

Modi Realty Miryalguda LLP

Date: 23-10-2025

To
The Assistant Commissioner State Tax,
M.G. Road - S.D. Road Circle, 4th floor,
Pavani Prestige, Ameerpet,
Hyderabad – 500 016

Dear Sir,

Sub: Request for stay of recovery proceedings in view of pending appeal against the Order-in-Original Ref No. ZD361223015215X dated 08-12-2023 for the FY 2017-18 pertaining to M/s. Modi Realty (Miryalaguda) LLP vide (GSTIN: 36ABCFM6774G2ZZ)

Ref:

- a. Notice for payment of arrears received via email dated 18-10-2025
 - b. Appeal filed vide APL-01 dated 06-04-2024 against the OIO Ref No. ZD361223015215X dated 08-12-2023
 - c. OIO vide Ref No. ZD361223015215X dated 08-12-2023 Pertaining to M/s. Modi Reality (Miryalaguda) LLP for the period July 2017 to March 2018.
1. We, M/s. Modi Reality (Miryalaguda) LLP having registered office at Soham Mansion, 2nd Floor, 5-4-187/3 and 4, M.G Road, Secunderabad, Ranga Reddy, Telangana, 500003 are registered under Central Goods and Service Tax Act, 2017 vide GSTN 36ABCFM6774G2ZZ.
 2. With reference to the above-mentioned recovery notice dated 18-10-2025, which has been issued despite the statutory appeal against the original order being pending before the Appellate Authority, we hereby seek an immediate stay on all recovery proceedings. (A Copy of recovery notice is attached as **Annexure-I**).
 3. In this regard, we submit that aggrieved by the Order-in-Original No. ZD361223015215X dated 08-12-2023, we had filed an appeal dated 06-04-2024. (The Copy of APL-01 enclosed as **Annexure-II** and OIO dated 08-12-2023 is enclosed as **Annexure-III**).
 4. In compliance with the mandatory pre-deposit requirement under Section 107(6) of the CGST Act, 2017, we have already deposited 10% of the disputed tax amount aggregating to Rs. 53,005/-. The details of the pre-deposit paid are duly reflected in the appeal filed in Form GST APL-01 dated 06-04-2024 is enclosed as **Annexure-II**.



[Handwritten Signature]



Modi Realty Miryalguda LLP

5. After the filing of the appeal and the personal hearing conducted, the Appellate Authority has neither uploaded the Order-in-Appeal (Form GST APL-04) on the common portal nor physically communicated any final order to us. Therefore, the appeal proceedings are definitively still pending before the Appellate Authority, and no final outcome has been determined or communicated.

6. The initiation of recovery in this scenario is legally untenable due to the deemed stay provision under the law. We wish to draw your kind attention to Section 107(7) of the Central Goods and Services Tax Act, 2017, which states

"Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed."

Since we have duly fulfilled the mandatory condition of making the pre-deposit of 10% of the disputed tax amounting to Rs. 53,005/- as required under Section 107(6), the recovery of the balance disputed demand is automatically and statutorily stayed by operation of law.

7. This legal position has been consistently upheld by various high court, we wish to place reliance on following judgements:

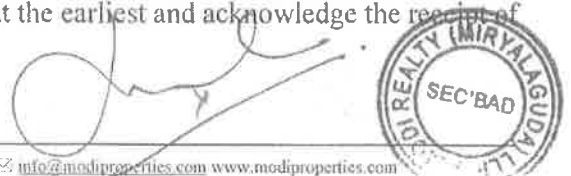
a. **The Hon'ble Madras High Court in the case of M/s. Chaizup Beverages LLP v. Deputy Commissioner of GST & Central Excise- 2019 (25) G.S.T.L. 26 (Mad.)** ruled that *"..On making mandatory pre-deposit of 10% for filing appeal, recovery of balance amount of demand is automatically stayed - Section 107 of Central Goods and Services Tax Act, 2017 - Article 226 of Constitution of India.."*

b. **Tvl. R. Selvarathinam v. The Deputy State Tax Officer-II, Villivakkam Assessment Circle, Chennai,- (2024) 22 Centax 456 (Mad.)** wherein it held that

"..As per provisions, once assessment order is passed and any amount is to be recovered from assessee, proper officer has to initiate recovery proceedings if assessee does not pay said amount within three months from date of service of such order - However, in instant case, since assessee had filed appeal against assessment order, recovery proceedings should be deferred till disposal of appeal.."

