

o/c

Modi Realty Miryalguda LLP

Date: 27-10-2025

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. ZD360424048614D dated 23-04-2024 for the FY 2018-19 pertaining to **M/s. Modi Realty (Miryalaguda) LLP** vide (GSTIN: 36ABCFM6774G2ZZ)

Ref:

- a. Notice for payment of arrears received via email dated 25-10-2025
 - b. Appeal filed vide APL-01 dated 23-07-2024 against the OIO Ref No. ZD360424048614D dated 23-04-2024
 - c. OIO vide Ref No. ZD360424048614D dated 23-04-2024 Pertaining to M/s. Modi Reality (Miryalaguda) LLP for the period April 2018 to March 2019.
1. We, **M/s. Modi Reality (Miryalaguda)** 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 25-10-2025, 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. ZD360424048614D dated 23-04-2024, we filed an appeal dated 23-07-2024. (The Copy of the Appeal filed along with the OIO dated 23-04-2024 are attached as **Annexure-II**).
 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. 48,924/-. The details of the pre-deposit paid are duly reflected in the appeal filed in Form GST APL-01 dated 23-07-2024 is enclosed as **Annexure-III**.



Modi Realty Miryalguda LLP

5. Subsequent to 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. 48,924/- 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.." *The Hon'ble Court specifically directed the Department to defer and suspend all recovery proceedings until the final disposal of the appeal by the Appellate Authority.*



Modi Realty Miryalguda LLP

8. In light of the foregoing, the recovery notice dated 25-10-2025 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 28-11-2024 against the OIO Ref No. ZD360424048614D dated 23-04-2024 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.

Thanking you,

Yours truly

For M/s. Modi Realty (Miryalaguda) LLP



Authorized Signatory

Enclosures:

- Notice for payment of arrears received via email dated 25-10-2025
- Appeal filed vide APL-01 dated 23-07-2024 against the OIO Ref No. ZD360424048614D dated 23-04-2024
- OIO vide Ref No. ZD360424048614D dated 23-04-2024 Pertaining to M/s. Modi Realty (Miryalaguda) LLP for the period April 2018 to March 2019.

10/27/25, 4:16 PM

Inbox - Abhijit Kiran Vadakattu - Outlook

Date: 25-10-2025

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
Apr-18 To Mar-19	ZD360424048614D	23-04-2024	0	244618	244618

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,



H N A & Co LLP
Chartered Accountants

(Formerly known as Hiregange & Associates LLP)

Date: 25.07.2024

To

The Joint / Additional Commissioner of State Tax (Appeals),
Punjagutta Division, 5th Floor,
C.T Complex, Nampally, Hyderabad-500001.

Dear Sir,

Sub: Filing of attested copy of DRC - 07 and appeal in Form GST APL - 01.

Ref: Appeal filed online against the Order Vide Ref. No. ZD360424048614D dated 23.04.2024 pertaining to **M/s. Modi Realty (Miryalaguda) LLP**.

1. With reference to the above, we have been authorized by M/s. Modi Realty (Miryalaguda) LLP to submit an appeal against the above-referred Order and represent in the appeal proceedings before your good office and to do necessary correspondence. A copy of the authorization is attached to the appeal.
2. In this regard, it is submitted that we have already filed an appeal memorandum online in Form GST APL-01 along with authorization and annexures against the above referred order and is acknowledged vide provisional acknowledgement number AD360724009342A dated 23.07.2024.
3. Further, we are hereby submitting the physical copy of the Appeal memorandum along with annexures and online filing acknowledgements for easy reference. Therefore, request you to take the same on record and admit the appeal.

Kindly acknowledge the receipt of the above and post the matter for hearing at the earliest.

Thanking You,

Yours truly

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

R. Lakshman Kumar
CA Lakshman Kumar K.
Partner

Enclosures:

1. Provisional Acknowledgement along with APL-01 form filed online.
2. Copies of Complete Appeal Memorandum.



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

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Vijayawada | Kolkata | Raipur | Kochi | Indore | Ahmedabad

Provisional Acknowledgement for submission of Form of Appeal

Your appeal has been successfully submitted against	AD360724009342A
GSTIN/UIN/Temporary ID	36ABCFM6774G2ZZ
Date of filing	23/07/2024
Time of filing	20:54
Place of filing	Hyderabad
Name of the Taxpayer	MODI REALTY (MIRYALAGUDA) LLP
Address	SOHAM MANSION, 2ND FLOOR, 5-4-187/3 AND 4, M.G ROAD, SECUNDERABAD, Rangareddy, Telangana, 500003
Name of the person who is filing Appeal	SOHAM MODI
Amount of pre-deposit	₹ 48924

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

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 - ZD360424048614D Order Date - 23/04/2024
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 - ZD360424048614D
7 Date of communication of the order to be appealed against - 23/04/2024
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 - 01/04/2018 To - 31/03/2019

