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

(Formerly known as Hiregange & Associates LLP)

Date: 26.08.2024**To****The Additional/ Joint Commissioner (Appeals-II) of Central Tax,****Hqrs Office, 7th Floor, L.B. stadium,****Basheerbagh, Hyderabad-500004.**

Dear Sir,

Sub: Filing of appeal against the Order dated 19.04.2024.**Ref:**

- i. Order issued vide Reference No. 23/2024-25 (GST-Adjn) dated 19.04.2024 pertaining to **M/s. Nilgiri Estates**
 - ii. GSTIN: 36AAHFN0766F1ZA
1. With reference to the above, we have been authorized by M/s. **Nilgiri Estates** to submit an appeal against the above-referred Order Dated 19.04.2024 but received on 24.04.2024 to represent before your good office and to do necessary correspondences in the above referred matter. A copy of the authorization along with proof of receipt of order is attached to the appeal.
 2. In this regard, we are herewith submitting the Appeal against the above referred order in Form APL-01 along with Authorization and annexures. Therefore, request you to take the same on record and admit the appeal.

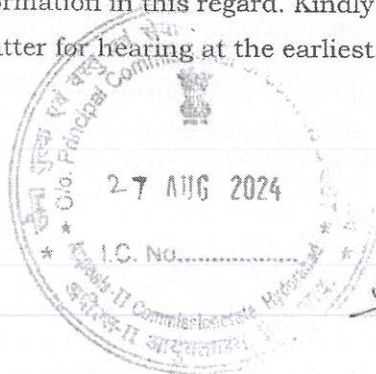
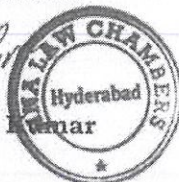
We shall be glad to provide any other information in this regard. Kindly acknowledge the receipt of the appeal and post the matter for hearing at the earliest.

Thanking You,

Yours truly

For M/s. H N A & Co. LLP**Chartered Accountants**

R. Lakshman Kumar
CA K. Lakshman Kumar
Partner



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Nilgiri Estates

5-4-187/3&4, II floor, MG Road,
Secunderabad – 500 003.
Phone: +91-40-66335551

Dated : 26.08.2024

To,
The Additional/Joint Commissioner (Appeals –II) Of Central Tax,
Hqrs Office, 7th Floor, L.B. Stadium,
Basheerbagh, Hyderabad – 500004.

Dear Sir,

Sub: Application for condonation of delay in filing the Appeal

Ref: Appeal against Order In Original No. 23/2024-25 (GST-Adjn) dated 19.04.2024
pertaining to M/s Nilgiri Estates.

1. As per Section 107 of the CGST Act, 2017, an appeal against the order of the adjudicating authority shall be filed within 3 months from the date of receipt of the order. In the instant case, the order was received on 24.04.2024, thereby, the due date for filing the appeal falls on 24.07.2024.
2. In this regard, we would like to submit that present appeal is related to the Interest and penalty amount related to FY 2018-19. Government has proposed in the 53rd council meeting about waiver of interest and penalty related FY 2017-18 to 2019-20 if tax was paid and subsequently government has introduced a new section 128A through The Finance (No. 2) Bill, 2024 dated:23.07.2024. However such insertion of section or further amendments were not given effect in the Goods and service tax act 2017. Considering the due date and condonation period we are filing the appeal against present order in original.
3. As explained in the above paragraphs, the delay is unintentional, and we have made sincere efforts to file the appeal within the time limit. Hence, we humbly request your good self to consider the same and allow the application for condonation of delay.

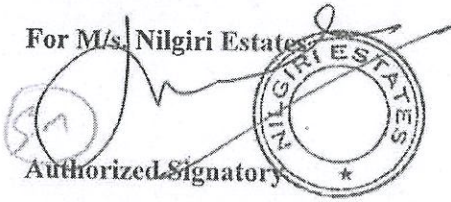
We sincerely regret the inconvenience caused in this regard. Kindly acknowledge receipt of this letter and do the needful.

Thanking You,

Yours faithfully,

For M/s. Nilgiri Estates

Authorized Signatory



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Form GST APL - 01

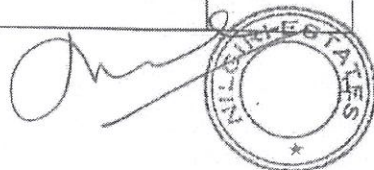
Form of Appeal to Appellate Authority

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

[See rule 108(1)]

**BEFORE THE ADDITIONAL/JOINT COMMISSIONER (APPEALS - II) OF
CENTRAL TAX, HQRS OFFICE, 7TH FLOOR, L.B. STADIUM, BASHEERBAGH,
HYDERABAD - 500004**

(1) GSTIN/ Temporary ID/UIN-	36AAHFN0766F1ZA			
(2) Legal Name of the Appellant	M/s. Nilgiri Estates			
(3) Trade name, if any-	M/s. Nilgiri Estates			
(4) Address	2 nd floor, 5-4-187/3 and 4, Soham Mansion, MG Road, Secunderabad, Ranaga Reddy, Hyderabad-500003.			
(5) Order No.	23/2024-25 (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, Ramgopal pet, MG Road, Secunderabad.			
(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, Chartered Accountants, 4 th Floor, West Block, Srida Anushka Pride, Above Lawrence and Mayo, Road No. 12, Banjara Hills, Hyderabad-500034. Email: laxman@hanindia.com Mob: +91 8978114334			
(9) Details of the case under dispute				
i. Brief issue of the case under dispute	Interest as per Sec50 of CGST Act, 2017 and penalty demanded as per Sec73(9) of CGST Act, 2017.			
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	NA	NA	NA	NA
b. Interest	u/s 50	u/s 50	u/s 50	NA
c. Penalty	u/s 73(9)	u/s 73(9)	u/s 73(9)	NA
d. Fees	NA	NA	NA	NA
e. Other charges	NA	NA	NA	NA



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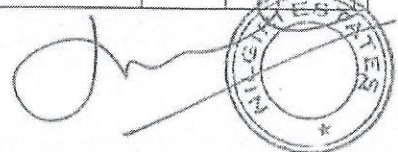
v. Market value of seized goods	NA
(10) Whether the appellant wishes to be heard in person	Yes
(11) Statement of Facts	Annexure - A
(12) Grounds of Appeal	Annexure - B
(13) Prayer	To set aside the impugned order to the extent aggrieved and grant the relief sought

(14) Amount of Demand Created, admitted, and disputed

Particulars	CGST	SGST	IGST	Ces s	Total amount
Amount of demand created (A)	NA	NA	NA	NA	NA
a) Tax/Ces s					
b) Interest	u/s 50	u/s 50	u/s 50	NA	u/s 50
c) Penalty	u/s 73(9)	u/s 73(9)	u/s 73(9)	NA	u/s 73(9)
d) Fees	NA	NA	NA	NA	NA
e) other charges	NA	NA	NA	NA	NA
Amount admitted (B)					
a) Tax/Ces s	NA	NA	NA	NA	NA
b) Interest	NA	NA	NA	NA	NA
c) Penalty	NA	NA	NA	NA	NA
d) Fees	NA	NA	NA	NA	NA
e) other charges	NA	NA	NA	NA	NA
Amount disputed (C)					
a) Tax/Ces s	NA	NA	NA	NA	NA
b) Interest	u/s 50	u/s 50	u/s 50	NA	u/s 50
c) Penalty	u/s 73(9)	u/s 73(9)	u/s 73(9)	NA	u/s 73(9)
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	Ces s	Total
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	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	NA	NA	NA	NA	NA

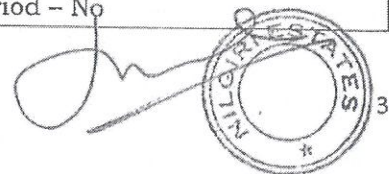
b) Details of payment of admitted amount and pre-deposit (pre-deposit 10% of the disputed tax and cess)

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	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

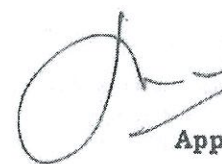
S.No.	Description	Amount Payable				Debit Entry No.	Amount paid			
1	2	3	4	5	6	7	8	9	10	11
1	Interest	NA	NA	NA	NA	NA	NA	NA	NA	NA
2	Penalty	NA				NA	NA			
3	Late Fee	NA	NA	NA	NA	NA	NA	NA	NA	NA
4	Others	NA	NA	NA	NA	NA	NA	NA	NA	NA

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



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(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)						

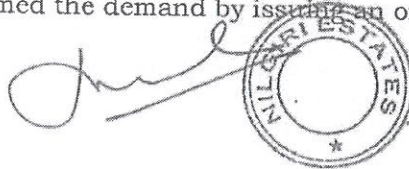
 
Appellant

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ANNEXURE-A

STATEMENT OF FACTS

- A. M/s. Nilgiri Estates (hereinafter referred to as "Appellant") having its Principal Place of Business at the 2nd floor, 5-4-187/3 and 4, Soham Mansion, MG Road, Secunderabad, Ranga Reddy, Hyderabad-500003 and is engaged in business of construction & sale of villas and are registered with the GST department vide GSTIN: 36AAHFN0766F1ZA
- B. Appellant has been receiving various Input goods and services during the normal course of business on which ITC is being availed for the GST charged on them. The appellant has been filing the GST returns by claiming the ITC on all its inwards supplies through GSTR - 3B.
- C. On verification of records by the Telangana state GST Authorities few discrepancies were found and the same is communicated through issuance of DRC-01A vide DIN: 20231256YO0000888A4D dated 19.12.2023
- D. Subsequently, the Appellant is in receipt of the present Show Cause Notice for the period 2018-19 asking to show cause as to why (
- An amount of Rs.27,66,974/- (Rupees twenty-seven lakhs sixty-six thousand nine hundred and seventy-four only) towards under declaration of output tax should not be demanded from them under Section 73 of the CGST Act, 2017/TGST Act, 2017 read with section 20 of IGST Act 2017;
 - an amount of Rs. 20,63,272/- (Rupees twenty lakhs sixty-three thousand two hundred and seventy-two) being excess ITC availed on account of non-reconciliation of information should not be demanded from them under Section 73 of the CGST Act,2017/TGST Act, 2017 read with section 20 of IGST Act 2017;
 - Interest on the amounts at Sl.No. (i) (ii) should not be recovered from them under Section 50 of the CGST Act,2017/TGST Act 2017 read with Section 20 of IGST Act,2017
 - Penalty should not be imposed on Sl.No. (i) (ii) under Section 122(2)(a) of the CGST Act,2017/TGST Act 2017 read with section 73(9) of CGST Act 2017/TGST Act 2017 read with Section 20 of IGST Act,2017
- E. Appellant has filed a reply to the above show cause notice on 16.02.2024 (
- F. The learned Adjudicating authority considering the submissions made by the Appellant have confirmed the demand by issuing an order in Original though OIO:



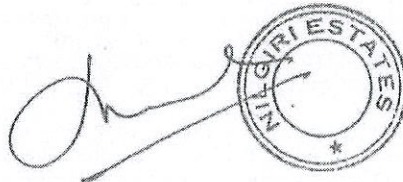
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23/2024-25 (GST-Adjn) dated 19.04.2024 by confirming the demand of Interest and Penalty. (A copy of the Order in Original is enclosed as **Annexure - I**).