8. In light of the foregoing, the recovery notice dated 18-10-2025 is illegal and contrary to the express provisions of Section 107(7). We therefore request you to immediately stay all the recovery proceedings with respect to the appeal filed vide APL-01 dated 06-04-2024 against the OIO Ref No. ZD361223015215X dated 08-12-2023 for the subject demand until the pending appeal is finally decided and the Order-in-Appeal is communicated.

Kindly notify us of the outcome or any further requirements at the earliest and acknowledge the receipt of the above.



Modi Realty Miryalguda LLP

Thanking you,
Yours truly

For M/s. Modi Reality (Miryalaguda) LLP

Authorized Signatory



Enclosures:

1. Notice for payment of arrears received via email dated 18-10-2025
2. Appeal filed vide APL-01 dated 06-04-2024 against the OIO Ref No. ZD361223015215X dated 08-12-2023
3. OIO vide Ref No. ZD361223015215X dated 08-12-2023 Pertaining to M/s. Modi Reality (Miryalaguda) LLP for the period July 2017 to March 2018.

10/27/25, 10:43 AM

Email - Abhijit Kiran Vadakattu - Outlook
Assistant Commissioner (ST),
M.G. Road - S.D. Road Circle,
4th floor, Pavani Prestige,
Anneerpet, Hyderabad - 500 016.

E-mail: ac_mgsd@tgct.gov.in

Date: 18-10-2025

GSTIN: 36ABCFM6774G2ZZ

Legal/Trade Name: MODI REALTY (MIRYALAGUDA) LLP

NOTICE FOR PAYMENT OF ARREARS

Sub: - GST Act, 2017 - M.G. Road - S.D. Road Circle - M/s. MODI REALTY (MIRYALAGUDA) LLP
- Arrears of Tax/Penalty/Interest/Other due - Notice issued for
payment of Tax /Penalty/Interest/Other due - Reg.

M/s. MODI REALTY (MIRYALAGUDA) LLP, GSTIN: 36ABCFM6774G2ZZ are hereby requested to pay the following arrear amounts immediately.

Tax Period	Order reference No.	Date	IGST	CGST	SGST
Jul-17 To Mar-18	ZD361223015215X	08-12-2023	64339	206352	206352

The above amounts are arrived on Assessment / scrutiny of returns and the same were assessed for the above years/tax periods and were sent to them. But so far the payments are not received.

Final opportunity is provided to pay the above arrears within (7) days of receipt of this notice. In case if any appeal is filed or the amount of the arrears as mentioned above, has already been paid, proof of payment / appeal particulars shall be provided to this office. You are further informed that if you do not pay the arrears, coercive steps will be initiated to recover the arrears by taking actions i.e., Bank attachments, third party attachment, recovery under RR Act etc.

Sd/-
Assistant Commissioner (ST),
M.G. Road - S.D. Road Circle,

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

1 GSTIN/Temporary ID/UIN - 36ABCFM6774G2ZZ
2 Legal Name - MODI REALTY (MIRYALAGUDA) LLP
3 Trade Name - MODI REALTY (MIRYALAGUDA) LLP
4 Address - SOHAM MANSION, 2ND FLOOR, 5-4-187/3
AND 4, M.G ROAD, SECUNDERABAD,
Rangareddy, Telangana, 500003

Order Type -

Demand Order

5 Order No - ZD361223015215X Order Date - 08/12/2023
6 Designation and address of the officer passing the order appealed against Assistant Commissioner and M.G.ROAD -
S.D.ROAD:Begumpet:Telangana
Demand Id - ZD361223015215X
7 Date of communication of the order to be appealed against - 08/12/2023
8 Name of the authorised representative - SOHAM MODI[ABMPM6725H]

Category of the case under dispute -

1	Incorrect admissibility of input tax credit of tax paid or deemed to have been paid
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9 Details of Case under dispute

(i) Brief issue of case under dispute - Refer to Annexure
(ii) Description and clarification of goods/ services in dispute - Refer to Annexure
(iii) Period of Dispute - From - 01/07/2017 To - 31/03/2018

(iv) Amount under Dispute

Description	Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)
Tax/Cess	229280	229280	71488	0	530048
Interest	0	0	0	0	0
Penalty	0	0	0	0	0
Fees	0	0	0	0	0
Other Charges	0	0	0	0	0

(v) Market value of seized goods - Refer to Annexure

10 Whether the appellant wishes to be heard in person - Yes/No Refer to Annexure
11 Statement of facts - Refer to Annexure
12 Grounds of appeal - Refer to Annexure
13 Prayer - Refer to Annexure