(iv) Amount under Dispute

Description		Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Amount of Dispute	Tax/Cess	244618	244618	0	0	489236	538160
	Interest	0	0	0	0	0	
	Penalty	24462	24462	0	0	48924	
	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	244618	244618	0	489236	538160
	Interest	0	0	0	0	
	Penalty	24462	24462	0	48924	
	Fees	0	0	0	0	
	Other Charges	0	0	0	0	
Amount of demand admitted (B)	Tax/Cess	0	0	0	0	0
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other Charges	0	0	0	0	
Amount of dispute (C)	Tax/Cess	244618	244618	0	489236	538160
	Interest	0	0	0	0	
	Penalty	24462	24462	0	48924	
	Fees	0	0	0	0	
	Other Charges	0	0	0	0	

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

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

(a) Details of payment required

Description	Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount(₹)	
Admitted Amount	Tax/Cess	0	0	0	0	48924
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other charges	0	0	0	0	
Pre deposit (10% of Disputed Tax/Cess)	Tax/Cess	24462	24462	0	48924	

(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	24462	24462	0	48924	48924
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other Charges	0	0	0	0	

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

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

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

Refer to Annexure

17 If 'Yes' in item 16 -

(a) Period of delay -

Refer to Annexure

(b) Reason for delay -

Refer to Annexure

Annexure to GST APL - 01 -

APL-01 along with covering letter.pdf

Upload Supporting Documents (Relied upon), if any -

Annexure 1-5

Annexures.pdf

Verification

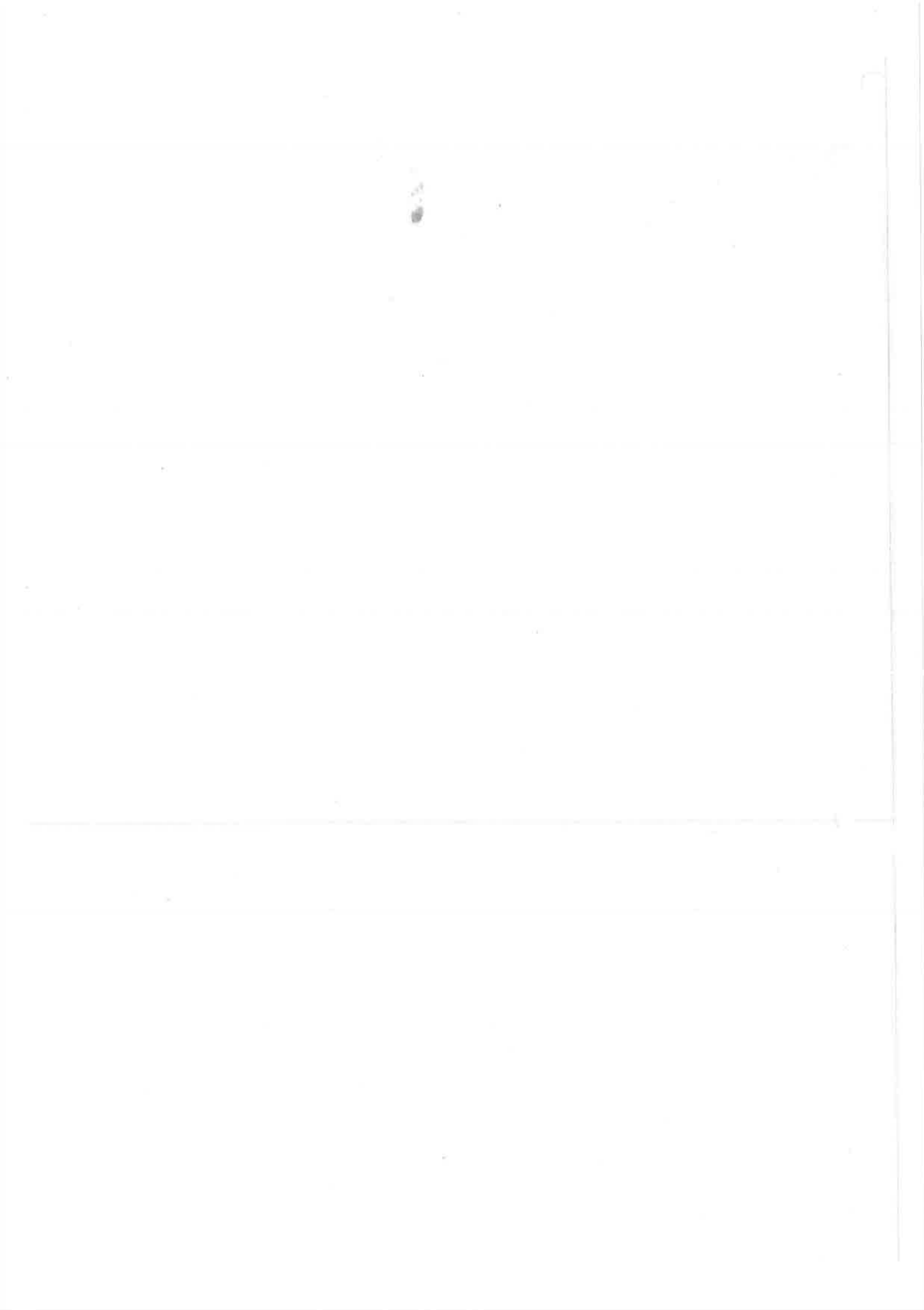
- ☒ I, SOHAM MODI, hereby solomently affirm and declare that the information given herein above is true and correct to the best of my / our knowledge and belief and nothing has been concealed therefrom.

