



केन्द्रीय सीमा शुल्क एवं केन्द्रीय कर आयुक्त का कार्यालय (अपील्स-II)
सातवातल, जी.एस.टी. भवन, एल.बी.स्टेडियमरोड, बशीरबाग, हैदराबाद, पिन - ५००००४
OFFICE OF THE COMMISSIONER OF CUSTOMS & CENTRAL TAX
APPEALS-II HYDERABAD COMMISSIONERATE
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अपीलसं Appeal No.30/2024(SC)DGST & 52/2024(SC)GST

Order-in-Original No 33/2023-24-Adjn-ADC(GST), dt.01.11.2023

DIN: 20250456DN0000712087

अपील आदेश ORDER - IN - APPEAL No.HYD-GST-SC-AP2-14-15-2025-
2026-GST

तारीख Date.29.04.2025

जारीकर्ता: श्री श्री. मनोज कुमार रजक, आयुक्त, सीमा शुल्क व केन्द्रीय कर (अपील्स-II)

केन्द्रीय कर व जी.एस.टी. (अपील्स-II)

Passed by: Sri. Manoj Kumar Rajak, IRS, Commissioner of Central Tax
& GST (Appeals-II)

उद्देशिका / P R E A M B L E

1	जिस व्यक्ति को यह प्रति जारी की जाती है, उस व्यक्ति के निजी उपयोग के लिए निशुल्क दी जाती है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	इस आदेश से व्यथित कोई भी व्यक्ति, वस्तु एवं सेवा कर नियम, 2017 के नियम 110 के साथ पठित केन्द्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 112 (1) के तहत इलेक्ट्रॉनिक या अन्य माध्यम से, केन्द्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 109 के तहत गठित उपयुक्त अपीलीय न्यायाधिकरण के राज्य / क्षेत्र के क्षेत्राधिकार के खंड पीठ में उन मामलों में, जिनमें 'अपूर्ति की जगह', विवाद-ग्रस्त विषयों में से एक न हो, अपील दायर कर सकता है। जहां 'आपूर्ति की जगह' विवादित मामलों में से एक है, अपील, उपरोक्त धारा 109 के तहत गठित राष्ट्रीय / क्षेत्रीय खंडपीठ के समक्ष दायर की जाए। जिस आदेश के विरुद्ध अपील दायर की जा रही है उसे अपीलकर्ता को संप्रेषित करने की तिथि से 3 (तीन) माह के अंदर अपील जीएसटी एपीएल-05 फॉर्म में दायर की जानी चाहिए। आदेश की एक प्रमाणित प्रति, यदि लागू हो तो नियम 110 (5) के अंतर्गत विहित शुल्क तथा अन्य संगत दस्तावेज़ संलग्न करते हुए, अपील पर नियम 26 के तहत विनिर्दिष्ट तरीके से हस्ताक्षर किए जाएं।
	Any person aggrieved by this order, may under Section 112(1) of the Central Goods and Services Tax (CGST) Act 2017, read with Rule 110 of the CGST Rules, 2017; file an appeal electronically or otherwise, to the appropriate State / Area Bench of the Appellate Tribunal constituted under Sec 109 of the CGST Act 2017 in cases not involving 'place of supply' as one of the disputed issues. Where the 'place of supply' is one of the disputed issues, the appeal shall be filed with the National /