14 Amount Of Demand created/ admitted/ disputed

Description	Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Amount of demand created (A)	Tax/Cess	229280	229280	71488	0	530048
	Interest	0	0	0	0	0
	Penalty	0	0	0	0	0
	Fees	0	0	0	0	0
	Other Charges	0	0	0	0	0
Amount of demand admitted (B)	Tax/Cess	0	0	0	0	0
	Interest	0	0	0	0	0
	Penalty	0	0	0	0	0
	Fees	0	0	0	0	0
	Other Charges	0	0	0	0	0
Amount of dispute (C)	Tax/Cess	229280	229280	71488	0	530048
	Interest	0	0	0	0	0
	Penalty	0	0	0	0	0
	Fees	0	0	0	0	0
	Other Charges	0	0	0	0	0

15 Details of payment of admitted amount and pre-deposit -

Pre-Deposit % of Disputed Tax/Cess - 10%

(a) Details of payment required

Description	Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Admitted Amount	Tax/Cess	0	0	0	0	0
	Interest	0	0	0	0	0
	Penalty	0	0	0	0	0
	Fees	0	0	0	0	0
	Other charges	0	0	0	0	0
Pre-deposit (10% of Disputed Tax/Cess)	Tax/Cess	22928	22928	7149	0	53005

(b) Details of payment of admitted amount and pre-deposit

Description	Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Amount Paid	Tax/Cess	22928	22928	7149	0	53005
	Interest	0	0	0	0	0
	Penalty	0	0	0	0	0
	Fees	0	0	0	0	0
	Other Charges	0	0	0	0	0

(c) Details of amount payable towards admitted amount and pre-deposit

Description	Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Balance payable	Tax/Cess	0	0	0	0	0
	Interest	0	0	0	0	0
	Penalty	0	0	0	0	0
	Fees	0	0	0	0	0
	Other Charges	0	0	0	0	0

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

Refer to Annexure

17 If 'Yes' in item 16 -

(a) Period of delay -

Refer to Annexure

(b) Reason for delay -

Refer to Annexure

- 18 Place of supply wise details of 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	Others	Total
1	2	3	4	5	6	7
Telangana	Admitted Amount[in the table in sub-clause(a) of clause 15(item(a))]	0	0	0	0	0

Upload Supporting Documents (Relied upon), if any -

CONDONATION	MODI REALTY_CONDONATION LETTER.PDF
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Verification

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

Place: Hyderabad

Date: 06/04/2024

Name of the Applicant

MODI REALTY (MIRYALAGUDA) LLP

Form GST APL - 01

Form of Appeal to Appellate Authority

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

[See rule 108(1)]

**BEFORE APPELLATE JOINT COMMISSIONER (ST), PUNJAGUTTA DIVISION, 5TH
FLOOR, O/O COMMISSIONER OF COMMERICAL TAXES, OPPOSITE
GANDHIBHAWAN, NAMPALLY, HYDERABAD-1.**

(1) GSTIN/ Temporary ID/ UIN	36ABCFM6774G2ZZ			
(2) Legal Name of the Appellant	M/S. MODI REALTY (MIRYALAGUDA) LLP			
(3) Trade name, if any-	M/S. MODI REALTY (MIRYALAGUDA) LLP			
(4) Address	SOHAM MANSION, 2ND FLOOR, 5-4-187/3 AND 4, M.G. ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003.			
(5) Order No.	ZD361223015215X	Order Date	08.12.2023	
(6) Designation and address of the officer passing the order appealed against	ASSISTANT COMMISSIONER (ST), M.G. ROAD-S.D.ROAD CIRCLE, BEGUMPET DIVISION			
(7) Date of communication of the order appealed against	08.12.2023			
(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 Anushika Pride, Road No. 12, Banjara Hills, Hyderabad-500034 Email: laxman@hnaindia.com Mob: +91 89781 14341			
(9) Details of the case under dispute				
i. Brief issue of the case under dispute	ITC on input goods and input services inadvertently claimed as RCM input in Form GSTR-3B.			
ii. Description and classification of goods/services in dispute	NA			
iii. Period of dispute	July 2017 - March 2018			
iv. Amount under dispute				
Descripti On	Central tax	State/UT tax	Integrated tax	Cess
a. Tax/Cess	2,29,280	2,29,280	71,488	NA
b. Interest	NA	NA	NA	NA
c. Penalty	NA	NA	NA	NA
d. Fees	NA	NA	NA	NA
e. Other charges	NA	NA	NA	NA
TOTAL				NA