ORDER

- (i) I drop the proceedings initiated in the show cause under Issue-1 in view of the discussions and findings in Para 9 above.
- (ii) I drop the proceedings initiated in the show cause under Issue-2 in view of the discussions and findings in Para 10 above.
- (iii) I confirm the demand of Rs. 4,56,318/- (CGST: Rs.2,28,159/- SGST: Rs.2,28,159/-) (Rupees Four Lakh Fifty Six Thousand Three Hundred and Eighteen Only), in respect of Issue-3, as discussed supra in Para 11 under Section 73(9) of the COST ACL 2017 and similar provisions as laid down in the TGST Act, 2017 read with Section 20 of IGST Act, 2017
- (iv) I appropriate the amount of Rs. 4,56,318/- (CGST: Rs.2,28,159/- SGST: Rs.2,28,159/-) (Rupees Four Lakh Fifty Six Thousand Three Hundred and Eighteen Only) which was already paid by them vide DRC dated 07 01 2020 under Debit Entry No. D13601200012760 and DRC dated 16 10.2020 under debit entry no D13610200050832 towards duty confirmed at Sl.No. (i) above, under Section. 73(9) of the CGST Act, 2017 and similar provisions as laid down in the TGST Act, 2017 read with Section 20 of IGST Act, 2017
- (v) I confirm the demand of interest at the applicable rate from them on tax demanded at (ii) above under Section 50 of CGST Act, 2017 read with Section 20 of IGST Act and similar provisions under TGST Act 2017
- (vi) I confirm the demand of penalty from them on the demand at (above under Section 73(9) of CGST Act, 2017 read with Section [22(2)(a) of CGST Act, 2017 and Section 20 of IGST Act, 2017 and similar provisions under TGST Act, 2017

To the extent 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.

A handwritten signature in black ink is written over a circular stamp. The stamp contains the text "M. G. R. ESTATES" around the perimeter and a small star at the bottom center.

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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 the CGST Act, 2017 are adopted by the IGST Act, 2017 thereby the reference to CGST provisions be considered for IGST purposes also, wherever it arises.

In Re: Penalties and interest are not payable/imposable:

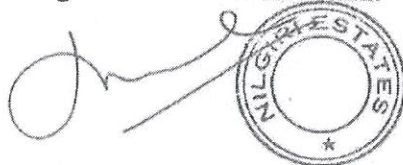
3. The present Order-in-original No. 23/2024-25 (GST-Adjn) dated 19.04.2024 has been issued under section 73 of CGST Act, 2017 for the FY 2018-19 confirming interest and penalty on the ITC amount which is reversed through DRC-03.

53rd Council meeting

4. The GST council has recommended the waiver of interest and penalty for demand notices issued under Section 73 of GST Act. To facilitate this initiative, the council has proposed the insertion of a new section, Section 128A, into the CGST Act and the extract of the same is as follows:

"Insertion of Section 128A in CGST Act, to provide for conditional waiver of interest or penalty or both, relating to demands raised under Section 73, for FY 2017-18 to FY 2019- 20: Considering the difficulties faced by the taxpayers, during the initial years of implementation of GST, the GST Council recommended, waiving interest and penalties for demand notices issued under Section 73 of the CGST Act for the fiscal years 2017-18, 2018-19 and 2019-20, in cases where the taxpayer pays the full amount of tax demanded in the notice up to 31.03.2025. The waiver does not cover the demand of erroneous refunds. To implement this, the GST Council has recommended the insertion of Section 128A in CGST Act, 2017."

From the above submissions, it is clear that if the taxpayer has paid the tax liability before 31.03.2025 then interest and penalty related to the said tax amount which was paid earlier need not be paid and hence in the present case the Appellant has paid tax liability already and demanding of the same is not valid.



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5. As per 53rd GST council meeting, no interest and penalty should be demanded as the full amount of tax demanded in the notice paid by March 31st, 2025. Hence, Impugned order needs to be set aside.

Insertion of Section-128A of CGST Act, 2017:-

6. As discussed earlier, the Appellant would like to provide an extract of newly inserted section for your ease reference below:

"128A. Waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods:

(1) Notwithstanding anything to the contrary contained in this Act, where any amount of tax is payable by a person chargeable with tax in accordance with, —

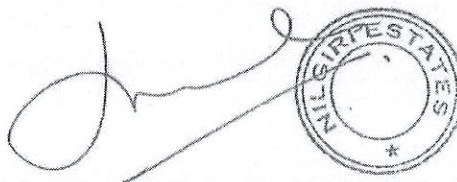
(a) a notice issued under sub-section (1) of section 73 or a statement issued under sub-section (3) of section 73, and where no order under sub-section (9) of section 73 has been issued; or

(b) an order passed under sub-section (9) of section 73, and where no order under sub-section (11) of section 107 or sub-section (1) of section 108 has been passed; or

(c) order passed under sub-section (11) of section 107 or sub-section (1) of section 108, and where no order under sub-section (1) of section 113 has been passed,

*pertaining to the **period from 1st July, 2017 to 31st March, 2020, or a part thereof**, and the said person pays the full amount of tax payable as per the notice or statement or the order referred to in clause (a), clause (b) or clause (c), as the case may be, on or before the date, as may be notified by the Government on the recommendations of the Council, no interest under section 50 and penalty under this Act, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, subject to such conditions as may be prescribed:*

7. From the above extraction, it is evident that the Appellant has paid the full amount before the due date notified by the government. Therefore, the Appellant submits that the Appellant has already discharged the tax amount through DRC-03 Dated 16.10.2024 vide No.DI3610200050832 and confirming demand of interest and penalty is not correct. Hence, Further proceedings in this regard need to be dropped.



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8. The Appellant submits that the impugned order confirmed that the Appellant is liable to interest under Section 50 of the 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

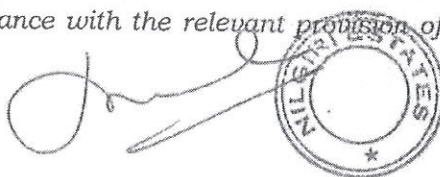
(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case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

9. The Appellant submits that the impugned order has demanded that interest rate prescribed under Section 50 is applicable. In this regard, The Appellant submits that the confirmation of the impugned order is not at all tenable in as much as it has not given any reason for such understanding.

10. The Appellant submits that Section 50(3) of GST Act, 2017 creates interest liability only when the Appellant has claimed undue or excess 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. This shows that the interest under Section 50(3) will arise only in above referred two instances and will not arise in any other case.

11. Judicially, it was consistently held that the imposition of interest on unutilized ITC is not correct. In this regard, reliance is further placed on:

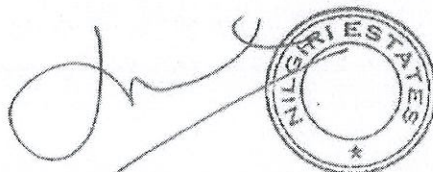
- a. Commissioner Cus., C.E. & S.T. v. Bharat Dynamics Ltd. 2016 (331) E.L.T. 182 (A.P.) wherein it was held that "6. From the findings arrived at by the Tribunal as reproduced above, it is obvious that in March, 2010, the The Appellant in accordance with the relevant provision of law, did



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seek clarification from the department to know whether the goods on clearance to the respondent-assessee are exempted from payment of Excise duty in terms of the notification and only in the absence of such clarification from the department, they took CENVAT credit during the intervening period i.e. from September, 2010 to March, 2011. It is also clearly observed that after getting clarification from TRU in April, 2011, the The Appellant reversed the entire amount of Cenvat credit. In that view of the matter, the specific contention put forth by the learned standing counsel that the respondent-assessee, without any eligibility, has taken the Cenvat credit, as such, they are liable to pay interest, is not sustainable."

- b. CCE & ST, LUT Bangalore Vs. Bill Forge Pvt. Ltd—2012 (26) S.T.R. 204 (Kar.) wherein it was held that "21. Interest is compensatory in character, and is imposed on an assessee, who has withheld payment of any tax, as and when it is due and payable. The levy of interest is on the actual amount which is withheld and the extent of delay in paying tax on the due date. If there is no liability to pay tax, there is no liability to pay interest. Section 11AB of the Act is attracted only on delayed payment of duty i.e., where only duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person liable to pay duty, shall in addition to the duty is liable to pay interest. Section do not stipulate interest is payable from the date of book entry, showing entitlement of Cenvat credit. Interest cannot be claimed from the date of wrong availment of CENVAT credit and that the interest would be payable from the date CENVAT credit is taken or utilized wrongly."
- c. Girijapathi Reddy & Company v. Commissioner — 2016 (344) E.L.T. 923 (Tri-Hyd);
- d. Ganta Ramanaiah Naidu v. Commissioner — 2010 (18) S.T.R. 10 (Tribunal)
- e. J.K. Tyre& Industries Ltd. Vs. CCE x., Mysore—2016(340) E.L.T 193 (Tri.-LB);
- f. Commissioner v. Strategic Engineering (P) Ltd. — 2014 (310) E.L.T. 509 (Mad.);
- g. Commissioner v. Bombay Dyeing and Mfg. Co. Ltd. — 2007 (215) E.L.T. 3 (S.C.);

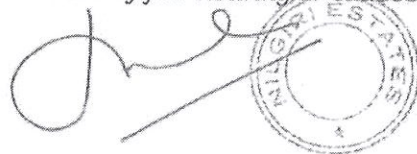


12. The Appellant further wishes to rely on Commercial Steel Engineering Corporation v. State of Bihar — 2019 (28) G.S.T.L. 579 (Pat.) wherein it was held that “The Assistant Commissioner of State Taxes has somewhere got confused to treat the transitional credit claimed by the dealer as an availment of the said credit when in fact an availment of a credit is a positive act and unless carried out for reducing any tax liability by its reflection in the return filed for any financial year, it cannot be a case of either availment or utilization. It is rightly argued by Mr. Kejriwal that even if the respondent no.3 was of the opinion that the petitioner was not entitled to such transitional credit at best, the claim could be rejected but such rejection of the claim for transitional credit does not bestow any statutory jurisdiction upon the assessing authority to correspondingly create a tax liability especially when neither any such outstanding liability exists nor such credit has been put to use.”

13. Without prejudice to the above, the Appellant would like to submit the definition of the word penalty is not defined under the GST Act, 2017. But the penalty indicates that it is a punishment that is imposed for any offence that is made. Hence, a penalty by nature is an imposition against any offence that is done. An offence is generally intentional or an act of purposeful deceiving. Hence, the allegation that “mens rea” is not essential to impose penalty is not correct is itself imposed to curtail the intentional errors made. The same is evident from Section 73(9) which states as follows:

“(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.”.

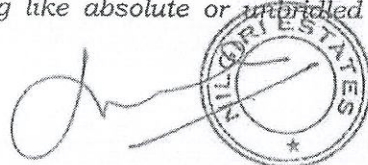
14. From the above, it can be understood that the proper officer at his discretion can either impose a penalty or just propose to demand interest and tax as the same pertain to penalty provisions. Further, Appellant submits that the sense and tone of the word “shall” in the legislature is litigative in nature. But the real meaning of shall always defined an intention of applicability of “may” as the penalty itself is discretionary in nature. In this regard, Appellant reliance on the decision of Shivjee Singh vs. Nagendra Tiwary, **AIR 2010 (SC) 2261 at 2263 (2010 (7) TMI 954 - SUPREME COURT)** wherein it was held that, “The provisions contained therein are required to be interpreted keeping in view the well-recognized rule of construction that procedural prescriptions are meant for doing substantial justice. If violation of the procedural provision does not result in denial of fair hearing or causes prejudice



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to the parties, the same has to be treated as directory notwithstanding the use of word 'shall'."

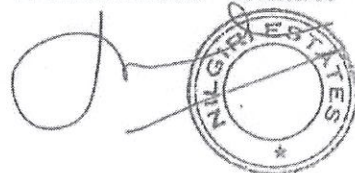
15. Without prejudice to the above, Appellant wishes to place reliance on the judgement in the case of Assistant Commercial Taxes Officer, Ward I, Sirohi Versus Shri Vajaram [1998] 111 STC 1 (Raj[TT]) 1997 (10) TMI 372 - RAJASTHAN TAXATION TRIBUNAL, wherein it was held that "...Whether penalty should 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 (emphasis* supplied). 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."
16. In the present case, Appellant has no intention to evade tax or to avail irregular credit and such penalties are statutory in nature. Thus, the penalty shall be waived off and the impugned order needs to be set aside.
17. Further, Appellant submits that GST being a new law, the imposition of penalties during the initial years of implementation is not warranted. Further, Appellant submits that they are under bonafide belief that there is no delay in payment of tax and short payment of tax, 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 a side.
18. 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 the Hon'ble Supreme Court in the case of Maya Devi v. Raj Kumari Batra dated 08.09.2010 [Civil Appeal No.10249 of 2003] wherein it was held that "14. It is in the light of the above+ pronouncements unnecessary to say anything beyond what has been so eloquently said in support of the need to give reasons for orders made by Courts and statutory or other authorities exercising quasi-judicial functions. All that we may mention is that in a system governed by the rule of law, there is nothing like absolute or unbridled power



exercisable at the whims and fancies of the repository of such power. There is nothing like a power without any limits or constraints. That is so even when a Court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well recognized and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity."