Place: Hyderabad

Date: 23/07/2024

Name of the Applicant

MODI REALTY (MIRYALAGUDA) LLP



Electronic Credit ledger

GSTIN - 36ABCFM6774G2ZZ

Legal Name - MODI REALTY (MIRYALAGUDA) LLP

Period: From -23/07/2024 To - 23/07/2024

Sr.No	Date	Reference No.	Tax period, if any	Description	Transaction Type [Debit (DR) / Credit (CR)]	Credit/Debit (₹)			Balance Available(₹)							
						Integrated Tax	Central Tax	State Tax	CESS	Total	Integrated Tax	Central Tax	State Tax	CESS	Total	
						-	-	-	-	-	-	0	157790	46262	0	626052
1	23/07/2024	D3607240189655	Mar-19	Payment of Demand under Appeal	Debit	0	24462	24462	0	48924	0	133328	443800	0	577128	
				Closing Balance		-	-	-	-	-	-	0	133328	443800	0	577128



H N A & Co LLP
Chartered Accountants

(Formerly known as Hiregange & Associates LLP)

Date: 23.07.2024

To
The Joint/Additional Commissioner of State Tax (Appeals),
5th Floor, CT Complex,
Panjagutta,
Hyderabad-500001

Dear Sir,

Sub: Filing of appeal against the Order ref.no. ZD360424048614D dated 23.04.2024.

Ref:

- a) Order no. ZD360424048614D dated 23.04.2024 pertaining to **M/s. Modi Realty (Miryalaguda) LLP.**
- b) GSTIN: 36ABCFM6774G2ZZ.

1. We have been authorized by M/s. Modi Realty (Miryalaguda) LLP to submit an appeal against the above-referred order dated 23.04.2024 to represent before your good office to do necessary correspondence in the above-referred matter. A copy of the authorization is attached to the appeal.
2. In this regard, we are herewith submitting the appeal against the above-referred Form DRC-07 passed by the office of the Assistant commissioner, MG Road, SD road, Begumpet, Telangana in Form APL-01 along with authorization and annexures.

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 Lakshman Kumar Kadali
Partner



4th Floor, West Block, Sree Anushka Enclave, R.No. 12, Banjara Hills, Hyderabad,
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6	Copy of reply to the show cause notice dated 09-12-2021 in Form GST DRC-06	II	39-50
7	Copy of the Show Cause Notice Ref. No. ZD3611210252690 dated 14.11.2021	III	51-55
8	Copy of GSTR 9 for the FY 2018-19	IV	56-63
9	Form GST DRC-03 dated 11-12-2020	V	64-65
10	Self-declaration from their vendor as per the requirement of the circular 183/15/2022-GST dated 27.12.2022	VI	To be submitted later

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 JOINT/ADDITIONAL COMMISSIONER OF STATE TAX (APPEALS),
PANJAGUTTA, 5th FLOOR, CT COMPLEX, HYDERABAD-500 001.**

(1) GSTIN/ Temporary ID/UIN-	36ABCFM6774G2ZZ			
(2) Legal Name of the Appellant	Modi Realty (Miryalaguda) LLP			
(3) Trade name, if any-	Modi Realty (Miryalaguda) LLP			
(4) Address	5-4-187/3 and 4, Soham Mansion, 2 nd Floor, M.G Road, Secunderabad, Rangareddy, Telangana, 500003			
(5) Order No.	ZD360424048614D	Order Date	23.04.2024	
(6) Designation and address of the officer passing the order appealed against	Assistant commissioner, MG Road, SD road, Begumpet, Telangana			
(7) Date of communication of the order appealed against	23.04.2024			
(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@hnaindia.com Mob: +91 8978114334			
(9) Details of the case under dispute				
i. Brief issue of the case under dispute	Excess claim of ITC declared in GSTR -09			
ii. Description and classification of goods/services in dispute	NA			
iii. Period of dispute	FY 2018-19			
iv. Amount under dispute				
Description	Central tax	State/UT tax	Integrated tax	Cess
a. Tax/Cess	2,44,618	2,44,618	NA	NA
b. Interest	NA	NA	NA	NA
c. Penalty	24,462	24,462	NA	NA
d. Fees	NA	NA	NA	NA
e. Other charges	NA	NA	NA	NA
v. Market value of seized goods	NA			
(10) Whether the appellant wishes to be heard in person	Yes			