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HYDERABAD

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	Cess	Total amount
Amount of demand created (A)	2,29,280/-	2,29,280/-	71,488/-	NA	5,30,048/-
a) Tax/Cess					
b) Interest	NA	NA	NA	NA	NA
c) Penalty	NA	NA	NA	NA	NA
d) Fees	NA	NA	NA	NA	NA
e) other charges	NA	NA	NA	NA	NA
Amount of demand admitted (B)	NA	NA	NA	NA	NA
a) Tax/Cess					
b) Interest	NA	NA	NA	NA	NA
c) Penalty	NA	NA	NA	NA	NA
d) Fees	NA	NA	NA	NA	NA
e) other charges	NA	NA	NA	NA	NA
Amount of demand disputed (C)	2,29,280/-	2,29,280/-	71,488/-	NA	5,30,048/-
a) Tax/Cess					
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

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

a) Details of payment required

Particulars	Central tax	State/UT tax	Integrated tax	Cess	Total
a) Admitted amount					
Tax/Cess	NA	NA	NA	NA	NA
Interest	NA	NA	NA	NA	NA
Penalty	NA	NA	NA	NA	NA
Fees	NA	NA	NA	NA	NA
Other charges	NA	NA	NA	NA	NA

M. J. S. 

b) Pre-Deposit (10% of disputed tax or 25Cr. Whichever is lower)	Tax/Cess	22,928/-	22,928/-	7,148/-	NA	53,004/-
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b) Details of payment of admitted amount and pre-deposit (pre-deposit 10% of the disputed tax and cess)

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

(17) If 'Yes' in item 16 -

a. Period of delay - 28 days

b. Reasons for delay - enclosed as an application

(18) Place of supply wise details of 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	NA	NA	NA	NA	NA	NA


Appellant


ANNEXURE-A

STATEMENT OF FACTS

- A. M/s. Modi Realty (Miryalaguda) LLP, (hereinafter referred as "Appellant") located at SOHAM MANSION, 2ND FLOOR, 5-4-187/3 AND 4, M.G ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003 is inter alia engaged in Works Contract sector and are registered with Goods and Services Tax department vide GSTIN No: 36ABCFM6774G2ZZ
- B. Appellant submits that the appellant is regularly discharging GST liability and filing periodical returns. Appellant has also filed the Annual return for the the period 2017-18.
- C. Appellant on 30.09.2023 has received a Show Cause Notice from department issued under Section 73 vide Reference No. ZD360923043336 for the tax period July 2017 to March 2018 proposing to demand CGST of Rs. 2,29,280/- and SGST Rs. 2,29,280/- stating there is a difference between the RCM liability discharged and RCM input claimed in the Form GSTR 3B (Copy enclosed as Annexure ___).
- D. Consequently, the department has issued order under Section 73 in form DRC-07 for the Financial Year 2017-18 vide Reference No. ZD360923043336A dated 08.12.2023 (Copy of order enclosed as (Annexure-2) and confirming the demand stating that excess RCM ITC of Rs. 2,29,280/- each under CGST and SGST respectively and Rs. 71,488/- under IGST claimed against the RCM output liability discharged.

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.



ANNEXURE-B
GROUND OF APPEAL

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

S. No.	Particulars	Amount
1.	Excess RCM ITC claimed against the RCM liability discharged in GSTR-3B.	5,30,048/-

In Re: No excess availment of ITC

4. Appellant submits that the impugned order has demanded payment of the excess RCM ITC of Rs. 5,30,048/- stating that the same has not been discharged as RCM liability in GSTR-3B in the month of Dec'17.
5. In this regard, the noticee submits that the only basis on which the impugned notice has been issued is on the account of the mere inadvertent error while availing the ITC by the Noticee i.e., availing ITC under inward supplies liable to reverse charge under Table 4A(3) instead of all other ITC under Table 4A(5) in Form GSTR 3B. This inadvertent error has been considered in various judicial pronouncements and the approach has always been positive in favour of the assessee. It is further submitted that when there is no undue benefit which has been availed by the Noticee, it is apparent/prima facie, the issuance of notice on such ground, i.e., by denying the credit to the Noticee is not valid in law.

The extracts of GSTR 3B for the month of Dec'17 has been reproduced below:



Table	IGST	CGST	SGST	Total
4A(3) Inward supplies liable to RCM	71,488/-	2,29,280/-	2,29,280/-	5,30,048/-
4A(5) All other ITC	0	0	0	0

The correct availment of ITC for the month of Dec'17 should have been as below:

Table	IGST	CGST	SGST	Total
4A(3) Inward supplies liable to RCM	0	0	0	0
4A(5) All other ITC	71,488/-	2,29,280/-	2,29,280/-	5,30,048/-

The above inappropriate disclosure of availment of ITC is due to a bonafide error. However, in the month of Aug'17, ITC has been claimed appropriately both under RCM in Table 4A(3) and all other ITC in Table 4A(5). The same has been attached for further reference.

