 42 and 43 of the CGST Act, 2017.												

Para 2. Under declaration of Ineligible ITC.

23. This para points out that noticee has utilized blocked credits under section 17(5) of CGST Act,2017.

S.No	Commodity/Service	HSN code	Table no. in GSTR-3B	SGST	CGST	Total
1	2	3	4	5	6	7
1	Works contractors	9954;		95123.68	95123.68	190247.36
A	Total ineligible ITC u/s 17(5)	-		95123.68	95123.68	190247.36
B	Ineligible ITC declared in GSTR-3B	-	4D.(1)	0.000	0.000	0.000
C	Difference/excess ITC claimed	-		95123.68	95123.68	190247.36

24. In this regard, it is submitted that such credits alleged as works contracts pertains to business administration services availed and credit claimed against such purchase does not fall under the ambit of Section 17(5) of CGST Act,2017. In support of such submission a sample invoice is attached as **Annexure 4.**

25. Noticee has discharged all his liability as pointed out under this notice. It is therefore requested to all further proceedings in this regard.

26. The noticee reserves the right to add, to withdraw, to correct, to change, to delete, to modify any submissions at the time of Personal Hearing in the Principal of Natural Justice.

For Rajesh Kumar Jayantilal Kadakia

Authorised Representative