	Regional bench constituted under the said Sec 109. The appeal should be filed in Form GST APL-05 within 3(three) months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal. The appeal shall be signed in the manner specified under Rule 26, enclosing a certified copy of the order, the prescribed fee under Rule 110(5) if applicable, and any other relevant documents.
3.	वस्तु एवं सेवा कर नियम, 2017 के नियम 111 के साथ पठित केंद्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 112 (3) के तहत आयुक्त द्वारा प्राधिकृत अधिकारी इलेक्ट्रॉनिक या अन्य माध्यम से, केन्द्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 109 के तहत गठित अपीलीय न्यायाधिकरण के राज्य / क्षेत्र के क्षेत्राधिकार के खंड पीठ में उन मामलों में, जिनमें 'आपूर्ति की जगह' विवाद-ग्रस्त विषयों में से एक न हो, अपील दायर कर सकता है। जहां 'आपूर्ति की जगह' विवादित मामलों में से एक है, अपील, उपरोक्त धारा 109 के तहत गठित राष्ट्रीय / क्षेत्रीय खंडपीठ के समक्ष दायर की जाए। जिस आदेश के विरुद्ध अपील दायर की जा रही है उसे जारी करने की तिथि से 6 (छः) माह के अंदर अपील जीएसटी एपीएल -07 फॉर्म में दायर की जानी चाहिए। अपील के साथ आदेश की प्रमाणित प्रति एवं अन्य संगत दस्तावेज़ संलग्न हो। विभागीय अपील के प्रत्याक्षेप, वस्तु एवं सेवा कर अधिनियम 2017 की धारा 112 (5) के साथ पठित नियम 110 (2) के अनुसार जीएसटी एपीएल -06 फॉर्म में इसके सम्प्रेषण के 45 दिनों के अंदर दायर किए जाएं और इस पर नियम 26 में विनिर्दिष्ट तरीके से हस्ताक्षर किए जाएं।
	The officer authorized by the Commissioner under Sec 112(3) of the CGST Act 2017, read with Rule 111 of the CGST Rules, 2017; file an appeal electronically or otherwise, to the State / Area Bench of the Appellate Tribunal constituted under Sec 109 of the CGST Act 2017 in cases not involving 'place of supply' as one of the disputed issues. Where the 'place of supply' is one of the disputed issues, the appeal shall be filed with the National / Regional bench constituted under the said Sec 109. The appeal should be filed in Form GST APL-07 within 6 (six) months of the date of issuance of the disputed order. The appeal shall enclose a certified copy of the order, and any other relevant documents. The cross objections to the departmental appeal shall be filed within 45 days of communicating it, in Form GST APL-06 in terms of Rule 110(2) read with Sec 112(5) of the CGST Act 2017 and signed in the manner specified in Rule 26.
	रेवेन्यू बार एसोसिएशन के मामले में मद्रास उच्च न्यायालय के आदेश के मद्देनजर अपीलीय न्यायाधिकरण का गठन नहीं किया गया है। v. भारत संघ और इसलिए अपील उस तारीख से तीन महीने के भीतर दायर नहीं की जा सकती जिस दिन आदेश के खिलाफ अपील की मांग की गई है। अधिनियम के उपरोक्त प्रावधान को प्रभावी करने में उत्पन्न होने वाली कठिनाई को दूर करने के लिए, सरकार ने परिषद की सिफारिशों पर, केंद्रीय माल और सेवा कर (कठिनाइयों का नौवां निवारण) आदेश, 2019 दिनांक 03.12.2019 जारी किया है। उक्त आदेश के माध्यम से यह प्रावधान किया गया है कि ट्रिब्यूनल में अपील आदेश के संचार की तारीख या जिस तारीख को राष्ट्रपति या राज्य अध्यक्ष, के रूप में तीन महीने (सरकार द्वारा अपील के मामले में छह महीने) के भीतर की जा सकती है। अपीलीय न्यायाधिकरण के कार्यालय में प्रवेश करने की स्थिति में, जो भी बाद में हो।