6. In this regard, Noticee submits that there is no extra benefit which was availed by the Noticee. Hence, the allegation of the impugned notice needs to be dropped.
7. Noticee further submits that it is settled law that the substantial benefit shall not be denied due to non-fulfilment of procedural conditions and the same was also held by the Hon'ble Supreme Court in various decisions. Noticee submit that while drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute, the Hon'ble Supreme Court in case of Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner - 1991 (55) E.L.T. 437 (S.C.) held that *"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to*



the non-observance of all conditions irrespective of the purposes they were intended to serve."

8. Noticee further submits that it is settled law that substantive benefit cannot be denied for procedural lapses. The procedure has been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement is the eligibility of the ITC. As long as this requirement is met other procedural deviations can be condoned. It is further submitted that any procedural lapse per se does not disentitle the substantial benefit in view of settled law that substantial benefit cannot be denied resorting to the non-compliance with the procedural law. In this regard, reliance is placed on
- a. *Sambhaji v. Gangabai* — 2009 (240) E.L.T. 161 (S.C.) wherein it was held that "Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. A procedural prescription is the handmaid and not the mistress, a lubricant, not resistant in the administration of justice."
 - b. *Commissioner of Central Excise, Madras v. Home Ashok Leyland Ltd.*, reported in 2007 (210) E.L.T. 178 (S.C.) 2007-TIOL-42-SC-CX has held that "Rule 57A recognizes the right of the manufacturer to take credit for the specified duty paid on the inputs. Whereas Rule 57E is a procedural provision. Rule 57E being procedural and classificatory would not affect the substantive rights of the manufacture of the specified final product to claim the Modvat credit for the duty paid on the inputs subsequent to the date of the receipt of those inputs."
 - c. *Hospira Health Care India P. Ltd. v. Development Commissioner, MEPZ, SEZ & Heous, Chennai*, reported in 2016 (340) ELT 668 (Madras) 2016-TIOL-3237-HC-MAD-CUS, has held that a procedure should not run contrary to the substantive right in the policy. If the procedural norms are against the policy, then the policy will prevail and the procedural norms to the extent they are in conflict with the policy, are liable to be held bad in law.
 - d. *Global Sugar Ltd. v. Commissioner of Central Excise, Kanpur*, reported in 2016 (334) E.L.T. 604 (Allahabad) 2016-TIOL-969-HC-ALL-CX, has held that Rule 57T of the Rules is only procedural in nature. The Modvat credit cannot be denied on a technical ground that the procedure for availing Modvat credit was not followed at the relevant moment of time. Hence, we



kindly request your good self to consider the above and let us know if anything is required in this regard.

In Re: Interest and Penalties are not imposable:

9. Appellant submits that Appellant is of vehement belief that the demand proposed in the impugned order are not payable, therefore, the question of interest and penalty does not arise. Further, it is a natural corollary that when the principal is not payable there can be no question of paying any Penalty as held by the Supreme Court in *Prathiba Processors Vs UOI*, 1996 (88) ELT 12 (SC).
10. Further, Appellant submits that the impugned order had not discharged the burden of proof regarding the imposition of the penalty under CGST Act, 2017. In this regard, wishes to rely on the judgment in the case of *Indian Coffee Workers' Co-Op. Society Ltd Vs C.C.E. & S.T.*, Allahabad 2014 (34) S.T.R 546 (All) it was held that *"It is unjustified in absence of discussion on fundamental conditions for the imposition of penalty under Section 78 of Finance Act, 1994"*.
11. Appellant submits that Section 73(11) of the CGST Act, 2017 which provides for penalty in case of non-payment of self-assessed tax reads as follows:
(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax
From the above referred sub-section, the penalty is applicable only when any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax. However, in the instant case the Appellant has paid the self-assessed tax and there is no delay in payment of tax. Hence, the penalty under Section 73(11) is not applicable in the instant case.
12. Appellant submits that the Supreme Court in case of *CIT Vs Reliance Petro Products Pvt Ltd (SC)* 2010 (11) SCC (762) while examining the imposition of penalties under Section 271(1)(c) of Income Tax Act, 1961 held that penalties are not applicable in similar circumstances.
13. Appellant submits that from the above referred decision of the Supreme Court, penalties cannot be imposed merely because the Appellant has claimed certain



ITC which was not accepted or was not acceptable to the revenue when the Appellant has acted on bonafide belief that the ITC is eligible. In the instant case also, Appellant has availed the ITC on bonafide belief that the same is eligible which was not accepted by the department. Therefore, in these circumstances the imposition of penalties is not warranted and the same needs to be set aside.