19. Appellant 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 order 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 a penalty was made out.***

20. 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 be imposed depending upon the facts and circumstances of the case there is a clear finding by the authorities below that this case does not warrant the imposition of a 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***



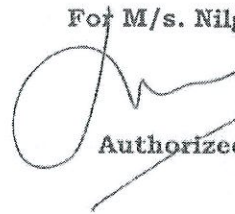
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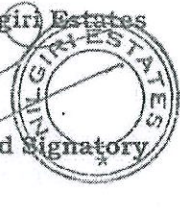
deliberate violation of the provisions of the particular statute." Hence, a Penalty cannot be imposed in the absence of deliberate defiance of law even if the statute provides for a penalty.

21. 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."

22. Appellant craves leave to alter, add to and/ or amend the aforesaid grounds.
23. Appellant wishes to be heard in person before passing any order in this regard.

For M/s. Nilgiri Estates

Authorized Signatory

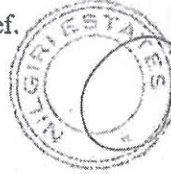


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PRAYER

Therefore, it is prayed that

- a) To set aside the impugned order to the extent aggrieved;
- b) To hold that there is violation of principles of natural justice
- c) To hold that there is no liability to pay the interest and penalty.
- d) To provide any other consequential relief.



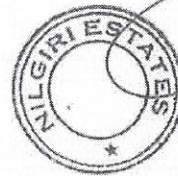
Signature

VERIFICATION

I, SOHAM MODI, S/o SATISH MODI, PARTNER Authorized Signatory of M/s. Nilgiri Estates 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: _____



Signature

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**BEFORE THE ADDITIONAL COMMISSIONER /JOINT COMMISSIONER
(APPEALS -II) OF CENTRAL TAX, HQRS OFFICE, 7TH FLOOR, L.B. STADIUM,
BASHEERBAGH, HYDERABAD - 500004.**

Sub: Filing of Appeal against Order-in-Original vide OIO: 23/2024-25 (GST-Adjn) dated 19.04.2024 in the case of M/s. Nilgiri Estates.

I, SOHAM MODI, PARTNER of M/s. Nilgiri Estates, hereby authorizes and appoint H N A & Co. LLP, Chartered Accountants, Bangalore or their partners and qualified staff who are authorized to act as an authorized representative under the relevant provisions of the law, to do all or any of the following acts: -

- 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/Appellant 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 26.08.2024 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: 26.08.2024

Address for service:

H N A & Co. LLP
Chartered Accountants,
4th Floor, West Block, Anushka Pride,
above Lawrence & Mayo,
Road Number 12, Banjara Hills,
Hyderabad, Telangana 500034.

For HNA & Co. LLP
Chartered Accountants

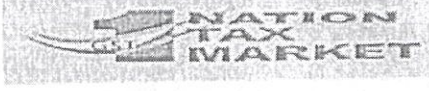
Lakshman Kumar K
Lakshman Kumar K
Partner (M.No. 241726)

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.

Sl No.	Name	Qualification	Mem. /Roll No.	Signature
1	Sudhir V S	CA	219109	
2	Venkata Prasad P	CA/LLB	AP/3511/2023	
3	Srimannarayana S	CA	261612	
4	Akash Heda	CA	269711	
5	P. Manikanta	CA	277705	



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केन्द्रीयकरसहायक आयुक्त कार्यालय,सिकंदरावादमाल एम सेवाकरमण्डल,
सिकंदरावाद।

OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL TAX,
SECUNDERABAD GST DIVISION, SECUNDERABAD

SALIK SENATE, D.No: 2-4-416 & 417, RAMGOPALPET, M.G. ROAD,
SECUNDERABAD- 500 003

Phone 7901243130 E-mail- cgst.secdiv@gov.in

C.No.GEXCOM/ADJN/GST/2916/2023-CGST-DIV-SNBD-COMMRTE-SECUNDERABAD

दिनांक/Date: 19.04.2024

DIN: 20240456YO000000E212

ORDER-IN-ORIGINAL No.23/2024-25 (GST-Adjn)(Passed by Shri R.Satyanarayana, I.R.S., Assistant Commissioner of Central Tax,
Secunderabad GST Division)**PREAMBLE**

1. This copy is granted free of charge for the private use of persons to whom it is issued.

इसे जिस व्यक्तिको जारी किया गया है वह प्रतिनिजी प्रयोग के लिए बिना मूल्यके दीजाती है।

2. Under Section 107(1) of the Central Goods and Service Act, 2017 any person aggrieved by this order can prefer appeal within three months from the date of communication of such order to the Joint Commissioner (Appeals), Hqrs Office, 7th floor, L.B. Stadium Road, Basheerbagh, Hyderabad-4.

कोईभी व्यक्ति जो केन्द्रीयवस्तु एवम सेवा कर अधिनियम, 2017 की धारा 107 (1) के तहत, इस आदेश से दुखी होता हो तो वह ऐसे आदेश के विरुद्ध संयुक्त आयुक्त (अपील), मुख्यालय कार्यालय, सातवीं मंजिल, जी.एस.टी. भवन, एल.बी. स्टेडियम रोड, बशीरबाग, हैदराबाद -500 004 के समक्ष इस आदेश के सूचित होनेके तीन माह के अंदर अपील दर्ज कर सकता है।

3. Appeals shall be filed in FORM GST APL-01 prescribed under Rule 108 of Central Goods and Service Tax Rules, 2017.

केन्द्रीयवस्तु एवम सेवा कर नियम, 2017 के नियम 108 के तहत निर्धारित फॉर्म GST APL-01 में अपील दाखल की जाएगी।

4. The grounds of appeal and form of verification as contained in Form GST APL 01 shall be signed in the manner specified in rule 26 of Central Goods and Service Tax Rules, 2017

अपील का आधार और फॉर्म के सत्यापन के रूप में फॉर्म जीएसटीएपीएल 01 में निहित है, केन्द्रीय सामान और सेवा कर नियम, 2017 के नियम 26 में निर्दिष्ट तरीके से हस्ताक्षर किए जाएंगे।

5. A certified copy of the decision or order appealed against shall be submitted within seven days of filing appeal under sub rule 1 of 108 of Central Goods and Service Tax Rules, 2017.

केन्द्रीयवस्तु एवम सेवा कर नियम, 2017 के 108 के उपनियम 1 के तहत अपील करने के सात दिनों के भीतर आदेश की प्रमाणित प्रति प्रस्तुत की जाएगी।

6. As per Section 107(6) of CGST Act, 2017, no appeal shall be filed under Section 107(1) of CGST Act, 2017 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 ten per cent of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.

केन्द्रीयवस्तु एवम सेवा कर अधिनियम, 2017 की धारा 107 (6) के अनुसार, अपीलकर्ता केन्द्रीयवस्तु एवम सेवा कर अधिनियम, 2017 की धारा 107 (1) के तहत कोई अपील दाखल नहीं करेगा, जब तक कि अपीलकर्ता निम्नलिखित नहीं किया हो—



(ए) पूर्णरूपसे, लगाए गए आदेश से उत्पन्न कर, व्याज, जुर्माना, शुल्क और जुर्माना की राशि का ऐसा हिस्सा, जैसा कि उसके द्वारा स्वीकार किया गया है; तथा

(बी) दस प्रतिशत के बराबर राशि। उक्त आदेश से उत्पन्न विवाद में कर की शेष राशि, जिसके संबंध में अपील दायर की गई है।

Sub: GST-On account of discrepancies observed during verification of Returns filed by M/S NILGIRI ESTATES (GSTIN: 36AAHFN0766F1ZA) for the FY 2018-19- Order-in-Original – Regarding.

M/S NILGIRI ESTATES (here-in-after referred to as "Taxpayer"), situated at 2nd FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003, is registered with the Centre GST Department with (GSTIN: 36AAHFN0766F1ZA) for the purpose of payment of GST and falls under the jurisdiction of Ramgopalpet-II CGST Range, Secunderabad GST Division, Secunderabad GST Commissionerate. Their business activities are 'WORKS CONTRACT SERVICES (HSNs- 00440334, 00440410).

2. On verification of the records, by the Telangana State GST authority, the following discrepancies were observed.

2.1. **ISSUE 1: Under declaration of output tax.** It is observed that, the taxpayer has not correctly declared tax on his outward supplies on reconciliation of turnover in GSTR-01, GSTR-3B and GSTR-9 for the financial year 2018-19.

2.2. The taxpayer has self-assessed the tax liability on outward supply and furnished the details of the same in returns specified under Section 37 of the CGST Act, 2017. In terms of provision of Section 59 of the CGST Act, 2017, 'every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39'. The taxpayer failed to discharge the self-assessed tax in the returns specified under Section 39 and the taxpayer was to pay taxes liable under Section 9 of the CGST Act, 2017 and therefore, the differential tax of **Rs 27,66,974/-** as detailed in table below, is liable for recovery under Section 73 of the CGST Act, 2017 along with applicable interest under Section 50 and penalty under Section 73 of the CGST Act, 2017 read with Section 122(2)(a) of the CGST Act, 2017.

Table-1

Amount: INR

S.No	Issue	Table No. in GSTR-09	SGST	CGST	Total
1	2	3	4	5	6
1	Tax on taxable supplies as declared in GSTR-09	4N	6384137.00	6384137.00	12768274.00
2	Add net increase due to amendments (Increase in amendments (-) decrease in amendments)	10 (-) 11	0.00	0.00	0.00
3	Add tax on deemed supplies	16B	0.00	0.00	0.00

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Order-In-Original No. 23/2024-25 (GST-Adjn) dated 19.04.2024

4	Add tax on unreturned goods	16C	0.00	0.00	0.00
5	Pending demands	15G	0.00	0.00	0.00
6	Total output tax liability as per the above in GSTR-09(S.NO 1+2+3+4+5)		6384137.00	6384137.00	12768274.00
7	Less Total tax paid in cash	9	0.00	0.00	0.00
8	Less Tax paid by adjustment of ITC	9	5000650.00	5000650.00	10001300.00
9	Less differential tax paid on amendments	14	0.00	0.00	0.00
10	Add differential tax paid on amendments related to previous year in current year	(14) of previous FY GSTR-09	0.00	0.00	0.00
11	Net tax payable (S.NO 6-7-8-9+10)		1383487.00	1383487.00	2766974.00

3. ISSUE 2: The excess input tax credit (ITC) claimed on account of non-reconciliation of information:

Under Section16(2)(c) every registered person shall be entitled to take credit of ITC on supply of goods or services to him subject to the condition that the tax charged in respect of such supply has been actually paid to the Government either in cash or through utilization of ITC admissible in respect of such supply.

It is observed that the taxpayer has not correctly availed input tax on his inward supplies on reconciliation of turnovers in GSTR-09.

- Scrutiny of ITC availed:

Amt in Rs.

S.N o	Description	SGST	CGST	Total
1	2	3	4	5
1	ITC in the year as per Table 8A of GSTR-09	6803981.00	6803981.00	13607962.00
2	ITC from ISD table 4A (4)	0.00	0.00	0.00
3	ITC from imports table 4A (1) +4A (2)	0.00	0.00	0.00
4	Inward Supplies liability to reverse charge 4A (3) (other than 4A(1) & 4A(2))	0.00	0.00	0.00
5	ITC brought forward from previous FY to current FY, Table 8C of previous FY GSTR-09	0.00	0.00	0.00
6	ITC carried forward from present FY to subsequent FY, Table 8C of GSTR-09	0.00	0.00	0.00
7	Reversals in Table 4B of GSTR-3B	0.00	0.00	0.00
8	ITC Available for use in the same year (S.No 1+2+3+4+5-6-7)	6803981.00	6803981.00	13607962.00
9	ITC used in same year as per 4C of GSTR-3B	7607458.00	7607458.00	15214916.00
10	Net excess used (S.No 9-8)	803477.00	803477.00	1606954.00

ISSUE 3.Scrutiny of ITC reversals:

S.N o	Description	SGST	CGST	Total
1	2	3	4	5
1	ITC reversed in Table 4(B) of GSTR-3B	0.00	0.00	0.00
2	ITC reversed in Table 7(I) of GSTR-09	228159.00	228159.00	456318.00
3	Excess ITC reversal showing in GSTR-09 as completed the GSTR-3B (S.No 2-1)	228159.00	228159.00	456318.00

From the above taxpayer has declared excess ITC reversal in GSTR 9 compared to ITC reversed in table 4(B) of GSTR-3B as detailed in table above.