	(ii) The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
4.	धारा 112 (8) के अनुसार, धारा 112 (1) के तहत तब तक कोई अपील दायर नहीं की जाएगी जब तक अपीलकर्ता ने (ए) आक्षेपित आदेश से उत्पन्न कर, ब्याज, फाइन, शुल्क व जुर्माना के उस अंश का, जो उसके द्वारा स्वीकार किया गया है तथा (बी) उक्त आदेश, जिसके संबंध में अपील दायर की गई है, से उत्पन्न धारा 107(6) के अंतर्गत प्रदत्त राशि के अतिरिक्त, विवादित कर की शेष राशि के 20% का पूर्ण भुगतान नहीं किया हो।
	In terms of Sec 112(8), no appeal shall be filed under Sec 112(1) unless the appellant has paid (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and (b) a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid under Sec 107(6), arising from the said order, in relation to which the appeal has been filed.
5.(i)	धारा 112 (1) के तहत आवेदन पत्र के साथ रुपए 5 मूल्य (केवल पांच रुपये) का गैर न्यायिक न्यायालय शुल्क टिकट हो। नियम 110 (5) के साथ पठित धारा 112 (10) के अनुसार अपीलीय प्राधिकरण के समक्ष अपील / अपील प्रत्यावर्तन हेतु प्रस्तुत आवेदन के साथ अधिकतम रु. पच्चीस हजार रुपये के अधधीन कर / इनपुट टैक्स क्रेडिट के प्रति एक लाख रुपए के लिए रु. एक हजार का शुल्क या कर या इनपुट टैक्स क्रेडिट में अंतर या जिस आदेश के विरुद्ध अपील की जा रही है उसमें निर्धारित फाइन, शुल्क या जुर्माना लगाया जाए।
	The application under Sec 112(1) shall bear a non-judicial court fee stamp of value Rs.5 (Rupees Five only). In terms of Sec 112(10) read with Rule 110(5), an application for appeal / restoration of appeal before the Appellate Tribunal shall be accompanied by a fee of One thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of twenty five thousand rupees
5.(ii)	उपरोक्त धारा 112 की उप धारा (5) में संदर्भित कुल प्रत्याक्षेपों के ज्ञापन के संबंध में कोई शुल्क देय नहीं होगा।
	No fee is payable in respect of the Memorandum of Cross Objections referred to in sub-sec (5) of Sec 112 ibid.
5.(iii)	धारा 112(3) के अंतर्गत, आयुक्त द्वारा अधिकृत अधिकारी द्वारा दायर किए जाने वाले आवेदन के मामले में कोई शुल्क देय नहीं होगा।

	No fee is payable in case of an application filed by the officer authorized by the Commissioner to file an appeal under Sec 112(3).
6.	केन्द्रीय वस्तु एवं सेवा कर अधिनियम, 2017 में निहित उक्त एवं अन्य संबंधित मामलों को नियंत्रित करने वाले प्रावधानों और इनके तहत बनाए गए नियम / जारी की गई अधिसूचनाओं की ओर ध्यान आकर्षित किया जाता है।
	Attention is invited to the provisions governing these and other related matters, contained in the Central Goods & Services Act, 2017 and the rules made / notifications issued thereunder, for compliance.

Department Appellant	The Assistant Commissioner of Central Tax, Secunderabad GST Division, Salike Senate, 1 st Floor, 2-4-416&417, Ramgopalpet, Hyderabad-500003.
Taxpayer Appellant	M/s. Villa Orchids LLP, 2 nd Floor, 5-4-187/3 and 4, Soham Mansion, M G Road, Secunderabad-500003.
Adjudicating Authority	The Additional Commissioner of Central Tax, Secunderabad Commissionerate

M/s. Villa Orchids LLP, 2nd Floor, U-22, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad - 500003 (GSTN:36AANFG4817C1ZH) (here-in-after referred to as "taxpayer appellant") and the Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad CGST Commissionerate, Hyderabad (here-in-after referred to as "department appellant"), have filed appeals against the Order-in-Original No. 33/2023-24-SEC-Adjn-ADC(GST), dated 01-11-2023 (hereinafter referred to as "the impugned order") passed by The Additional Commissioner of Central Tax, Secunderabad Commissionerate, GST Bhavan, LB Stadium Road, Basheerbagh, Hyderabad-500004 (here-in-after referred to as the "Original Adjudicating Authority").