14. Appellant submits that it is pertinent to understand that the Supreme Court in the above referred case has held that the penalties shall not be imposed even though the mens rea is not applicable for imposition of penalties.

15. 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 ITC availed by them are eligible, thus, penalties shall not be imposed. Further, the government has been extending the due dates & waiving the late fees for delayed filing etc., to encourage compliance and in these circumstances imposition of penalties for claiming ITC on bonafide belief is not at all correct and the same needs to be set aside.

16. In addition to above, Appellant submits that where an authority is vested with discretionary powers, discretion must 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."



17. 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. Penalties 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 consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out.*
18. 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 that there is a clear finding by the authorities below that this case does not warrant the imposition of penalty. The respondent’s Counsel has also relied upon the decision of the Supreme Court in the case of M/s. Pratibha Processors v. Union of India reported in 1996 (88) E.L.T. 12 (S.C.) that penalty ordinarily levied for some contumacious conduct or a deliberate violation of the provisions of the statute.”* Hence, Penalty cannot be imposed in the absence of deliberate defiance of law even if the statute provides for a penalty.



19. 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."

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

- a. Bhargava Motors Vs UOI 2019 (26) GSTL 164 (Del) wherein it was held that *"The GST system is still in a 'trial and error phase' as far as its implementation is concerned. Ever since the date the GSTN became operational, this Court has been approached by dealers facing genuine difficulties in filing returns, claiming input tax credit through the GST portal. The Court's attention has been drawn to a decision of the Madurai Bench of the Madras High Court dated 10th September, 2018 in W.P. (MD) No. 18532/2018 (Tara Exports v. Union of India) [2019 (20) G.S.T.L. 321 (Mad.)] where after acknowledging the procedural difficulties in claiming input tax credit in the TRAN-1 form that Court directed the respondents "either to open the portal, so as to enable the petitioner to file the TRAN-1 electronically for claiming the transitional credit or accept the manually filed TRAN-1" and to allow the input credit claimed "after processing the same, if it is otherwise eligible in law*
- b. Bharti Airtel Ltd Vs. UOI 2020 (5) TMI 169 - DELHI HIGH COURT;
- c. The Tyre Plaza Vs UOI 2019 (30) GSTL 22 (Del);
- d. Kusum Enterprises Pvt Ltd Vs UOI 2019-TIOL-1509-HC-Del-GST;

21. Appellant submits that from the above-referred case laws, it is clear that Appellant has not wilfully misstated any facts, therefore, the imposition of penalties is not warranted.



In Re: Impugned Order is not valid:

Impugned order is time barred and Notification No. 09/2023-C.T dated 31.03.2023 is bad in law:

22. Appellant 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 2017-18, the annual return due date falls on 07.02.2020 and the 3 years' time limits expires by 07.02.2023 however citing the difficulties caused due to Covid-19, the Government has extended the time limit from 07.02.2023 to 30.09.2023 exercising the powers u/s. 168A of CGST Act, 2017 as amended vide Notification No. 13/2022 dated 05.07.2022. However, again exercising the powers u/s. 168A, ibid the time was further extended to 31.12.2023 by the Notification No. 09/2023-C.T dated 31.03.2023 (second extension).
23. In this regard, it is submitted that second 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 30.09.2023. Hence, the second extension of time from 30.09.2023 to 31.12.2023 runs beyond the mandate of Section 168A and is not sustained in the law. The Notification No. 09/2023 dated 31.03.2023 is illegal, arbitrary, unjust, improper, unfair and contrary to section 73(10) of the CGST Act, 2017.
24. It is settled law that any delegated legislation travelling beyond the Statutory provisions be 'ultra vires' and do not sustain in law.
25. Hence, the impugned demand raised for FY 2017-18 deserves to be quashed 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 30.09.2023.

Unsigned impugned order is non est in law

26. Appellant submits that all the relevant documents lacked the necessary signatures and official stamps.
27. It is submitted that as per Rule 26(3) of the Central Goods and Services Tax Rules, 2017 (the CGST Rules) which is in *pari materia* with Telangana Goods and



Services Tax Rules, 2017 requires notices/orders issued under Chapter III of the rules to be authenticated by a digital signature certificate or through E-signature or by any other mode of signature or verification notified in that behalf.