Therefore, excess ITC of Rs. 20,63,272/- availed is required to be recovered under Section 73 of the CGST Act, 2017 along with applicable interest under Section 50 of the CGST Act, 2017 and penalty under Section 73 of the CGST Act, 2017 read with Section 122(2)(a) of the CGST Act, 2017.

TOTAL TAX PAYABLE SUMMARY				
Sl. No.	Issue	SGST	CGST	Total
1	2	3	4	5
1	Total Tax due for issues 1 to 2.	2415123.00	2415123.00	4830246.00
2	Interest	In terms of Section 50 of the CGST Act, 2017		
3	Penalty	In terms of Section 73 of the CGST Act, 2017		

4. The DRC 01A vide DIN: 20231256Y00000888A4D dated 19.12.2023 issued to the taxpayer requesting to pay tax along with interest and applicable penalty. However the taxpayer neither paid dues nor submitted any reply.

5. In view of the above, **M/S NILGIRI ESTATES** (here-in-after referred to as "Taxpayer"), situated at 2nd FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003, was issued a Show Cause Notice answerable to the **Assistant/Deputy Commissioner of Central Tax, Secunderabad Division, Salike Senate, 1st Floor, D. No. 2-4-416 & 417, Ramgopalpet, MG Road, Secunderabad 500003** within thirty days (30) from the date of issue of this notice as to why: -

- (i) an amount of Rs.27,66,974/- [Rs.13,83,487/-CGST and Rs.13,83,487/-SGST] (Rupees Twenty Seven Lakhs Sixty Six Thousand Nine Hundred and Seventy Four only), as discussed supra in Para 2 should not be demanded from them under Section 73(1) of the CGST Act, 2017 and similar provisions as laid in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.
- (ii) an amount of Rs. 20,63,272 /- [Rs.10,31,636/- CGST and Rs.10,31,636/- SGST] (Rupees Twenty Lakhs Sixty Three Thousand Two Hundred and Seventy Two only), as discussed supra in Para 3 should not be demanded from them under Section 73(1) of the CGST Act, 2017 and similar provisions as laid in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.
- (iii) interest at the applicable rate should not be demanded from them on tax demanded at (i) & (ii) above under Section 50 of CGST Act, 2017 read with Section 20 of IGST Act and similar provisions under TGST Act, 2017.

- (iv) penalty should not be imposed on them demands at (i) & (ii) above under Section 73 of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and Section 20 of IGST Act, 2017 and similar provisions under TGST Act, 2017

6. Reply to Show Cause Notice

The TP has submitted their reply to the SCN on 16.02.2024. The tax payer in his reply stated that in respect of:

6.1 Issue-1: Under declaration of output tax

The taxpayer Submitted that the alleged difference of output tax liability was factually incorrect and wherever there was short payment, it was paid voluntarily. The actual difference was quite less than the amount arrived in the impugned SCN. The detailed explanation was already made to the previous SCN which may be considered here also.

6.2. Issue-2: The excess input tax credit (ITC) claimed on account of non-reconciliation of information

The taxpayer submitted that the demand was raised in the previous SCN in any case, such alleged differences between ITC in GSTR3B Vs GSTR2A is factually wrong as impugned SCN was based on the old GSTR2A as on the date of filing of annual returns. Once, the updated GSTR2A was considered, the actual difference was quite less than the amount arrived in the SCN. Further, submitted that ITC cannot be denied merely due to non-reflection of invoices in GSTR2A as all the conditions specified under Section 16 have been satisfied. The taxpayer submitted that GSTR2A cannot be taken as a basis to deny the ITC in accordance with Section 41, Section 42 of CGST Act, 2017, Rule 69 of CGST Rules, 2017. Finally, requested to drop further proceedings initiated in the show cause notice.

6.3. ISSUE-3: Scrutiny of ITC Reversals:

The tax payer submitted, they have reversed the said ITC of Rs. 4,56,318/- (CGST: Rs.2,28,159/- SGST: Rs.2,28,159/-) vide DRC dated 07.01.2020 under Debit Entry DI3601200012760 and DRC dated 16.10.2020 under debit entry DI3610200050832 and requested to drop further proceedings.

7. Personal Hearing:

7.1 A Personal Hearing was fixed on 25.01.2024, 13.02.2024 & 27.02.2024 and intimated to the tax payer. Shri Srimannarayana, authorized representative of the company has attended the PH reiterated the submissions made in their reply dated 16.02.2024 and requested to drop further proceedings.

8. Discussions & Findings :

I have carefully gone through the records of the case, Show Cause Notice, tax payer's reply dated 16.02.2024, submissions made during the course of

personal hearing and other material available on record. I now propose to adjudicate the case under the provisions of Section 73 of CGST Act, 2017. There are three issues before me to decide. I shall take up the aforesaid issues one by one for discussion.

9. Issue-1: Under declaration of output tax

Section 37. Furnishing details of outward supplies. -

(1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically ¹[subject to such conditions and restrictions and] in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details ²[shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed]

Section 39. Furnishing of returns.— (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, for every calendar month or part **CHAPTER IX RETURNS** 70 thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof. (2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter. (3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month. (4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month. (5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier. (6) The

Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein: Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner. (7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return. CHAPTER IX RETURNS 71 (8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period. (9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or subsection (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act: Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier. (10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.

Section 49. Payment of tax, interest, penalty and other amounts.-

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:-

- (a) self-assessed tax, and other dues related to returns of previous tax periods;
- (b) self-assessed tax, and other dues related to the return of the current tax period;
- (c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.

9.1. In the instant case, a show cause notice was issued on the same issue, by the Additional Commissioner, Hyderabad Audit II Commissionerate vide Show Cause No. 06/23-24 dated 19.05.2023 under C.No.V/Audit-II/C-I/28/2021-22/Gr-15. The said Show Cause Notice was adjudicated by the Additional

Commissioner, Secunderabad GST Commissionerate vide OIO No. 28/2023-24 (Sec-Adjn-ADC)(GST) Dated 12.10.2023. In view of the above, it is proposed to drop the proceedings initiated in the show cause notice.

10. Issue-2: The excess input tax credit (ITC) claimed on account of non-reconciliation of information

In the instant case, a show cause notice was issued by the Hyderabad Audit II Commissionerate issued by the Additional Commissioner vide Show Cause Notice No. 06/23-24 dated 19.05.2023 under C.No.V/Audit-II/C-I/28/2021-22/Gr-15. The said Show Cause Notice was adjudicated by the Additional Commissioner, Secunderabad GST Commissionerate vide OIO No. 28/2023-24 (Sec-Adjn-ADC)(GST) Dated 12.10.2023.

10.1. In view of the above, it is proposed to drop the proceedings initiated in the show cause.

11. Issue-3: Scrutiny of ITC reversals:

In the instant case, the tax payer submitted that they have reversed the said ITC of Rs. 4,56,318/- (CGST: Rs.2,28,159/- SGST: Rs.2,28,159/-) vide DRC dated 07.01.2020 under Debit Entry DI3601200012760 and DRC dated 16.10.2020 under debit entry DI3610200050832 and requested to drop further proceedings. The same has to be appropriated. However, interest under Section 50 and Penalty under 73 read with Section 122(2)(a) of CGST Act, 2017 is recoverable.

12. Further, Section 6 of the Telangana State Goods & Services tax Act, 2017 authorizes the officers appointed under the Central Goods and Services Tax Act as proper officers for the purposes of the said Act, subject to such conditions as the Government shall, on the recommendations of the Council, by Notification, specify. Accordingly, the demand of levy of SGST is authorized under the provisions of Section 6 of the TGST Act, 2017.

13. In view of the foregoing discussions and findings, in terms of provisions of Section 73 of CGST Act 2017, having regard to the facts and circumstances of the case, I pass the following order:

ORDER

- (i) I drop the proceedings initiated in the show cause under **Issue-1** in view of the discussions and findings in **Para 9** above.
- (ii) I drop the proceedings initiated in the show cause under **Issue-2** in view of the discussions and findings in **Para 10** above.
- (iii) I confirm the demand of Rs. 4,56,318/- (CGST: Rs.2,28,159/- SGST: Rs.2,28,159/-) (Rupees Four Lakh Fifty Six Thousand Three Hundred and Eighteen Only), in respect of Issue-3, as

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discussed supra in Para -11 under Section 73(9) of the CGST Act, 2017 and similar provisions as laid down in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.

- (iv) I appropriate the amount of Rs. 4,56,318/- (CGST: Rs.2,28,159/- SGST: Rs.2,28,159/-) (Rupees Four Lakh Fifty Six Thousand Three Hundred and Eighteen Only) which was already paid by them vide DRC dated 07.01.2020 under Debit Entry No. DI3601200012760 and DRC dated 16.10.2020 under debit entry no. DI3610200050832 towards duty confirmed at Sl.No. (iii) above, under Section 73(9) of the CGST Act, 2017 and similar provisions as laid down in the TGST Act, 2017 read with Section 20 of IGST Act, 2017
- (v) I confirm the demand of interest at the applicable rate from them on tax demanded at (iii) above under Section 50 of CGST Act, 2017 read with Section 20 of IGST Act and similar provisions under TGST Act, 2017.
- (vi) I confirm the demand of penalty from them on the demand at (iii) above under Section 73(9) of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and Section 20 of IGST Act, 2017 and similar provisions under TGST Act, 2017

3-12-24 24/04/2024
19/04/2024

(आर.सत्यनारायण)/(R.SATYANARAYANA)

सहायक आयुक्त/Assistant Commissioner

सिकंदराबाद मण्डल/ Secunderabad GST Division

To

M/S NILGIRI ESTATES

2nd FLOOR, 5-4-187/3 AND 4,

SOHAM MANSION, MG ROAD, SECUNDERABAD.

Copy submitted to:

The Commissioner of Central Tax, Secunderabad GST Commissionerate, GST Bhavan, Opp. L.B.Stadium, Hyderabad (Attention: Superintendent, (Review))

Copy to:

The Superintendent of GST, Ramgopalpet-II Range, Secunderabad GST Division - For information.

Office copy & Master file.

RS

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H N A & Co LLP
Chartered Accountants

(Formerly known as Hireganje & Associates LLP)

Date: 16.02.2024

To,
The Assistant Commissioner of Central Tax,
Secunderabad GST Division,
Salike Senate, D.No. 2-4-416 & 417,
Ramgopalpet, M.G. Road,
Secunderabad-500003.

Dear Sir,

Sub: Filing of Reply to Show Cause Notice in Form GST DRC - 06.

Ref: SCN No. 46/2023-24 vide DIN :20231256YO00008328CE dated 29.12.2023 pertaining to **M/s. Nilgiri Estates.**

1. We have been authorized by M/s. Nilgiri Estates to submit the SCN reply to the above referred SCN No. 46/2023-24 vide DIN :20231256YO00008328CE dated 29.12.2023 and represent before your good office and to do necessary correspondence in the above referred matter. A copy of authorization is attached to the reply.
2. In this regard, we are herewith submitting the SCN reply along with authorization letter and other annexures referred in the reply.

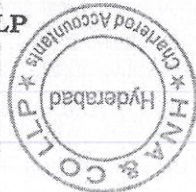
We shall be glad to provide any other information in this regard. Kindly acknowledge the receipt of the reply and post the hearing at the earliest.