2. Basing on the verification of the records by the departmental audit officers, a Show Cause Notice was issued demanding among other things:

- i) An amount of Rs.3,19,85,690/- being unpaid GST on advances received in FY 2017-18 and 2018-19 under Section 74 of the CGST/TSGST Act, 2017;
- ii) An amount of Rs.44,51,756/- towards irregularly availed ITC being difference in GSTR 2A and 3B difference under Section 74 of the CGST/TSGST Act, 2017.

3. The adjudicating authority after following due procedure passed the

impugned order duly:

- i) Confirming the demand of Rs.3,19,85,690/- (CGST-1,59,92,845, SGST-1,59,92,845) along with Interest under Section 50 and imposing equal Penalty under Section 74(9) of the CGST Act, 2017.
- ii) Confirming the demand of Rs.44,51,756/- (CGST-22,25,878, SGST-22,25,878) along with Interest under Section 50 and imposing equal Penalty under Section 74(9) of the CGST Act, 2017.

4. Aggrieved with the above mentioned OIO, the tax-payer appellant filed the appeal on the following grounds:

4.1 That the appellant is in the business of real estate development where it has undertaken development of a project consisting of 112 units. The project was executed over a period of 5 years i.e., from FY 2017-18 to FY 2021-22. The appellant for each unit has entered into two separate agreements one for sale of land and the other for providing construction services. It is humbly submitted that the land does not belong to the appellant. As and when a customer is booking a unit the appellant is entering into an agreement to purchase such plot of land from original owners and is thereafter selling such land to customer. It is further providing construction service to the customer.

4.2. Since neither the appellant nor its prospective customer owns the land, the first transaction that the appellant enters into is for completing the purchase of land transaction. Only after the land is secured can the construction service be provided. Accordingly, the appellant first collects the consideration towards sale of land from its customer and then proceeds for the supply of Construction Service.

4.3 It is humbly submitted that the manner in which the demand is computed as per Order-in-Original is far from the facts of the case and is devoid of any merit for the following 2 reasons:

a. The Assessing Authority failed to appreciate the fact that the appellant first receives money towards sale of land and only after the sale of land is completed it receives consideration towards Construction Service based on construction milestones.

b. The Assessing Authority has failed to appreciate a vital fact that the appellant adopts POCM method for recognizing revenue in its financial statements.

4.4 To substantiate the stand of the appellant we submit the copy of Booking Form, Agreement of Sale cum GPA, Agreement of Sale, Agreement of Construction and Sale Deed for your kind consideration for three sample units namely unit no 8, 10 and 85. Copy's enclosed as Annexure 1.

4.5 It is submitted that the turnovers towards supply of Construction Service is spread across 5 years and taxes have been paid over the course of 5 years. For determining the correct liability discharged by the appellant it is essential to look at the entire lifetime of the project as a whole and not to look at any specific year in isolation. In support of the turnovers reported in the financials, GST returns for FY 2017-18 to FY 2021-22, mode of discharge of liability and project land reconciliation for 112 units is given by way of CA certificate enclosed as Annexure 2. As may be evident from the CA certificate the total shortfall in turnover reported is Rs. 14,89,754/- and the corresponding tax liability @ 18% is Rs. 2,68,156/- . It is therefore humbly prayed that the demand determined towards short reporting of the turnover be restricted to Rs. 2,68,156/- . We request you to consider such Certificate during the hearing and while adjudicating our appeal before your good self.

4.6 With reference to irregular availment of ITC, the Appellant submits that the impugned order has confirmed that the Appellant has excess claimed ITC of Rs. 44,51,756/- (CGST Rs. 22,25,878/- SGST Rs.22,25,878/-) in GSTR-3B as compared to the tax declared by the suppliers of Appellant in GSTR-01. Without prejudice to the above, 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.

4.7 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 notice has also not been brought 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 notice on such allegation, which is not envisaged under the provisions of the CGST/SGST Act.

That in view of their above submissions, they have requested to allow the appeal.

5. Having been aggrieved by the impugned order, the department appellant filed the present appeal on the grounds that;

- I. That the Adjudicating Authority dropped the demand of Interest of Rs.827/- without confirming the demand as proposed in the impugned SCN and thereby appropriating the interest paid by the

taxpayer.