28. Pertinently, no such authentication is done by affixing the E signature. Accordingly, the show cause notice and impugned order should be set aside on this ground alone. Unless order uploaded is signed, the same has no legal sanctity and same were set aside by various Hon'ble High Courts as under:

(a) SRK Enterprises vs. Assistant Commissioner (ST) (2023) 13 Centax 60

(A.P.)

(b) Ramani Suchit Malushte Vs UOI & Ors. (2022 (9) TMI 1263-Bombay High Court

(c) Railsys Engineers Pvt. Ltd. vs. Addl. Commr. of CGST (Appeals-II) 2022

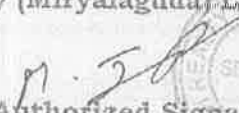
(65) G.S.T.L. 159 (Del.)

The Hon'ble High Court of Telangana in WP No. 5375/2024 & WP No. 6671/2024 has set aside the unsigned orders under GST.

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

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

For M/s. Modi Realty (Miryalaguda) LLP


Authorized Signatory



PRAYER

Therefore, it is prayed that

- a. To set aside the impugned order to the extent aggrieved;
- b. To hold that there is no excess availment of ITC;
- c. To hold that demand needs to be re-quantified;
- d. To hold that interest and penalty is not payable/imposable;
- e. To provide any other consequential relief.

M. J. S. 
Signature

VERIFICATION

I, Mr. M. JAYAPRAKASH, 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: 05.04.2024

M. J. S. 
Signature

BEFORE APPELLATE JOINT COMMISSIONER (ST), SECUNDERABAD, 5TH FLOOR,
O/O COMMISSIONER OF COMMERICAL TAXES, OPPOSITE GANDHIBHAWAN,
NAMPALLY, HYDERABAD-1

Sub: Filing of Appeal against Order No. ZD361223015215X dated 08.12.2023 in the case of M/s. Modi Realty (Miryalaguda) LLP.

I, **JAI PRAKASH**, ~~FINANCE MANAGER~~, of M/s. Modi realty (Miryalaguda) LLP hereby authorizes and appoint H N A & Co. LLP (Formerly known as 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 05th April 2024 at Hyderabad.

[Signature]
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: 05.04.2024

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 & CO LLP,
Chartered Accountants

[Signature]
CA Lakshman Kumar
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.
1	Sudhir V S	CA	219109
2	Venkata Prasad P	CA	236558
3	Srimannarayana S	CA	261612
4	Revanth Krishna	CA	262586
5	Akash Heda	CA	269711

Office of : Assistant Commissioner
Jurisdiction : M.G.ROAD - S.D.ROAD:Begumpet:Telangana, State/UT : Telangana

Reference No. : ZD361223015215X

Date : 08/12/2023

To

GSTIN/ID : 36ABCFM6774G2ZZ

Name : MODI REALTY (MIRYALAGUDA) LLP

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

SCN/Statement Reference No. : ZD360923043336A

Date : 30/09/2023

Tax Period : JUL 2017 - MAR 2018

F.Y. : 2017-2018

Act/ Rules Provisions :
Under the Provisions of GST Act and Rules 2017

Order under section 73

A show cause notice/statement referred to above was issued to you u/s 73 of the Act for reasons stated therein. Since, no payment has been made within 30 days of the issue of the notice by you; therefore, on the basis of documents available with the department and information furnished by you, if any, demand is created for the reasons and other details attached in annexure

Please note that interest, if any, has been levied up to the date of issue of the order. While making payment, interest for the intervening period between date of order and date of payment, shall also be worked out and paid along with the dues stated in the order.

In case any refund is arising as per the above order, please claim the same by filing application in the prescribed form.

Demand Details :-

(Amount in Rs.)

Sr. No.	Tax Rate (%)	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
1	0	0.00	JUL 2017	MAR 2018	IGST	Telangana	71,488.00	0.00	0.00	0.00	0.00	71,488.00
2	0	0.00	JUL 2017	MAR 2018	CGST	NA	2,29,280.00	0.00	0.00	0.00	0.00	2,29,280.00
3	0	0.00	JUL 2017	MAR 2018	SGST	NA	2,29,280.00	0.00	0.00	0.00	0.00	2,29,280.00
Total							5,30,048.00	0.00	0.00	0.00	0.00	5,30,048.00

You are hereby directed to make the payment by 08/01/2024 failing which proceedings shall be initiated against you to recover the outstanding dues.