Thanking You,

Yours faithfully,

For M/s. H N A & Co. LLP
Chartered Accountants

R. Lakshman Kumar
CA Lakshman Kumar K
Partner



4th Floor, West Block, Srida Anushka Pride, R.No. 12, Banjara Hills, Hyderabad,
Telangana - 500 034. INDIA.

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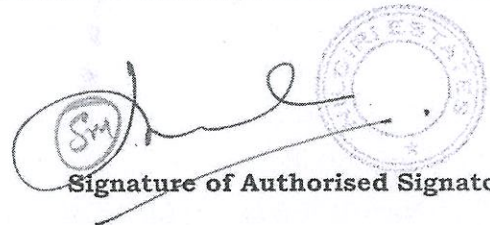
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FORM GST DRC - 06*[See rule 142(4)]***Reply to the Show Cause Notice**

1.GSTIN	36AAHFN0766F1ZA	
2.Name	M/s Nilgiri Estates	
3.Details of Show Cause Notice	SCN No. 46/2023-24 vide DIN :20231256YO00008328CE	Date of issue: 29.12.2023
4.Financial Year	2018-19	
5.Reply		
Given as Annexure A		
6.Documents uploaded: YES		
7.Option for personal hearing	Yes- Required	☐ No

8.Verification -

I 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.

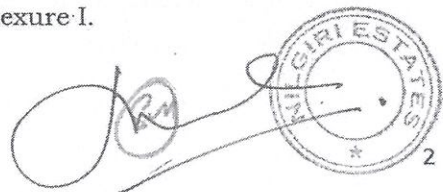

Signature of Authorised Signatory

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ANNEXURE A

FACTS OF THE CASE:

1. M/s. Nilgiri Estates (hereinafter referred as "Noticee") located at 5-4-187/3, 2nd Floor, Soham Mansion, M.G.Road, Secunderabad, Telangana-500003 *inter alia* engaged in the business of Construction & sale of Villas and is registered with the Goods and Service Tax Department vide GSTIN 36AAHFN0766F1ZA in the state of Telangana. The Noticee has been paying applicable GST and filing returns regularly after disclosing the required disclosures therein.
2. In the year 2022, the GST department has conducted the audit for the period July 2017 to March 2019 and has issued FAR No.518/2022-23 dated 04.11.2022 (copy of FAR is enclosed as Annexure-Vii) *inter alia* making observation that there was short payment of GST in GSTR-3B when compared to liability declared in GSTR-1 for FY 2018-19 & also there was excess availment of ITC in GSTR-3B when compared to ITC reflected in GSTR-2A. It was followed by the issuance of a Show Cause Notice vide Sl No. 06/2023-24 dated 19.05.2023. Copy of SCN enclosed as Annexure-Vi.
3. In response to the SCN dated 19.05.2023, the Noticee furnished its reply vide submissions dated 31.07.2023 & and also filed additional submissions dated 29.08.2023 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. The department did not consider the submissions instead passed the Order-In-Original No. 28/2023-24-SEC-ADJN-ADC(GST) dated 12.10.2023 confirming the aforesaid demands proposed in SCN dated 19.05.2023. Copy of OIO dated 12.10.2023 is enclosed as Annexure-Iv.
4. Further, the summary of the OIO was uploaded electronically in GST portal vide reference No. ZD3612230078888 dated 05.12.2023 along with copy of OIO. Copy of summary order in Form DRC-07 enclosed as Annexure III. Aggrieved by the OIO, Noticee filed an appeal on 16.01.2024 after making required pre-deposit. Copy of the appeal acknowledgment enclosed as Annexure II.
5. To the utter surprise of the Noticee, Noticee is in receipt of the impugned SCN No. 46/2023-24 dated 29.12.2023 which was received on 02.01.2024 through registered proposing the following demands which were the very same demands that were already proposed & adjudicated by Additional Commissioner of Central Tax, Hyderabad who had passed the OIO dated 12.10.2023. Copy of SCN No. 46/2023-24 dated 29.12.2023 enclosed as Annexure-I.

A handwritten signature in black ink is written over a circular stamp. The stamp contains the text "NILGIRI ESTATES" around the perimeter and a small star at the bottom. The number "2" is written at the bottom right of the stamp.

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- i. An amount of Rs.27,66,974/- [Rs. 13,83,487/-CGST and Rs13,83,487/-SGST] (Rupees Twenty Seven Lakhs Sixty Six Thousand Nine Hundred and Seventy Four only), as discussed supra in Para 2 should not be demanded from them under Section 73(1) of the CGST Act, 2017 and similar provisions as laid in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.
 - ii. An amount of Rs. 20,63,272 /- [Rs. 10,31,636/- CGST and Rs. 10,31,636/-SGST] (Rupees Twenty Lakhs Sixty Three Thousand Two Hundred and Seventy Two only), as discussed supra in Para 3 should not be demanded from them under Section 73(1) of the CGST Act, 2017 and similar provisions
6. Noticee herein below makes the submissions in response to the allegations and propositions made in the impugned SCN which are independent and without prejudice to one another.

Submissions

7. Noticee submits that they deny all the allegations made in Show Cause Notice (SCN) dated 29.12.2023 as they are not factually/legally correct.
8. 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.

In Re: Impugned notice is not valid

Notice has been issued based on assumptions and presumptions.

9. Noticee submits that impugned SCN is issued with prejudged and premeditated conclusions on various issues raised in the notice. That being the case, issuance of SCN in that fashion is bad in law and requires to be dropped. In this regard, reliance is placed on **Oryx Fisheries Pvt. Ltd. v. Union of India — 2011 (266) E.L.T. 422 (S.C.)**.
10. Noticee submits that the subject SCN is issued based on mere assumption and unwarranted inference, interpretation of the law without considering the intention of the law, documents on record, the scope of activities undertaken, and the nature of activity involved, the incorrect basis of computation, creating its own assumptions, presumptions. Further, they have arrived at the conclusion without actual examination of facts, provisions of the CGST Act, 2017. In this regard,



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Noticee relies on the decision of the Hon'ble Supreme Court in case **Oudh Sugar Mills Limited v. UOI, 1978 (2) ELT 172 (SC)**

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

The present demand is already raised in previous SCN dated 19.05.2023 and adjudicated vide OIO 12.10.2023:

12. Without prejudice to the above submissions, Noticee submits that the audit wing of Central tax has already conducted the detailed audit *inter alia* verified the records of sales and purchases and reconciled the differences between GSTR-1, GSTR-3B and GSTR-2A and made certain observations which were finally culminated into issuance of earlier SCN dated 19.05.2023 *inter alia* vide

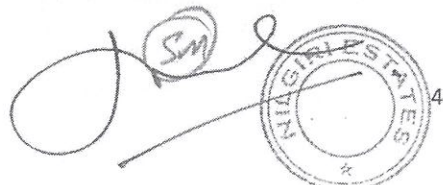
- a. Para III of such SCN has raised the demand of alleged short payment of tax on comparison of GSTR-1 & GSTR-3B for the FY 2018-19
- b. Para IV of such SCN has raised the demand of alleged ITC on comparison of GSTR-3B & GSTR-2A for FY 2018-19

Thus, previous SCN dated 19.05.2023 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.

13. 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 IX). Therefore, the demand proposed vide the impugned SCN is completely duplicated, fallacious and devoid of any merit.

14. Noticee further submits that in response to the previous SCN dated 19.05.2023, the Noticee has filed the submissions dated 31.07.2023 & additional submissions dated 29.08.2023. (Copy of the submissions are enclosed as Annexure-V). Thereafter, Additional Commissioner of Central tax has passed Order-In-Original No. 28/2023-24-SEC-ADJN-ADC(GST) dated 12.10.2023 confirming the aforesaid demands proposed in SCN dated 19.05.2023 including the aforesaid demands. Thus, there was no necessity to raise the very same demands covering same period and same issue again in the present SCN.

15. Further, the summary of the OIO was uploaded electronically in GST portal by your good office vide reference No. ZD3612230078888 dated 05.12.2023 along with copy



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of OIO. That being a case, issuance of the present SCN for very same issues covering the same period do not sustain in law.

16. Noticee submits that the orders of Additional Commissioner of Central Tax, Hyderabad, being higher authority, clearly binds on the Assistant Commissioner of Central Tax, Hyderabad thereby not permitted to reagitate the very same issues that are already adjudicated especially when the demands are confirmed not even dropped by Additional Commissioner of Central Tax, Hyderabad.
17. Noticee submits that reopening of the already adjudicated assessment is not permitted in law. In this regard, Noticee places reliance on **UOI v. Vicco Laboratories 2007 (218) E.L.T. 647 (SC)**.
18. 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, Noticee 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.
- 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: There is no under declaration of output tax

19. Without prejudice to the above, it is further submitted that the alleged difference of output tax liability was factually incorrect and wherever there was short



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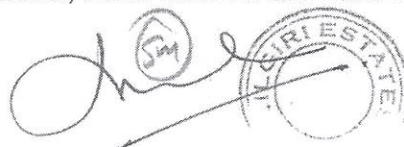
payment, it was paid voluntarily. The actual difference was quite less than the amount arrived by impugned SCN. The detailed explanation was already made to the previous SCN which may be considered here also.

In Re: There was no excess ITC availment as misconstrued in SCN:

20. Similarly, impugned SCN has proposed demand of Rs.16,06,954/- (first table in Para 3) towards alleged excess ITC availed in GSTR-3B on comparison to GSTR-2A. It is submitted that this demand was raised in the previous SCN (in fact more amount was demanded) and in any case, such alleged differences between ITC in GSTR-3B v. 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 Noticee but faults, if any of the suppliers of Noticee whom to be investigated first instead of direct recovery from Noticee.

21. Noticee further submits that Noticee is rightly eligible for ITC for the following reasons even though such alleged ITC is not reflected in GSTR-2A:

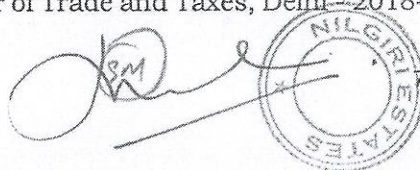
- a. ITC cannot be denied merely due to non-reflection of invoices in GSTR-2A as all the conditions specified under Section 16 of CGST Act, 2017 have been satisfied.
- b. GSTR-2A cannot be taken as a basis to deny the ITC in accordance with Section 41, Section 42 of CGST Act, 2017, Rule 69 of CGST Rules, 2017.
- c. Finance Act, 2022 has omitted Section 42, 43 and 43A of the CGST Act, 2017 which deals ITC matching concept. 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.
- d. 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.
- e. The Section 38 read with Rule 60 had prescribed the FORM GSTR 2 which is not made available till 30.09.2022. Further, Form GSTR 2 has been omitted



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vide Notification No. 19/2022 Central Tax dated 28.09.2022 w.e.f. 01.10.2022.

- f. 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.
- g. 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.
- h. It is submitted that neither the form has been prescribed by the law nor the same has been communicated to the Noticee 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.
- i. Fact that there is no requirement to reconcile the invoices reflected in GSTR-2A vs GSTR-3B is also evident from the amendment in Section 16 of CGST Act, 2017 vide Section 100 of Finance Act, 2021. Hence, there is no requirement to reverse any credit in the absence of the legal requirement during the subject period.
- j. 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 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.
- k. The fact of payment or otherwise of the tax by the supplier is neither known to Noticee nor is verifiable by Noticee. 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 '*lex non-cogit ad impossibilia*'. 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.
- l. In the same context, Appellant also wish to place reliance on the decision in case of Arise India Limited vs. Commissioner of Trade and Taxes, Delhi-2018-



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TIOL-11-SC-VAT and M/s Tarapore and Company Jamshedpur v. State of Jharkhand - 2020-TIOL-93-HC-JHARKHAND-VAT.