- II. The Adjudicating Authority dropped penalty proposed in the impugned SCN for non-payment of interest on belated payment of tax (cash) due to delayed filing of GSTR-3B returns.

Based on the above grounds, the Appellant prayed for setting aside the impugned order.

6. A copy of the Appeal filed by the taxpayer appellant was sent to the Respondent for comments. However, no comments were received.

PERSONAL HEARING: -

7. The authorised representative appeared for second Personal Hearing on 20.11.2024. A first personal hearing was recorded by earlier Commissioner on 10.04.2024. He reiterated the submissions made in the appeal and before the appellate authority on 10.04.2024. With regard to department appeal, he stated that the Interest amounting to Rs.827/- is already paid and department may take a lenient view as per Section 126 of the CGST Act and close the matter.

DISCUSSION AND FINDINGS: -

8. I have gone through the facts of the case, the statement of facts & grounds of appeal submitted by both taxpayer appellant and department appellant, along with the submissions made by the authorised representative of the taxpayer appellant during the personal hearing. The taxpayer appellant has filed this appeal with a delay of 7 days. They have filed an application for condonation of delay. The delay is condoned as the grounds mentioned for the delay appear to be genuine. They have paid the appropriate pre-deposit. Since both the tax-payer's appeal and department appeal are filed against one impugned order, I take up both the appeals and proceed to decide together.

9. First, I take up the appeal filed by the taxpayer appellant. I have gone through the submissions made by the Taxpayer appellant in their appeal memorandum and submissions made at the time of personal hearing.

10. The Taxpayer appellant is engaged in the business of construction and development of residential villas. The Taxpayer appellant has

undertaken development of a project of residential villas that was executed over a period of 5 years (2017-18 to 2021-22) wherein 112 Villas were constructed and sold to their independent customers. It is observed from the records, that a sale deed is executed first on the independent customer and an agreement is made later, specifying the consideration towards the construction service.

11. Though the impugned order covers the period 2017-18 and 2018-19, a wholistic verification covering the entire duration of the project needs to be undertaken for arriving at a holistic picture. It is observed that the Taxpayer appellant is following the accounting standards AS-7 on Construction Contracts for the purpose of Income Tax Act, 1961. As per these accounting standards, the revenue in financials is determined based on Percentage of Completion Method (POCM). Whereas, GST liability needs to be discharged on actual receipts basis. In view of this, turnover as per the balance sheet will vary when compared to the turnover declared in GST Returns. For verifying this aspect too, necessary examination has to be conducted for the entire period of project. The Taxpayer appellant has submitted a CA Certificate wherein the total sale consideration from sale of 112 Villas was quantified as Rs.63,83,30,000/- as per the AS-7 on "Construction Contract" over a period of 5 years i.e., starting from FY 2017-18 to 2021-22.

12. I take up the first issue of demand of short paid GST amounting to Rs.3,19,85,690/-, as per the turnover declared in GSTR9/9C for the FY 2017-18 & 2018-19. There are two vital factors that need to be addressed to resolve this issue. First being, computation of taxable value as provided under Notification No.11/2017(CT)Rate, dated 28.06.2017, i.e., deemed deduction of 1/3rd value towards cost of land, from the total value. The department has taken this stand. Whereas, the Taxpayer appellant states that in the present Project, two separate agreements, namely Sale Deed for the sale of land & Agreement for Construction for the construction provided, are available. The Taxpayer appellant submitted that the deemed deduction of 1/3rd land value is not correct when the actual land value is available. The sale consideration towards value of land being covered under Entry 5 to Schedule-III of the CGST Act, 2017 is not liable to GST and is therefore excluded while arriving at the GST liability. The Taxpayer appellant has also

submitted a case law:

[2023] 151 taxmann.com 422 (Madras) HIGH COURT OF MADRAS Avigna Properties (P.) Ltd. V. State Tax Officer DR. ANITA SUMANTH, J. W.P. NOS. 6431 & 6434 OF 2023 AND OTHERS WMP. NOS. 7600 OF 2020 AND 2809 OF 2023 AND OTHERS APRIL 24, 2023 Valuation - Construction services - Land value, deduction of - Period 2017 to March, 2019 - By impugned order it was held that Notification No. 11/2017-Central Tax (Rate) does not provide for taking actual land value and it does not permit distinguishing sale of land and supply of construction services and in case of composite construction, 70:30 formula was liable to be adopted - HELD : Impugned method is applicable only in cases where assessee is unable to bifurcate construction service from land value - Deeming fiction is not applicable where assessee is able to provide actual amount of consideration received towards construction services and land cost - Officer can call for evidence but proceeding on basis of formula as per deeming fiction as only method, is not correct - View taken in impugned order was not correct and order was to be set aside [Section 15 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Paras 9 and 12] [In favour of assessee]*

13. The above judgement of the Hon'ble High Court Madras is strongly in favour of the Taxpayer appellant and as separate sale deed for the land is available in the instant case, it is held that Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017 has no relevance to the Taxpayer appellant and GST can only be demanded on the value forming the part of Construction Agreement i.e., on Rs.31,75,20,000/-

Particulars	Amount in Rs.
Towards Sale of Land	32,08,10,000/-
Towards Supply of Construction Services	31,75,20,000/-
Total Sale Consideration	63,83,30,000/-

14. Now coming to the second vital factor, it is observed that the adjudicating authority has failed to appreciate the accounting practice being followed by the Taxpayer appellant. As stated in the facts of the present case, the financials of the Taxpayer appellant are prepared in accordance with the percentage of completion method (POCM) as mandated by AS - 7 on Construction Contracts. However, the turnover in GST returns is declared based on the provisions contained in section 12(2) and section 13 of the CGST Act, 2017. This has resulted in timing differences between the turnovers reported in financials and the turnover reported in GST returns. Such timing differences have also been duly disclosed as

reconciling items in relevant GSTR 9 and 9C returns. A reconciliation of turnovers reported in financials Vs reported in GST returns spanning across FY 2017-18 to FY 2021-22 duly supported by a CA certificate has been submitted as a part of the facts in the present case. The Adjudicating Authority has erred in not considering this vital fact which was fundamental to the nature of the business of the Taxpayer appellant and manner in which transactions were reported. This very fact renders the manner of determination of tax liability, bad-in-law and is liable to be set aside.

15. The Taxpayer appellant has reconciled the actual total consideration received by it from the project with the amounts reported by it in Financials Statements and GST returns spanning across FY 2017-18 to FY 2021-22 duly supported by a CA certificate. Therefore, it is factually established that when a wholistic approach is adopted considering the nature of business of the Taxpayer appellant and the total lifetime of the project, there is no under reporting of turnover or non-payment of GST on advances received across the total life time of the project.

16. The Adjudicating Authority has erred in considering the higher of the financials turnover and GST returns turnover for the purposes while completely ignoring the timing differences. The year wise revenue recognised for the period 2017-18 to 2021-22 is as below:

(Amount in rupees)		
Sl. No.	F. Y.	Revenue Recognised
1	2017-18	19,83,45,402/-
2	2018-19	20,44,89,453/-
3	2019-20	13,26,34,292/-
4	2020-21	8,96,45,970/-
5	2021-22	1,32,14,883/-
		63,83,30,000/-

17. The Taxpayer appellant while filing the GSTR 9C for the year 2018-19 has reconciled and paid differential tax of Rs.90,550/- vide DRC-03 debit entry no. DI3612200171423, dated 31.12.2020, i.e., well before the departmental audit.

18. The appellant has submitted a comprehensive reconciliation statement for the entire project showing the details of payments received for

the sale of land, construction service provided along with disclosures made in the GST returns and GST paid spanning over FY 2017-18 to 2021-22.