(11)	Statement of Facts	Annexure - A
(12)	Grounds of Appeal	Annexure - B
(13)	Prayer	To set aside the impugned order to the extent aggrieved and grant the relief sought

(14) Amount of Demand Created, admitted, and disputed							
Particulars	CGST	SGST	IGST	Cess	Total amount		
Amount of demand created (A)							
a) Tax/Cess	2,44,618	2,44,618	NA	NA	4,89,236		
b) Interest	NA	NA	NA	NA	-		
c) Penalty	24,462	24,462	NA	NA	48,924		
d) Fees	NA	NA	NA	NA	NA		
e) other charges	NA	NA	NA	NA	NA		
Amount of demand admitted (B)							
a) Tax/Cess	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 of demand disputed (C)							
a) Tax/Cess	2,44,618	2,44,618	NA	NA	4,89,236		
b) Interest	NA	NA	NA	NA	-		
c) Penalty	24,462	24,462	NA	NA	48,924		
d) Fees	NA	NA	NA	NA	NA		
e) other charges	NA	NA	NA	NA	NA		

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

a) Details of payment required

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



	b) Pre-Deposit (10% of disputed tax or 25Cr. Whichever is lower)	Tax/Cess		24,462	24,462	NA	NA	48,924
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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	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

(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 (19)	Admitted amount [in the Table in sub-clause (a) of clause 15 (Item (a))]	NA	NA	NA	NA	NA



ANNEXURE-A

STATEMENT OF FACTS

- A. M/s. Modi Realty (Miryalaguda) LLP (herein referred to as the "Appellant"), having registered premises at 5-4-187/3 and 4, Soham Mansion, 2nd Floor, M.G Road, Secunderabad, Rangareddy, Telangana, 500003 is engaged in and registered with GSTIN: 36ABCFM6774G2ZZ.
- B. Appellant is availing Input Tax Credit (ITC) of taxes paid on inputs and input services and discharging taxes on output liability on timely basis by filing the monthly returns. Appellant has also filed the GSTR-09 for the FY 2018-19.
- C. Subsequently, the Department issued Show Cause notice in the Form GST DRC - 01 Ref no: ZD3611210252690 dated 14.11.2021 for payment of tax Rs. 16,01,228/- (CGST Rs. 8,00,614/- and SGST Rs.8,00,614 /-) (Copy of Show Cause Notice is enclosed as **Annexure III**)
- D. Appellant has replied to the above show cause notice dated 09/12/2021 (Copy of reply to the show cause notice is enclosed as **Annexure II**).
- E. Subsequently, the current Order in DRC-07 vide Ref. No. ZD360424048614D dated 23.04.2024 has been passed by the adjudicating authority confirming the demand of Rs. 4,89,236/- along with penalties (Copy of OIO is enclosed as **Annexure I**).

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 TGST 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 purposes also, wherever arises.

In Re: No Excess claim of ITC:

3. Appellant submits that impugned order has confirmed the demand on account of excess claim of ITC on certain invoices which have not been reflected in GSTR-2A amounting to Rs.4,89,235/- (CGST Rs. 2,44,617/- and SGST Rs. 2,44,617/-).
4. In this regard, appellant submits that appellant has not availed any excess ITC, the details of the demand is as follows:

Sl. No.	Particulars	CGST	SGST
1	ITC as per Table 8A of GSTR-09 (i.e., as per GSTR 2A)	43,21,696	43,21,696
2	ITC as per GSTR-3B	45,66,314	45,66,314
3	Difference (3=2-1)	2,44,617	2,44,617

5. From the above table it is evident that Rs. 2,44,617/- each under CGST and SGST is ITC not appeared in GSTR 2A. Appellant submits that the Appellant has made reversals in Table 7(H1) Others in GSTR 9 of Rs. 2,44,617/- each under CGST and SGST and the same has been discharged through Form GST DRC-03 vide ref.no. DC3612200046239/DI3612200028163 dated 11-12-2020 while filing GSTR 9 for the period FY 2018-19 (copy of GSTR 9 for the FY 2018-19 is enclosed as **Annexure[V]**). Therefore, Appellant submits that demand



needs to be set aside. To evidence the same, copy of Form DRC-03 is enclosed as **Annexure V**.