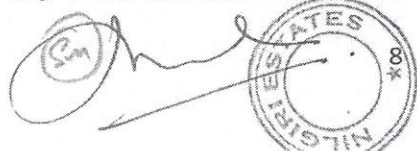
- m. Section 41 allows the provisional availment and utilization of ITC, there is no violation of section 16(2)(c) of CGST Act 2017
- n. The above view is also fortified from press release dated 18.10.2018
- o. Even if there is differential ITC availed, if the same is accompanied by a valid tax invoice containing all the particulars specified in Rule 36 of CGST Rules and the payment was also made to the suppliers, the Appellant is rightly eligible for ITC.
- p. Under the earlier VAT laws there were provisions similar to Section 16(2) ibid which have been held by the Courts as unconstitutional.

22. In this regard, Noticee relies on following decisions:

- **Suncraft Energy Pvt. Ltd. vs. Assistant Commissioner 2023 (77) G.S.T.L. 55 (Cal.) affirmed by Supreme Court as reported in 2024 (80) G.S.T.L. 225 (S.C.)**
- Diya Agencies v. State Tax Officer 2023 (9) TMI 955 - Kerala High Court
- Gargo Traders v. Joint Commissioner 2023 (6) TMI 533 - Calcutta High Court
- Henna Medicals v. State Tax Officers 2023 (10) TMI 98 - Kerala High Court
- D.Y. Beathel Enterprises Vs State Tax officer (Data Cell), (Investigation Wing), Tirunelveli 2021(3) TMI 1020-Madras High Court
- LGW Industries limited Vs UOI 2021 (12) TMI 834 -Calcutta High Court
- Bharat Aluminium Company Limited Vs UOI & Others 2021 (6) TMI 1052 - Chhattisgarh High Court
- Sanchita Kundu & Anr. Vs Assistant Commissioner of State Tax 2022 (5) TMI 786 - Calcutta High Court

In Re: ITC reversals shown in GSTR-9 was paid in Form GST DRC-03 and hence, there is no declaration of excess ITC reversals as alleged in SCN:

23. Impugned SCN has proposed Rs.4,56,318/- alleging that ITC said to be reversed in GSTR-9 but not reversed in GSTR-3B. In this regard, it is submitted that this demand is also factually incorrect as evident from the table 7(H1) & 7(H2) of GSTR-9 wherein the payment details related to such ITC reversals were disclosed and in fact, the payments made in Form GST DRC-03 were verified and acknowledged by jurisdictional officer vide Form DRC-04 No. 459710 dated 26.09.2023. Copy of DRC-03 & DRC-04 enclosed as annexure VIII. That being a case, issuance of the impugned SCN dated 29.12.2023 proposing the very same demands is without

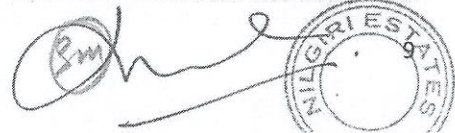


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application of mind, ignoring the details that are expressly disclosed in annual returns which are the basis for serving the impugned SCN and already verified by number of officers of the same department. Hence, impugned demands do not sustain and requires to be dropped.

In Re: Impugned SCN is time barred and Notification No. 09/2023-C.T dated 31.03.2023 & Notification No. 56/2023-C.T dated 28.12.2023 are bad in law:

24. Noticee submits that the impugned SCN was issued under section 73 of CGST Act, 2017 which provides for adjudication of demand within 3 years from the due date of annual return of corresponding FY. For FY 2018-19, the annual return due date falls on 31.10.2020 and the 3 years time limit expires on 31.10.2023. Therefore, the last date for issuance of the show cause notice u/s. 73(2) of CGST Act, 2017 is 31.07.2023 only.
25. Citing the difficulties caused due to Covid-19, the Government has extended the time limit to 31.03.2024 exercising the powers u/s. 168A of CGST Act, 2017 as amended vide Notification No. 09/2023-C.T dated 31.03.2023. However, again exercising the powers u/s. 168A, ibid the time was further extended to 30.04.2024 by the Notification No. 56/2023-C.T dated 28.12.2023.
26. In this regard, it is submitted that extension of the time period prescribed for issuance of show cause notice under Section 73 (10) of the Goods and Service Tax Act, 2017 is not sustainable in law, in as much as COVID restrictions were uplifted long back in the year 2022 and the revenue had sufficient time to complete the scrutiny and audit process. Further, the 'force majeure' as defined u/s. 168A, ibid was never occurred from 2022 till the expiry of extended due date of 31.10.2023. Hence, the extension of time from 31.10.2023 to 31.03.2023 & again to 30.04.2024 runs beyond the mandate of Section 168A and is not sustained in the law. Similarly, the extending of the time limits prescribed under section 73, ibid by exercising the notification issued u/s. 168A, ibid runs contrary to the provisions of section 73(10) of CGST Act, 2017 as amended. Therefore, both the Notifications No. 09/2023 dated 31.03.2023 & 56/2023-C.T dated 28.03.2023 are illegal, arbitrary, unjust, improper, unfair and contrary to provisions of the CGST Act, 2017.
27. Noticee submits that it is settled law that any delegated legislation travelling beyond the Statutory provisions be 'ultra vires' and do not sustain in law. It is also manifestly arbitrary and violative of Article 14 of the Constitution of India.
28. The Noticee submits that it is a settled position of law that in indirect Taxes, demands proposed after the expiry of the time limit prescribed under the statute is



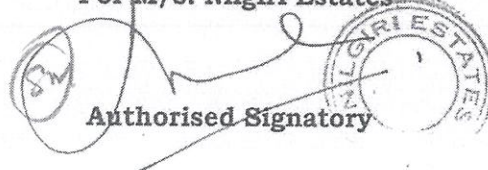
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- time-barred and not enforceable in law. In this regard wish to place reliance on the judgment in the case of CCE vs Classic Strips Pvt Ltd 2015 (318) E.L.T. 20 (S.C.).
29. Therefore, the impugned demand raised for FY 2018-19 deserves to be dropped as the proceedings are deemed to be concluded in terms of Section 75(10) of CGST Act, 2017 in absence of passing the order before 31.10.2023 and also non-issuance of SCN in 3 months prior to 31.10.2023.

Interest and penalties are not payable/imposable:

30. The Noticee respectfully submits that issue involved in the present case is critical analysis of various provisions of GST provisions and Notifications issued thereunder. Therefore, it is settled position of the law that when the issue involved is interpretation of statutory provisions, the imposition of penalties not warranted.
31. The Noticee respectfully submits that no penalty should be imposed where the breach flows from the bona-fide belief that the offender is not liable to act in the manner prescribed by the statute. Reliance is placed on **Hindustan Steel Ltd. Vs State of Orissa 1978 (2) E.L.T. (J159) (S.C.)**.
32. The Noticee respectfully submits that various High Courts in plethora of cases held that that GST is still in a "trial and error" phase.
33. Noticee submits that GST is new law, which is developing day by day. Every day there will be notification or Circular clarifying the GST issues from the Government. It is undisputed fact the Government horridly implemented the GST Law without being much preparatory work and trade was not fully ready for GST implementation. Due dates & deadlines were extended many times for the first 3 years of implementation of the GST Law. The alleged violations are purely unintentional and without any malafide intentions as explained supra. When the issue involved is interpretation of Law, therefore failure/non-payment of tax with intent to evade cannot be attributed accordingly penalty under the provisions of the law cannot be imposed.
34. Noticee craves leave to alter, add to and/or amend the above reply.
35. Noticee would also like to be heard in personal, before any order being passed in this regard.

For M/s. Nilgiri Estates

The block contains a handwritten signature in black ink, which appears to be 'S. M.' or similar, written over a circular stamp. The stamp has the text 'NILGIRI ESTATES' around its perimeter. Below the signature and stamp, the words 'Authorised Signatory' are printed in a bold, sans-serif font.

Authorised Signatory

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**BEFORE THE ASSISTANT/DEPUTY COMMISSIONER OF CENTRAL TAX,
SECUNDERABAD DIVISION, SALIKE SENATE, 1st FLOOR, D.NO. 2-4-416 & 417,
RAMGOPALPET, MG ROAD, SECUNDERABAD, 500003.**

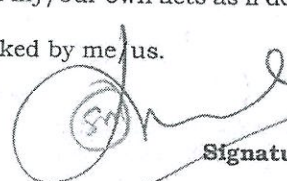
Sub: Proceedings under Show Cause Notice SCN No. 46/2023-24 vide
DIN:20231256Y000008328CE dated 29.12.2023 issued to M/s. Nilgiri Estates

I, SOHAM MODD, PARTNER of M/s Nilgiri estates hereby authorizes and appoint M/s. H N A & Co. LLP (formerly known as M/s. Hiregange & Associates LLP), Chartered Accountants, Bangalore or their partners and qualified staff who are authorized to act as an authorized representative under the relevant provisions of the law, to do all or any of the following acts: -

- 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 16th February, 2024 at Hyderabad


Signature

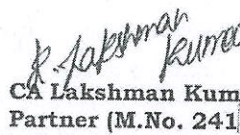
I the undersigned partner of M/s. H N A & Co. LLP (formerly known as M/s. Hiregange & Associates LLP), Chartered Accountants, do hereby declare that the said M/s. H N A & Co. LLP is a registered firm of Chartered Accountants, and all its partners are Chartered Accountants holding certificate of practice and duly qualified to represent in above proceedings under Section 116 of the SGST 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: 16.02.2024

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**

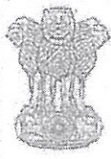

**CA Lakshman Kumar K.
Partner (M.No. 241726)**

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	Venkat Prasad P	CA, LLB	AP/3511/2023	
3	Srimannarayana S	CA	261612	
4	Revanth Krishna K	CA	262586	
5	Akash Heda	CA	269711	
6	Mohammed Shabaz	Advocate	TS/2223/2016	
7	Ankita Mehta	BBA LLB	TS/1578/2021	

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Annexure-I

 केंद्रीय कर सहायक कार्यालय, सिकंदराबाद नाल एचन सेवाकर मण्डल, सिकंदराबाद। OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL TAX, SECUNDERABAD GST DIVISION, SECUNDERABAD SALIKE SENATE, D.No: 2-4-416 & 417, RAMGOPALPET, M.G. ROAD, SECUNDERABAD- 500 003 Phone 7901243130 E-mail- cgst.secdiv@gov.in	 NATIONAL TAX MARKET  
C. No. GEXCOM/ADJN/GST/2916/2023-CGST-DIV-SABD-COMMIRATE-SECUNDERABAD	
Date: 29.12.2023	

DIN: 20231256Y00008328CE

SHOW CAUSE NOTICE No.:46/2023-24

Subj: -GST-On account of discrepancies observed during verification of Returns filed by M/S NILGIRI ESTATES (GSTIN: 36AAHFNO766F1ZA) for the FY 2018-19- Issue of Show Cause Notice under Section 73 of the CGST Act, 2017 – Regarding.

M/S NILGIRI ESTATES (here-in-after referred to as "Taxpayer"), situated at 2nd FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003, is registered with the Centre GST Department with (GSTIN: 36AAHFNO766F1ZA) for the purpose of payment of GST and falls under the jurisdiction of Ramgopalpet-II CGST Range, Secunderabad GST Division, Secunderabad GST Commissionerate. Their business activities are WORKS CONTRACT SERVICES (HSNs-00440334, 00440410).

2. On verification of the records, by the Telangana State GST authority, the following discrepancies were observed.

2.1. **ISSUE 1: Under declaration of output tax.** It is observed that, the taxpayer has not correctly declared tax on his outward supplies on reconciliation of turnover in GSTR-01, GSTR-3B and GSTR-9 for the financial year 2018-19.

2.2. The taxpayer has self-assessed the tax liability on outward supply and furnished the details of the same in returns specified under Section 37 of the CGST Act, 2017. In terms of provision of Section 59 of the CGST Act, 2017, 'every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39'. The taxpayer failed to discharge the self-assessed tax in the returns specified under Section 39 and the taxpayer was to pay taxes liable under Section 9 of the CGST Act, 2017 and therefore, the differential tax of Rs 27,66,974/- as detailed in table below, is liable for recovery under Section 73 of the CGST Act, 2017 along with applicable interest under Section 50 and penalty under Section 73 of the CGST Act, 2017 read with Section 122(2)(a) of the CGST Act, 2017.