Annexure F :

Reconciliation of turnovers reported in GSTR 3B, GSTR 9/9C and Financials

GSTR 3B

F.Y	Taxable Value	Rate	Tax
17-18	7441781	18%	1339520
18-19	69713251	18%	12542424
19-20	109127017	18%	19642825
20-21	121817986	18%	21927237
21-22	13303494	18%	2392177
Total	321403529		57844183

GSTR 9

F.Y	Taxable Value	Rate	Tax Payable	Tax Paid Via GSTR 3B	Tax Paid Via DRC 03	Total Tax Paid	Short/ (Excess)	Remarks
17-18	7441781	18%	1339521	1339520	-	1339520	1	
18-19	69992090	18%	12632974	12542424	90550	12632974	1	DRC-03 dated 12-2020 vide AI AD36122000552
19-20	109398326	18%	19691699	19642825	48874	19691699	-0	DRC-03 dated 04-2021 vide AI AD36042100210 Total DRC Amount is Rs. 63,208/- and includes Rs. 14,3 towards rever. Ineligible Input credit
20-21	121824087	18%	21927238	21927237	0	21927237	1	
21-22	13303494	18%	2392177	2392177	0	2392177	-	Based on 3b GSTR 9 is not filed due to no applicability
Total	321959778		57983608	57844183	139424	57983607	2	

As per Financials				As per GSTR 9/3b			Difference	
F.Y	Taxable Value	Rate	Tax Payable	Taxable Value	Rate	Tax Paid	Taxable Value	Tax Paid
17-18	74,41,781	18%	1339521	7441781	18%	1339520	0	
18-19	6,99,92,089	18%	12598576	69992090	18%	12632974	-1	-34,3
19-20	11,04,02,486	18%	19872447	109398326	18%	19691699	10,04,160	1,80,7
20-21	12,18,24,087	18%	21928336	121824087	18%	21927237	1	1,0
21-22	1,33,03,494	18%	2392177	13303494	18%	2392177	0	
Total	32,29,63,937		58131057	321959778		57983607	10,04,160	1,47,4

Reasons for difference in Financials vs GSTR 9 of FY 19-20

	As per financials	As per GSTR 9	Diff
Actual turnover towards POCC taxable Revenue	109815406	10,98,15,406	0
Extra Specs Income	587080	-5,87,080	1174160
Total Turnover	110402486	10,92,28,326	1174160
Add: Unreconciled turnover as per GSTR 9C		1,70,000	-170000
Total	110402486	10,93,98,326	1004160
Tax thereon @ 18%			180749

19. The above reconciliation has been verified with the GSTR 3B/GSTR 9/GSTR 9C and financials of the appellant taking into account the CA's

Certificate and conclude that there is no short payment of GST during the impugned period i.e., 2017-18 and 2018-19. Further, as the taxpayer appellant has declared the values of exempted turnover i.e., values of sale of land in their GSTR 9 and GSTR 9C statements throughout these years, invocation of extended period for demanding differential tax does not sustain. However, the appellants are liable for payment of interest on differential tax of rs.90,550/- paid under DRC-02 dated 31st December, 2020, under Sec.50 of the CGST Act, 2017 along with penalty under Sec.73(9) of the CGST/TSGST Act, 2017

20. Now, I take up the second demand of Rs.44,51,756/- being irregularly availed ITC being GSTR2A-3B difference for the year 2018-19. The issue needs to be verified from the GST Portal. The latest GSTR2A-3B Comparative Statement is downloaded from the Portal:

ITC claimed in GSTR-3B and accrued as per GSTR-2A [As per report no. 4] [GSTR-3B - GSTR-2A] *		
As per GSTR-3B	As per GSTR-2A	Shortfall (-)/ Excess (+) in ITC
254,206.00	301,716.44	-47,510.44
418,881.56	276,332.88	142,548.68
340,724.30	530,237.60	-189,513.30
1,154,383.18	717,003.16	437,380.02
988,344.98	479,940.64	508,404.34
1,742,932.00	1,120,361.78	622,570.22
508,869.52	781,578.84	-272,709.32
1,448,985.30	743,308.38	705,676.92
941,512.82	1,656,773.80	-715,260.98
2,425,234.92	521,605.36	1,903,629.56
828,633.98	910,155.44	-81,521.46
3,645,696.00	2,592,582.78	1,053,113.22
14,698,404.56	10,631,597.10	4,066,807.46

As seen from the above, ITC to an extent of Rs.40,66,808/- is availed in excess over and above the ITC as appearing in GSTR 2A. Hence, the demand to an extent of Rs.3,84,948/- is liable to be set aside.