6. Without prejudice to above, Appellant submits that the impugned order has confirmed the demand solely on the ground that certain invoices on which ITC has been availed by the Appellant are not reflected in GSTR-2A. In this regard, Appellant submits that ITC cannot be denied merely due to non-reflection of invoices in GSTR-2A as all the conditions specified under Section 16 of CGST Act, 2017 has been satisfied. Further, Appellant submits that GSTR-2A cannot be taken as a basis to deny the ITC in accordance with Section 41, Section 42, Rule 69 of CGST Rules, 2017 prevailing during the disputed period.
7. Appellant submits that the condition for availment of credit is provided under Section 16(2) of the Central Goods and Service Tax Act, 2017 which do not state that credit availed by the recipient needs to be reflected in GSTR-2A, further the order has also not been bought out as to which provision under the Central Goods and Service Tax, 2017 or rules made thereunder requires that credit can be availed only if the same is reflected in GSTR- 2A. Hence, issuance of the order on such allegation, which is not envisaged under the provisions of the CGST/SGST Act. Extract of section 16(2)(c) is given below:

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

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

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

1. Every registered person shall, **subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis** to his electronic credit ledger.
2. The credit referred to in sub-section (1) shall be utilized only for payment of self-assessed output tax as per the return referred to in the said sub-section"



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

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



supplier has not filed their monthly GSTR-3B returns till the mechanism to file GSTR 2 and GSTR 3 or any other new mechanism is made available.

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

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

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

"SECTION 38. Furnishing details of inward supplies. — (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37."

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



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



GSTR-3B for the month of September 2018 is unfounded as the same exercise can be done thereafter also.”

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

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

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

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

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

25. Without prejudice to above, Appellant submits that even if there is differential ITC availed by the Appellant, the same is accompanied by a valid tax invoice containing all the particulars specified in Rule 36 of CGST Rules based on which Appellant has availed ITC. Further, Appellant submits that the value of such



supplies including taxes has been paid to such vendors thereby satisfying all the other conditions specified in Section 16(2) of the CGST Act, 2017. As all the conditions of Section 16(2) are satisfied, the ITC on the same is eligible to the Appellant hence the impugned Order needs to be set aside.

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

a. Indian Seamless Steel & Alloys Ltd Vs UOI, 2003 (156) ELT 945 (Bom.)

b. Hico Enterprises Vs CC, 2005 (189) ELT 135 (T-LB). Affirmed by SC in 2008 (228) ELT 161 (SC)

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

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

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

29. Appellant further submits that to substantiate our claim for non-reflection of ITC in GSTR-02A we have placed the reliance in the following judgement:

Diya Agencies Versus The State Tax Officer, The State Tax Officer, Union Of India, The Central Board Of Indirect Taxes & Customs, The State Of Kerala
2023 (9) Tmi 955 - Kerala High Court



"7. From the perusal of Exhibit P-1 impugned assessment order for the assessment year 2017-18 dated 24.05.2022 it is evident that the petitioner's claim for higher input tax has been denied only on the ground that the said amount was not mentioned in the GSTR 2A. If the seller dealer (supplier) has not remitted the said amount paid by the petitioner to him, the petitioner cannot be held responsible. Whether the petitioner has paid the tax amount and the transactions between the petitioner and seller dealer are genuine are the matter on facts and evidence. The petitioner has to discharge the burden of proof regarding the remittance of tax to the seller dealer by giving evidence as mentioned in the Judgment of the Supreme Court in *The State of Karnataka v. M/s. Ecom Gill Coffee Trading Private Limited* (supra).

8. In view thereof, I find that the impugned Exhibit P-1 assessment order so far denial of the input tax credit to the petitioner is not sustainable, and the matter is remanded back to the Assessing Officer to give opportunity to the petitioner for his claim for input tax credit. If on examination of the evidence submitted by the petitioner, the assessing officer is satisfied that the claim is bonafide and genuine, the petitioner should be given input tax credit. **Merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of the input tax credit.** The assessing authority is therefore, directed to give an opportunity to the petitioner to give evidence in respect of his claim for input tax credit. The petitioner is directed to appear before the assessing authority within fifteen days with all evidence in his possession to prove his claim for higher claim of input tax credit. After examination of the evidence placed by the petitioner/assessee, the assessing authority will pass a fresh order in accordance with law."

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

"12. Therefore, if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer. In the case on hand, the respondent does not appear to have



taken any recovery action against the seller / Charles and his wife Shanthi, on the present transactions.

13. The learned counsel for the petitioners draws my attention to the SCN, dated 27.10.2020, finalising the assessment of the seller by excluding the subject transactions alone. I am unable to appreciate the approach of the authorities. When it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him.

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

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

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

"54. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a



purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. **In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC."**

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

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

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

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

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



36. 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.

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

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

38. Appellant submits that the aforesaid Rule can be considered to be valid only if the provisions of the Act envisage such restriction. The Appellant submits that Section 16(2) of the CGST Act, 2017 as presently applicable provides that a registered person shall not be entitled to ITC unless he satisfies the given four conditions. A perusal of the said provisions shall reveal that none of the conditions provides for the furnishing of the details of the invoice in GSTR 1 by the vendors. It may be noted that the actual payment condition under clause (c) cannot be inferred to include the condition of the furnishing of the details in GSTR 1. It is for the simple reason that the furnishing of the details of outward supplies is u/s 37 of the CGST Act, 2017 which is distinct and at present legally



not linked with the furnishing of the return and payment of tax u/s 39 of the said Act. In fact, an amendment made u/s 75 by virtue of Finance Act, 2021 to the effect that the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39 and shall permit the direct recovery of the said tax so declared also confirms that the declaration of the details u/s 37 in GSTR 1 do not confirm the payment of tax. Hence, it can be stated that in absence of any provisions in the Act enabling the formulation of Rule 36(4), the same has to be declared as invalid.