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Table-1

Amount: INR

S.No	Issue	Table No in GSTR-09	SGST	CGST	Total
1	2	3	4	5	6
1	Tax on taxable supplies as declared in GSTR-09	4N	6384137.00	6384137.00	12768274.00
2	Add net increase due to amendments (Increase in amendments (-) decrease in amendments)	10 (-) 11	0.00	0.00	0.00
3	Add tax on deemed supplies	15B	0.00	0.00	0.00
4	Add tax on unreturned goods	15C	0.00	0.00	0.00
5	Pending demands	15G	0.00	0.00	0.00
6	Total output tax liability as per the above in GSTR-09 (S.NO 1+2+3+4+5)		6384137.00	6384137.00	12768274.00
7	Less Total tax paid in cash	9	0.00	0.00	0.00
8	Less Tax paid by adjustment of ITC	9	5000550.00	5000550.00	10001100.00
9	Less differential tax paid on amendments	14	0.00	0.00	0.00
10	Add differential tax paid on amendments related to previous year in current year	(14) of previous FY GSTR-09	0.00	0.00	0.00
11	Net tax payable (S.NO 6-7-8-9+10)		1383487.00	1383487.00	2766974.00

3. ISSUE 2: The excess input tax credit (ITC) claimed on account of non-reconciliation of information:

Under Section 16(2)(c) every registered person shall be entitled to take credit of ITC on supply of goods or services to him subject to the condition that the tax charged in respect of such supply has been actually paid to the Government either in cash or through utilization of ITC admissible in respect of such supply.

It is observed that the taxpayer has not correctly availed input tax on his inward supplies on reconciliation of turnovers in GSTR-09.

Scrutiny of ITC availed:		Amt in Rs		
S.N	Description	SGST	CGST	Total
1	2	3	4	5
1	ITC in the year as per Table 8A of GSTR-09	6803981.00	6803981.00	13607962.00
2	ITC from ISD table 4A (4)	0.00	0.00	0.00
3	ITC from imports table 4A (1) + 4A (2)	0.00	0.00	0.00
4	Inward Supplies liability to reverse charge 4A (3) (other than 4A(1) & 4A(2))	0.00	0.00	0.00
5	ITC brought forward from previous FY to current FY, Table 8C of previous FY GSTR-09	0.00	0.00	0.00
6	ITC carried forward from present FY to subsequent FY, Table 8C of GSTR-09	0.00	0.00	0.00
7	Reversals in Table 4B of GSTR-3B	0.00	0.00	0.00
8	ITC Available for use in the same year (S.No 1+2+3+4+5-6-7)	6803981.00	6803981.00	13607962.00
9	ITC used in same year as per 4C of GSTR-3B	7607458.00	7607458.00	15214916.00
10	Net excess used (S.No 8-9)	803477.00	803477.00	1606954.00

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* Scrutiny of ITC reversals:

S.N c	Description	Amt in Rs.		
		SGST	CGST	Total
1	2	3	4	5
1	ITC reversed in Table 4(B) of GSTR-3B	0.00	0.00	0.00
2	ITC reversed in Table 7(I) of GSTR-09	228159.00	228159.00	456318.00
3	Excess ITC reversal showing in GSTR-09 as completed the GSTR-3B (S.No 2-1)	228159.00	228159.00	456318.00

From the above taxpayer has declared excess ITC reversal in GSTR 9 compared to ITC reversed in table 4(B) of GSTR-3B as detailed in table above.

Therefore, excess ITC of Rs. 20,63,272/- availed is required to be recovered under Section 73 of the CGST Act, 2017 along with applicable interest under Section 50 of the CGST Act, 2017 and penalty under Section 73 of the CGST Act, 2017 read with Section 122(2)(a) of the CGST Act, 2017.

TOTAL TAX PAYABLE SUMMARY				
Sl. No.	Issue	SGST	CGST	Total
1	2	3	4	5
1	Total Tax due for issues 1 to 2.	2415123.00	2415123.00	4830246.00
2	Interest	In terms of Section 50 of the CGST Act, 2017		
3	Penalty	In terms of Section 73 of the CGST Act, 2017		

4. The DRC 01A vide DIN: 20231256Y00000888A4D dated 19.12.2023 issued to the taxpayer requesting to pay tax along with interest and applicable penalty. However the taxpayer neither paid dues nor submitted any reply till now.

5. Now therefore, M/S NILGIRI ESTATES (here-in-after referred to as "Taxpayer"), situated at 2nd FLOOR, 5-4-187/3 AND 4, SOHAM MANSION, MG ROAD, SECUNDERABAD, Rangareddy, Telangana-500003, are required to Show-Cause to the Assistant/Deputy Commissioner of Central Tax, Secunderabad Division, Saljke Senate, 1st Floor, D. No. 2-4-416 & 417, Ramgopalpet, MG Road, Secunderabad 500003 within thirty days (30) from the date of issue of this notice as to why: -

- (i) an amount of Rs.27,66,974/- [Rs.13,83,487/-CGST and Rs13,83,487/-SGST] (Rupees Twenty Seven Lakhs Sixty Six Thousand Nine Hundred and Seventy Four only), as discussed supra in Para 2 should not be demanded from them under Section 73(1) of the CGST Act, 2017 and similar provisions as laid in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.
- (ii) an amount of Rs. 20,63,272 /- [Rs.10,31,636/- CGST and Rs.10,31,636/-SGST] (Rupees Twenty Lakhs Sixty Three Thousand Two Hundred and Seventy Two only), as discussed supra in Para 3 should not be demanded from them under Section 73(1) of the CGST Act, 2017 and similar provisions as laid in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.
- (iii) interest at the applicable rate should not be demanded from them on tax demanded at (i) & (ii) above under Section 50 of CGST Act, 2017 read with Section 20 of IGST Act and similar provisions under TGST Act, 2017.

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- (iv) penalty should not be imposed on them demands at (i) & (ii) above under Section 73 of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and Section 20 of IGST Act, 2017 and similar provisions under TGST Act, 2017

6. M/s. NILGIRI ESTATES are also informed that in terms of Section 73(8) of the CGST Act, 2017 and TSGST, Act, 2017, "where any person chargeable with tax under Sub-Section (1) or Sub-Section (3) pays the said tax along with interest applicable under Section 50 within thirty days (30) of issue of the notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded".

7. This notice is issued without prejudice to any other action that may be initiated against them in terms of the provisions of Central Goods and Services Tax Act, 2017 and Telangana Goods and Services Tax Act, 2017 and Rules made thereunder and/or any other law for the time being in force and enforceable in India.

8. Reliance for issuance of the notice is placed on the following documents which are already available with the taxpayer:

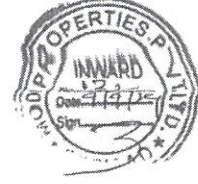
- (i) DRC-01A vide DN: 20231256Y00000888A4D dated 19.12.2023 issued by Assistant/Deputy Commissioner of Central Tax, Secunderabad Division, Salike Senate, 1st Floor, D. No. 2-4-416 & 417, Ramgopalpet, MG Road, Secunderabad 500003.
- (ii) Observation communicated by the Telangana GST Authority as per GSTR-9 and other returns filed by the taxpayer.

24.12.2023
24/12/2023
(R.SATYANARAYANA)/(R.SATYANARAYANA)
सहायक आयुक्त/Assistant Commissioner
सिकंदराबाद मण्डल/ Secunderabad Division

To
M/s-NILGIRI ESTATES
GSTIN: 36AAHFN0766F1ZA
Address: 2ND FLOOR, 5-4-187/3 AND 4,
SOHAM MANSTON, MG ROAD, SECUNDERABAD,
Rangareddy, Telangana, 500003

Copy to:

1. Superintendent of Central Tax, Ramgopalpet-II GST Range, Secunderabad GST Division - He is directed to serve the SCN on the Tax payer, obtain dated acknowledgement and submit the same to this office for record.
2. Office Copy/Spare-Copy.
3. Notice Board.



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కస్టమర్స్ రియూసెంట్రలైజ్డ్ మిషనరీస్ (అప్పీల్స్-II)
7వ అంతస్తు, GST భవన్ : LB స్టేడియం రోడ్, బషీర్ బాగ్, హైదరాబాద్, పిన్-500004
సీమాశుల్కవకేంద్రీయకర(అపీల్స్) ఆయుక్తకాకార్యాలయ
OFFICE OF THE COMMISSIONER OF CUSTOMS & CENTRAL TAX (APPEALS-II)
సాతవాత్తల, కేంద్రీయశుల్కభవన 7th Floor, Kendriya Shulk Bhavan,
ఎల్ బీ స్టేడియం రోడ్ కేసామనే, బషీర్ బాగ్, హైదరాబాద్ - 500 004
opp. L.B. Stadium, Basheerbagh, Hyderabad-500 004
Tel No. 040-23234219 / e-Mail: cgst.hydaappeals2@gov.in

అపీల్ సం: Appeal No. 15/2024(SC)GST
OIO No. 28/2023-24-SEC-ADJN-ADC(GST) dated 12.10.2023
DIN: 20240856DN0000777DFF

అపీల్ ఆదేశ ORDER-IN-APPEAL No.HYD-GST-SC-AP2-291-2024-25

తారీఖ్ Date. 19.08.2024

జారీకర్త: శ్రీరాঘవేంద్ర, आईआरएस, संयुक्त आयुक्त, केन्द्रीय कर वजी.एस.टी. (अपील्स-II)
Passed by: Sri. P DEVARAJ, IRS, Commissioner of Central Tax & GST (Appeals-II)

उद्देशिका / PREAMBLE

- जिस व्यक्ति को यह प्रतिजारी 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.
- इस आदेश से व्यक्त कोई भी व्यक्ति वस्तुएं व सेवाएं कर नियम 2017, के नियम 110 के साथ पठित केंद्रीय वस्तुएं व सेवाएं अधिनियम 2017 की धारा (1) 112 के तहत इलेक्ट्रॉनिक या अन्य माध्यम से, केन्द्रीय वस्तुएं व सेवाएं अधिनियम 2017 की धारा 109 के तहत गठित उपयुक्त अपीलीय न्यायाधिकरण के राज्य / क्षेत्र के क्षेत्राधिकार के खंडपीठ में उन मामलों में, जिनमें अपूर्ति की जगह, विवाद-ग्रस्त विषयों में से एक न हो, अपील दायर कर सकता है। जहां अपूर्ति 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 अपील कर्ता 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 (5) 110 के अंतर्गत विहित शुल्क तथा अन्य संगत दस्तावेज संलग्न करके, 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.
- वस्तुएं व सेवाएं कर नियम 2017, के नियम 111 के साथ पठित केंद्रीय वस्तुएं व सेवाएं अधिनियम 2017 की धारा (3) 112 के तहत आयुक्त द्वारा प्राधिकृत अधिकारी इलेक्ट्रॉनिक या अन्य माध्यम से, केन्द्रीय वस्तुएं व सेवाएं अधिनियम 2017 की धारा 109 के तहत गठित अपीलीय न्यायाधिकरण के राज्य / क्षेत्र के क्षेत्राधिकार के खंडपीठ में उन मामलों में, जिनमें अपूर्ति की जगह, विवाद-ग्रस्त विषयों में से एक न हो, अपील दायर कर सकता है। जहां अपूर्ति 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 दस्तावेज संलग्न हों। विभागीय अपील के प्रत्याक्षेप, वस्तुएं व सेवाएं अधिनियम 2017 की धारा (5) 112 के साथ पठित नियम (2) 110 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।

OIA No.HYD-GST-SC-AP2-291-2024-25 Date. 19.08.2024

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.

(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.