Signature

Name : UPENDER REDDY BOPPIDI

Designation : Assistant Commissioner

Jurisdiction : M.G.ROAD -

S.D.ROAD: Begumpet: Telangana

Copy to -

FORM GST DRC - 07
[See rule 142(5)]
Summary of the order

Reference No. : ZD361223015215X

Date : 08/12/2023

1. Tax Period :- JUL 2017 - MAR 2018

2. Issues involved :- Excess ITC claimed

3. Description of goods / services :-

Sr. No	HSN	Description
-	-	-

4. Details of demand :-

Sr. No	Tax Rate (%)	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
1	0	0.00	JUL 2017	MAR 2018	IGST	Telangana	71,488.00	0.00	0.00	0.00	0.00	71,488.00
2	0	0.00	JUL 2017	MAR 2018	CGST	NA	2,29,280.00	0.00	0.00	0.00	0.00	2,29,280.00
3	0	0.00	JUL 2017	MAR 2018	SGST	NA	2,29,280.00	0.00	0.00	0.00	0.00	2,29,280.00
Total							5,30,048.00	0.00	0.00	0.00	0.00	5,30,048.00

You are hereby directed to make the payment by 08/01/2024 failing which proceedings shall be initiated against you to recover the

outstanding dues.

Signature

Name : UPENDER REDDY BOPPIDI

Designation : Assistant Commissioner

Jurisdiction : M.G.ROAD -

S.D.ROAD: Begumpet: Telangana

Copy to -

GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT

Attachment to DRC-07

DIN	RCM/ 36ABCFM6774G2ZZ/17-18
Date	08/12/2023
Office details : Designation of the Assessing Officer Unit Division	ASSISTANT COMMISSIONER (ST), M.G.ROAD-S.D.ROAD CIRCLE, BEGUMPET DIVISION.
Details of the Tax Payer Legal Name Trade Name GSTIN	M/S. MODI REALTY (MIRYALAGUDA) LLP M/S. MODI REALTY (MIRYALAGUDA) LLP 36ABCFM6774G2ZZ
Financial year	2017-18

- Ref: 1) Show Cause Notice U/Sec 73 & DRC-01 vide Reference No. ZD360923043336A, Dt.30.09.2023.
2) Reminder notice Reference No. ZD361123009661S, Dt.08.11.2023.
3) Reminder notice Reference No. ZD3611230194101, Dt.17.11.2023.
4) Reminder notice Reference No. ZD361123031832R, Dt.25.11.2023.

You have filed GSTR-3B for the period July, 2017 to March, 2018.

On examination of the information furnished in the returns under various heads and also the information furnished in returns under various heads and also the information furnished in TRAN-1, GSTR-01, GSTR-3B, EWB and other records available in this office it is found that you have not declared your correct tax liability while filing the annual returns of GSTR-09 and 9C. The summary of under declared tax is as follows.

IGST Rs.71488
CGST Rs.229280
SGST Rs.229280
Total Rs.530048

The details of the above tax liability are as follows.

It resolutely appears to be observable inaccuracy (having worthy of brought to tax assessment as per law) on verification of Form GSTR-3B of table 4(A)(2)+4(A) (vs) GSTR-3B of table 3.1 (d) with regards RCM, the taxpayer without payment of taxes under the head of RCM have availed ITC under RCM, which is not permissible under law, hence the same is proposed as payable on the hands of the taxpayer the details are as under :

ACT	ITC claimed on inward RCM supplies in GSTR-3B [(as per table 4(A)(2) +4(A)(3)]	Reverse Charge liability declared in GSTR-3B [(as per table 3.1(d)]	Short(-)/Excess (+) in ITC (ITC claimed - Liability declared)
IGST	71488	0	71488
CGST	258734	29454	229280
SGST	258734	29454	229280
Total	588956	58908	530048

According a Show cause notice under Section 73 and DRC-01 was issued vide reference 1st cited and (3) reminder notices were issued vide reference 2nd to 4th cited. The tax payable which was availed under RCM as specified in the above table ought to have been paid by you voluntarily along with the Interest. As on date you have not filed any objections or furnished any payment details, even after issue of notice and subsequent reminders in this regard.

As you have already availed sufficient amount of time for payment of GST Tax which was availed under RCM along with Interest, since the issue of notice & reminder and long time has lapsed, **M/s. MODI REALTY (MIRYALAGUDA) LLP** shall pay the Tax which was availed under RCM along with applicable Interest @18% pa, specified in the above table within (10) days from the date of receipt of DRC-07, failing which action shall be initiated under the provisions of Section 79 of the CGST/Telangana GST Act, 2017 without further notice in the matter.

Assistant Commissioner (ST),
M.G. Road-S.D. Road Circle,
Begumpet Division, Hyderabad.