39. The aforesaid view has also been recognized as evident from the rationale for the amendment under discussion (i.e., clause (aa)) as expressly stated in the minutes of the GST Council meeting. The agenda note (supra) clearly has recognized the said gap between the Act and the Rule by stating that the proposed amendment is aimed to "to complete this linkage of outward supplies declared by the supplier with the tax liability, by also limiting the credit availed in FORM GSTR 3B to that reflected in the GSTR2A of the recipient, subject to the additional amount available under rule 36(4)". Hence the amendment by way of clause (aa) leads to a conclusion that the provisions of Rule 36(4) shall not be valid till the said clause is notified.
40. Appellant submits that Section 38(1) of the CGST Act, 2017 permits the recipient to declare the details of the missing invoices in GSTR 2 and claim the ITC thereof subject to eventual matching. Clause (aa) on the other hand seeks to allow the ITC only if the details are furnished by the vendors. Hence, Appellant submits that the law is asking the recipient to do the impossible by (a) not making the provisional claim of ITC by filing GSTR 2 and asking the vendors to accept the liability and (b) determining the eligibility solely based on filings done by the said vendors which are not in the control of the recipient. Hence, based on the doctrine of supervening impossibility that the ITC of the genuine recipient cannot be denied by virtue of the provisions of clause (aa).
41. Appellant submits that based on the above submissions, it is clear that the ITC availed by the taxpayer is rightly eligible and there is no requirement to pay any interest on the same. Hence, the impugned Order to that extent needs to be set aside.
42. Appellant wishes to rely on recent decisions in case of:



- a. **Diya Agencies Versus The State Tax Officer, The State Tax Officer, Union Of India, The Central Board Of Indirect Taxes & Customs, The State Of Kerala 2023 (9) TMI 955 - Kerala High Court held that:**

7. From the perusal of Exhibit P-1 impugned assessment order for the assessment year 2017-18 dated 24.05.2022 it is evident that the **petitioner's claim for higher input tax has been denied only on the ground that the said amount was not mentioned in the GSTR 2A**. If the seller dealer (supplier) has not remitted the said amount paid by the petitioner to him, the petitioner cannot be held responsible. Whether the petitioner has paid the tax amount and the transactions between the petitioner and seller dealer are genuine are the matter on facts and evidence. The petitioner has to discharge the burden of proof regarding the remittance of tax to the seller dealer by giving evidence as mentioned in the Judgment of the Supreme Court in *The State of Karnataka v. M/s. Ecom Gill Coffee Trading Private Limited (supra)*.

8. In view thereof, I find that the impugned Exhibit P-1 **assessment order so far denial of the input tax credit to the petitioner is not sustainable, and the matter is remanded back to the Assessing Officer to give opportunity to the petitioner for his claim for input tax credit**. If on examination of the evidence submitted by the petitioner, the assessing officer is satisfied that the claim is bonafide and genuine, the petitioner should be given input tax credit. **Merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of the input tax credit**. The assessing authority is therefore, directed to give an opportunity to the petitioner to give evidence in respect of his claim for input tax credit. The petitioner is directed to appear before the assessing authority within fifteen days with all evidence in his possession to prove his claim for higher claim of input tax credit. After examination of the evidence placed by the petitioner/assessee, the assessing authority will pass a fresh order in accordance with law."

- b. **M/S. Henna Medicals Versus State Tax Officers, Deputy Commissioner (Arrear Recovery) Office Of The Joint Commissioner, State Goods And Service Tax Kannur, Union Of India, Central Board**



Of Indirect Taxes & Customs, State Of Kerala- 2023 (10) TMI 98 - Kerala High Court held that:

"3. Paragraph 8 of Diya Agencies v. The State Tax Officer Judgment dated 12.09.2023 in WPC 29769/2023, of this Court would read as under:

*"8. In view thereof, I find that the impugned Exhibit P-1 assessment order so far denial of the input tax credit to the petitioner is not sustainable, and the matter is remanded back to the Assessing Officer to give opportunity to the petitioner for his claim for input tax credit. If on examination of the evidence submitted by the petitioner, the assessing officer is satisfied that the claim is bonafide and genuine, the petitioner should be given input tax credit. **Merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of the input tax credit. The assessing authority is therefore, directed to give an opportunity to the petitioner to give evidence in respect of his claim for input tax credit. The petitioner is directed to appear before the assessing authority within fifteen days with all evidence in his possession to prove his claim for higher claim of input tax credit. After examination of the evidence placed by the petitioner/assessee, the assessing authority will pass a fresh order in accordance with law.***