राजस्व अधिकरण के मामले में मद्रास उच्च न्यायालय के आदेश के मद्देनजर अपील न्यायाधिकरण का गठन नहीं किया गया है। iv) भारत संघ और इस लिए अपील उस्तारीख से तीन महीने के भीतर दायर नहीं की जा सकती, जिस दिन के खिलाफ अपील करने का आदेश दिया गया है। अधिनियम के उपर्युक्त प्रावधान को प्रभावी करने में उत्पन्न होने वाली कठिनाई को दूर करने के लिए, सरकार ने परिषद की सिफारिशों पर केंद्रीय वस्तु एवं सेवा कर (कठिनाईयों का नौवां निष्कासन) आदेश, 2019 दिनांक 03.12.2019 जारी किया है। यह उक्त आदेश के माध्यम से प्रदान किया गया है कि टिब्युनल के पास अपील तीन महीने के भीतर (सरकार द्वारा अपील के मामले में छह महीने) आदेश या तिथि के संचार की तारीख से राष्ट्रपति या राज्य अध्यक्ष के रूप में की जा सकती है। मामला, अपील न्यायाधिकरण के कार्यालय में प्रवेश कर सकता है, जो भी बाद में हो।

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 उस के द्वारा स्वीकार किया गया है तथा (बी) उक्त आदेश, जिस के 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 (1) 112 के तहत आवेदन पत्र के साथ रुपए 5 (मूल्य) केवल पांच रुपये (का गैर न्यायिक कन्यायालय शुल्क टिकट हो)। नियम (5) 110 के साथ पठित धारा (10) 112 के अनुसार अपील न्यायाधिकरण के समक्ष अपील / अपील प्रत्यावर्तन हेतु प्रस्तुत आवेदन के साथ अधिकतम रु. पच्चीस हजार रुपये के अध्यक्षीन कर / इनपुट टैक्स क्रेडिट के प्रति एक लाख रुपये 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 उपधारा 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.

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BEFORE THE COMMISSIONER OF CENTRAL TAX, APPEALS-II), HYDERABAD
APPEAL No. 15/2024(SC)GST

M/ Nilgiri Estates,
 5-4-187/3, 2nd Floor, Soham Mansion,
 M.G. Road, Secunderabad,
 Telangana – 500 003.

-Appellant

Vs.

The Additional Commissioner of Central Tax,
 Secunderabad GST Commissionerate,
 Lakdi-ka-pul, Hyderabad

-Respondent

This proceeding arise out of an appeal filed by M/s. Nilgiri Estates, 5-4-187/3, 2nd Floor, Soham Mansion, M.G. Road, Secunderabad, Telangana – 500 003, (hereinafter referred to as "Appellant") against Order in Original No. 28/2023-24-SEC-ADJN-ADC(GST) dated 12.10.2023, (hereinafter referred to as "Impugned Order") issued by Additional Commissioner of Central Tax, Secunderabad GST Commissionerate, Hyderabad (hereinafter referred to as respondent).

2. The accounts of the taxpayer were audited by the Audit II Commissionerate and raised demand notice vide dated 19.05.2023. After following due course of law, the respondent vide the impugned order No. 28/2023-24-SEC-ADJN-ADC(GST) dated 12.10.2023, confirmed the following demands along with other demands under section 73 of the CGST Act, 2017 / TSGST Act, 2017, along with interest under Section 50 of the CGST Act, 2017 / TSGST Act, 2017.

- i. Short payment of GST by adopting wrong method of valuation;
- ii. Short payment of tax due to difference in tax rate;
- iii. Short payment of GST on comparison of tax liabilities declared in GSTR 1 vs GSTR 3B;
- iv. Excess availment of input tax credit compared with GSTR 2A; and
- v. Irregular availment of input tax credit on blocked credits.

3. Aggrieved by the decision of the respondent on the above demands, applicant filed the present appeal on the following grounds.

- i. They are entered into two separate agreements, one for sale of land and one for constructions of villa on such sold land. Hence the valuation adopted by the department is not correct;
- ii. Short payment of tax is not correct in as much as they have issued debit note and also paid part of the tax under DRC-03;
- iii. Respondent has not considered the excess paid tax in previous tax periods and considered negative entries only;
- iv. Respondent has not considered the tax periods where input tax credit is availed less than amount available under GSTR 2A; and
- v. The reversal of blocked credit made by them through DRC-03 is not considered by the respondent.

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4. The authorised representative of the taxpayer respondent appeared for personal hearing and submitted that the actual land value has to be adopted for valuation. The department in the differences in negative are considered and ignored the positive differences i.r.o., GSTR 1 vs. 3B and GSTR 2A vs., 3B on wrong adoption of rate of tax, they have paid Rs.9.98 Lakhs instead of Rs.19.82 Lakhs.

5. I have gone through the facts of the case, the statement of facts, ground of appeal filed by the appellant and submissions made during personal hearing held in the case. I find the issues to be decided as under;

- (a) Whether the method of valuation adopted by the appellant is correct;
- (b) Whether the differential tax on account of difference in rate of tax confirmed is correct and legal;
- (c) Whether the differential tax arrived on account of difference in GSTR 1 and GSTR 3B correct;
- (d) Whether the confirming the demand of input tax credit availed in excess of GSTR 2A and Blocked Credits is correct and legal;

6. The applicant is a developer and is into construction of villas. Demand of short payment of GST was raised by the department on the method of valuation adopted by the appellant is not in conformity with Sl. No.2 of the Notification No.11/2017 (Central Tax (Rate) dated 28th June, 2017. It is noticed from the sample sale deed and agreement of construction submitted by the appellant (Sl. No.6 of Annexure-I i.e., Mr. P.V. Subramanyam) that the appellant is entering into two different deeds one for sale of plot and the other for construction of villa on such sold land. By entering into the sale deed for plot the taxpayer is transferring the title of the plot to the prospective buyer, and as per the agreement of construction the appellant is constructing villa on such sold plot.

7. The respondent considered both the transactions together and adopted the valuation as provided under Notification No.11/2017– Central Tax (Rate) dated 28th June, 2017, as amended. Sl. No.2 of the Notification, which provides valuation of 'Construction Service' as under;

"2. In case of supply of service specified in column (3) of the entry at item (i) against serial no. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. –For the purposes of paragraph 2, "total amount" means the sum total of, -(a) consideration charged for aforesaid service; and (b) amount charged for transfer of land or undivided share of land, as the case may be"

8. The valuation is provided in case of supply of construction service 'involving transfer of property in land or undivided share of land', and in the present case no such activity is being undertaken by the appellant as per the agreement for construction. The construction service agreed to be provided under 'agreement of construction' is not

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transferring any land to the prospective customers. The transaction of land is separate from the transaction of construction of villa. Hence, the method provided under Sl.No.2 to the Notification No.11/2-17-Central Tax (Rate) dated 28th June, 2017, as amended, cannot be applied to the present case and therefore, the impugned order to that extent is not correct.

9. It is noticed by the audit that the appellant has paid GST @12% as against the tax rate of @18% on the construction services provided by them and differential tax of Rs.19,82,815/- was demanded. Instead of debating the applicability of rate of tax the appellant has made submissions with regard to the tax liability declared in GSTR I and actual tax payment made in GSTR 3B. Hence, the contentions of the taxpayer are out of place and cannot be considered. I am in agreement with the decision of the respondent to that extent.

10. Difference in tax liability declared in GSTR 1 and actual payment of tax made during the tax periods June, 2018 and March, 2019 was noticed and demand notice was issued for Rs.27,16,554/-. Respondent has confirmed without considering the submissions made by the appellant. The appellant has submitted the difference of tax liability declared in GSTR 1 and actual amount of tax paid in GSTR 3B for the period of audit. In certain months the appellant has paid more than what they have declared in GSTR 1 and in certain tax periods they have paid less than what they have declared in GSTR 1. Respondent without considering the excess payments made in earlier tax periods and has confirmed the demand. Board has categorically clarified vide para 4 of the Circular 26/26/2017- GST dated 29th December, 2017 that the excess paid tax in a particular tax period can be adjusted to the tax liability of subsequent tax periods. After adjusting such excess paid tax prior to June, 2018 and March, 2019 against the short payment of tax noticed for the said particular tax periods, the differential tax liability works out to Rs.5,15,478/- (Rs.2,57,739/- SGST of Rs.2,57,739/-). I, therefore, reduce the demand to Rs.5,15,478/-.

10.1. Appellant submitted that they have paid said differential tax vide DRC-03 dated 9th August, 2019, whereas it is noticed from the subject DRC-03 that the tax liability pertains to the tax period December, 2018, hence the same cannot be considered as payment towards the differential tax of Rs.5,15,478/-.

11. As regards to excess availment of input tax credit over and above GSTR 2A the appellant submitted that the impugned order has considered only those tax periods where there is less reflection of input tax credit in GSTR 2A and ignored where there is excess reflection of input tax credit. The appellant has recalculated the irregular input tax credit and arrived at Rs.17,78,059/- considering the input tax credit availed in excess and less over GSTR2A, for the period covered by the audit, i.e., 2017-18 to 2019-20. The contention of the taxpayer cannot be considered in as much as –

- the availment of credit has to be compared on financial year basis;
- the time lines have been prescribed under Sec.16 of the CGST Act, 2017 in order to avail the input tax credit of particular financial year in subsequent financial year and which cannot be verified with the information submitted by the appellant;

11.2. Appellant further contended that GSTR 2A cannot be taken as a basis to deny the input tax credit during the prevailing period. Before availing the input tax credit, the appellants are required to make sure that the conditions prescribed under Sec.16 of the CGST Act, 2017 are fulfilled, and one of the conditions prescribed under sub section (c) is that the tax charged in respect of such supply has been actually paid to the Government. Mere possession of invoice and receipt of goods is not sufficient to avail the input tax credit by the appellant. They have to make sure that the tax charged has been paid by the supplier or otherwise. The details of outward supplies declared by the suppliers and their GSTR3B return filing status is made available to all the taxpayers in the common portal in the form of GSTR2A. The purpose of making such statement available to the taxpayers is to facilitate the taxpayers in taking reasonable steps before availing the input tax credit charged by their suppliers. If any invoice is reflecting in the GSTR 2A and the filing status of GSTR3B is positive it can be construed that the supplier has paid the tax charged in respect of such invoices, vis versa, wherever the invoices are not reflected in the GSTR2A or the supplier's filing status of GSTR3B is negative, such credit is considered as ineligible in as much as the same is not credited to the Government. Therefore, the field formations are using GSTR 2A as a tool to verify the eligibility of input tax credit availed by the taxpayers.

11.3. Instead of disputing the legality of comparing with GSTR 2A the appellant would have come up with detailed statement of invoices against which they have availed the input tax credit, matching with their GSTR3Bs, and would have explained the eligibility of excess input tax credit. To deal with the differences in input tax credit availed in GSTR 3B returns compared to GSTR 2A statement Board has issued circulars 183/15/2022-GST 27th December, 2022 and 193/05/2023-GST dated 17th July, 2023. The appellant would have made use of such circulars and come up with a proof to consider the eligibility of differential input tax credit confirmed in the impugned order. In the absence of which I agree with the confirmation of demand by the respondent. Appellant cannot ignore that the burden of proof of eligibility of input tax credit lies with them, as stipulated under Sec.155 of the CGST Act, 2017.

12. Coming to irregular availment of input tax credit of Rs.88,320/-, which was availed on the inputs that are blocked under Sec.17(5) of the CGST Act, 2017. The appellant is not disputing the fact availing such input tax credit, and are claiming that they have reversed such input tax credit under DRC-03 dated 7th January, 2020. The observations of the respondent are very much true and the said DRC-03 was pertaining to the specific tax period i.e., September, 2018 whereas the demand pertain to period 2017-18 to 2019-20. Hence the payment made under the subject DRC-03 cannot be considered as reversal of irregular input tax credit related to blocked credit of Rs.88,320/-. Hence the submissions of the appellant cannot be considered.

13. Appellant contended the confirmation of demands under Sec.74 of the CGST Act, 2017, and it is noticed that the same is invoked in cases of short payment of tax on account of wrong adoption of rate of tax and irregular availment of input tax credit on blocked credit. Appellant has not disputed both the demands on its merits, it implies that they are in agreement with the irregularity. In the era of self-assessment, the taxpayers are expected to take all reasonable steps in assessing the tax and eligible input tax credit, whereas the appellant has mis-declared the rate of tax as 12% as against 18% and blocked credit as eligible input tax credit. But for the auditing the accounts of the taxpayer the such discrepancies would have gone unnoticed causing loss to the exchequer. Hence the respondent is correct in applying the law.