21. It is observed that this irregularly availed ITC being GSTR2A-3B difference is demanded by invoking the provisions of Section 74 of the CGST Act, 2017. Both the GSTR 2A and 3B returns of the taxpayer are in domain

and knowledge of the department. Hence, invoking extended period of limitation on this issue does not sustain.

22. Now I take up the appeal filed by the department appellant. I have gone through the submissions made in the appeal memorandum. The issues to be decided in the instant case are i) whether the Interest already paid through DRC03 needs to be confirmed and appropriated and ii) Whether penalty under Section 125 is warranted for non-payment of Interest.

23. In the instant case, the appellants have paid the Interest amounting to Rs.827/- vide DRC03 dated 19.12.2022 i.e., subsequent to the issue of SCN dated 05.01.2022. In view of this, the demand of Interest amounting to Rs.827/- is confirmed and the amount paid vide DRC03 is appropriated.

24. Looking at the facts, circumstances and the meagre amount of Interest involved; I feel it is not appropriate to impose Penalty under Section 125 of the CGST/SGST Act, 2017.

25. Accordingly, I pass the following order.

ORDER

(A) (i) The demand of Rs.3,19,85,690/- confirmed at Para 18(vii) of the impugned order is modified to Rs.90,550/- [Rupees Ninety Thousand Five Hundred and Fifty only] (CGST-45275+SGST-45275) along with interest of Rs.44,822/- [Rupees Forty Four Thousand Eight Hundred and Twenty Two only] (CGST-22411+SGST-22411) under Section 50 and impose penalty of Rs.20,000/- (CGST-10000+SGST-10000) under Section 73 (9) of the CGST/TSGST Act, 2017. An amount of Rs.90,550/- [Rupees Ninety Thousand Five Hundred and Fifty only] paid by the appellant vide DRC 03 dated 31.12.2020 is appropriated.

(ii) The demand of Rs.44,51,756/- confirmed at Para 21(x) is modified to Rs.40,66,808/- (Rupees Forty Lakhs Sixty-Six Thousand Eight Hundred Eight only) (CGST-20,33,404+SGST-20,33,404) along with Interest under Section 50 and Penalty of

Rs.4,45,176/- (Rupees Four Lakhs Forty-Five Thousand One Hundred Seventy-Six only) is imposed under Section 73(9) of the CGST/TSGST Act, 2017.

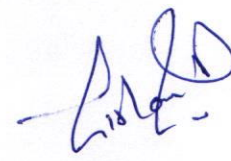
(B) The appeal filed by the department appellant is partially allowed in confirming and appropriating the Interest of Rs.827/- [Rupees Eight Hundred and Twenty Seven only].


(मनोज कुमार राजक)
(Manoj Kumar Rajak)
आयुक्त/COMMISSIONER

To

1. M/s. Villa Orchids LLP, 2nd Floor, 5-4-187/3 and 4, Soham Mansion, M G Road, Secunderabad-500003. (By speed post)
2. Copy submitted to The Principal Chief Commissioner, Customs & Central Tax, Hyderabad Zone.
3. The Assistant Commissioner of Central Tax, Secunderabad GST Division, Salike Senate, 1st Floor, 2-4-416&417, Ramgopalpet, Hyderabad-500003
4. Copy submitted to the Principal Commissioner of Central Tax, Secunderabad GST Commissionerate, Basheerbagh, Hyderabad.
5. Master Copy/Office Copy

आयुक्त/COMMISSIONER


Received on 29/4/25