*4. In view thereof, the present writ petition is allowed. **The matter is remitted back to the file of the Assessing Authority/1st respondent to examine the evidence of the petitioner irrespective of the Form GSTR 2A for the petitioner's claim for the input tax credit. After examination of the evidence placed by the petitioner/assessee, the Assessing Authority shall pass fresh orders in accordance with the law. The petitioner is directed to appear before the Assessing Officer on 03.10.2023 at 11.00 a.m. with all the evidence in support of his claim for input tax credit.***

c. **M/S. Gargo Traders V/s The Joint Commissioner, Commercial Taxes (State Tax) & Ors. 2023 (6) TMI 533 - Calcutta High Court** the following judgement held in as follows:

"12.The main contention of the petitioner that the transactions in question are genuine and valid and relying upon all the supporting relevant documents required under law, the petitioner with due



diligence verified the genuineness and identity of the supplier and name of the supplier as registered taxable person was available at the Government Portal showing its registration as valid and existing at the time of transaction.

13. Admittedly at the time of transaction, the name of the supplier as registered taxable person was already available with the Government record and the petitioner **has paid the amount of purchased articles as well as tax on the same through bank and not in cash.**

14. **It is not the case of the respondents that there is a collusion between the petitioner and supplier with regard to the transaction.**

15. This Court finds that without proper verification, it cannot be said that there was any failure on the part of the petitioner in compliance of any obligation required under the statute before entering into the transactions in question.

16. The respondent authorities **only taking into consideration of the cancellation of registration of the supplier with retrospective effect have rejected the claim of the petitioner without considering the documents relied by the petitioner.**

17. The unreported judgment passed in the case of M/s Lgw Industries Limited & Ors. (supra) is squarely applicable in the present case.

18. In view of the above, the impugned orders are set aside. The respondent no. 1 **is directed to consider the grievance of the petitioner afresh by taking into consideration of the documents which the petitioner intends to rely in support of his claim."**

d. Suncraft Energy Private Limited Versus The Assistant Commissioner, State Tax, Ballygunge Charge And Others

The first respondent without resorting to any action against the fourth respondent who is the selling dealer **has ignored the tax invoices produced by the appellant as well as the bank statement to substantiate that they have paid the price for the goods and services rendered as well as the tax payable there on, the action of the first respondent has to be branded as arbitrarily.** Therefore, before directing the appellant to reverse the input tax credit and remit the same to the government, the first respondent ought to have taken action against the fourth respondent the selling dealer and unless and until the



*first respondent is able to bring out the exceptional case where there has been collusion between the appellant and the fourth respondent or where the fourth respondent is missing or the fourth respondent has closed down its business or the fourth respondent does not have any assets and such other contingencies, straight away the **first respondent was not justified in directing the appellant to reverse the input tax credit availed by them. Therefore, we are of the view that the demand raised on the appellant dated 20.02.2023 is not sustainable.***

- e. **Jurisdictional High Court decision in case of Bhagyanagar Copper Pvt Ltd Vs CBIC and Others 2021-TIOL-2143-HC-Telangana-GST**
- f. **LGW Industries limited Vs UOI 2021 (12) TMI 834-Calcutta High Court**
- g. **Bharat Aluminum Company Limited Vs UOI & Others 2021 (6) TMI**
- h. **Sanchita Kundu & Anr. Vs Assistant Commissioner of State Tax 2022 (5) TMI 786 - Calcutta High Court**

43. Appellant submits that in the case of **Global Ltd. v. UOI - 2014 (310) E.L.T. 833 (Guj.)** it was held that denial of ITC to the buyer of goods or services for default of the supplier of goods or services, will severely impact working capital and therefore substantially diminishes ability to continue business. Therefore, it is a serious affront to his right to carry on his trade or business guaranteed under Article 19(1)(g) of the Constitution.

44. Appellant submits that the denial of ITC to the buyer of goods or services for default of the supplier of goods or services, is wholly unjustified and this causes the deprivation of the enjoyment of the property. Therefore, this is positively violative of the provision of Article 300A of the Constitution of India - **Central Excise, Pune v. Dai Ichi Karkaria Ltd., SC on 11 August 1999 [1999 (112) E.L.T. 353 (S.C.)]**

45. Appellant submits that the denial of ITC to the buyer of goods or services for default of the supplier of goods or services, clearly frustrates the underlying objective of removal of cascading effect of tax as stated in the Statement of object and reasons of the Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014. It is an established principle of law that it is necessary to look into the mischief against which the statute is directed, other statutes in pari materia and the state of the law at the time.



46. Appellant submits that one also needs to consider that Article 265 of the Constitution which provides that no tax shall be levied or collected except by authority of law. Hence not only the levy but even the collection of the tax shall be only by authority of law. Hence, with regard to above submission it is requested to drop the further proceedings.
47. Further, the Appellant wishes to refer to internal circular No. 02A of 2022 dated 25.02.2022 issued by the Commissioner of State Tax Maharashtra wherein the said circular was intended to provide clarifications to the department in relation to issuance of Notices denying the input tax credit. The said circular stated that in relation to apparent **difference** appearing between GSTR-2A and 3B, where the **ITC difference per supplier is more than 2.5 lakhs**, the proper officer may instruct the claimant to obtain a certificate from the Chartered Accountant of the supplier certifying the output transactions and tax paid thereon complies with the provision of section 16. Thereby, the ITC may be allowed on the said basis.
48. The said circular also stated that it shall be applicable only for the FY 2017-18 and 2018-19 and the same is due to lack of understanding of the provisions of law and issues of GST system in the initial stage. However, the department is still issuing notices denying ITC merely due to difference in Form GSTR-2A and 3B without following the protocols laid down and basic due diligence.
49. Further, the Appellant also wishes to refer to the latest **circular No. 183/15/2022-GST dated 27.12.2022** which was also issued to clarify on to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018- 19-reg which reiterates the clarifications and also states the following procedure "The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfilment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:
- i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents,
 - ii) that he has received the goods or services or both;



iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier."

50. Based on the above circular, the Ld. Authority has to initially seek the details from registered person before arriving at the duty levied. The Ld. Authority has to arrive at the correct figures and analyse the cause of difference before levying any taxes.

51. We place reliance in the decision of the Hon'ble Supreme Court in **Commissioner of C.Ex., Bolpur Vs Ratan Melting & Wire Industries 2005 (181) E.L.T. 364 (S.C.)**, wherein it was held that departmental circulars are binding on departmental officers.

52. In this regard, the Appellant hereby submits the supplier has duly remitted taxes pertaining to invoices mentioned supra to the government exchequer.

53. Appellant submits that it is settled position of law that the circulars are binding on the department authorities, Appellant further relies on **Union of India Vs Darshan Boardlam Limited 2013(287) E.L.T.401(Guj)** wherein it was held "it was also held that departmental clarification issued by the board is binding on Central Excise officers who are duty bound to observe and follow such circulars".

54. The Appellant submits that they have obtained self-declaration from their vendor as per the requirement of the circular **183/15/2022-GST dated 27.12.2022** which is enclosed herewith in **Annexure 3** for your kind perusal. Based on this, the proposed liability should be dropped and the impugned notice needs to be set aside.

In Re: Penalties are not imposable:

55. Appellant submits that the impugned order confirms penalty under Section 73 of CGST Act, 2017 and similar provisions as laid down in TSGST Act, 2017.

56. Appellant submits that GST being a new law, the imposition of heavy penalties during the initial years of implementation is not warranted. Further, Appellant submits that they are under bonafide belief that ITC was available, 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.



57.Appellant submits that the GST is still under trial-and-error phase and the assessee are facing genuine difficulties and the same was also held by various courts by deciding in favour of assessee. 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

58.Appellant submits that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the bonafide belief that the offender is not liable to act in the manner prescribed by the statute. Relied on Hindustan Steel Ltd. v. State of Orissa —1978 (2) E.L.T. (J159) (S.C.)

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

In Re: Impugned order is not valid:

Violation of Principles of Natural Justice:

60.The Appellant submits that the impugned order has confirmed the demand without considering the various meritorious submissions made by the Appellant in their reply to the Show Cause Notice which shows that the same has been passed in violation of principles of natural justice, therefore, the same is not



valid and needs to be set aside on this count alone. In this regard, Appellant submits that the Hon'ble Supreme Court in case of Dharampal Satyapal Limited Vs DC of Gauhati **2015 (320) ELT 3 (SC)** held that

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

19. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi-judicial bodies, has assumed different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must be given to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as 'natural justice.' The principles of natural justice developed over a period of time, and which is still in vogue and valid even today were: (i) rule against bias, i.e., nemo iudex in causa sua; and (ii) opportunity of being heard to the concerned party, i.e., audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is duty to give reasons in support of decision, namely, passing of a 'reasoned order.'

Appellant submits that from the above referred decision of the Hon'ble Supreme Court, it is quite clear that every quasi-judicial authority is required to give reasons while confirming the demands. However, in the present case, the impugned order has not given any reasons as to why the submissions made by the Appellant are not correct. For instance, on the demand pertaining to the eligibility of the export of supplies made to SEZ and further no justification on the issuance of Order under both Section 73 and 74 of the CGST Act, 2017 where the GST Act has prescribed separate provisions. Hence, the impugned order is not correct and the same needs to be set aside.

61. Appellant submits that Section 75(6) of CGST Act, 2017 requires the



adjudicating authority to set out all the relevant facts and the basis of his decision while passing any order. For easy reference, the same is extracted as follows

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

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

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

63.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 claim of ITC;
- c. To hold that ITC shall not be denied for mere non-reflection in GSTR-2A;
- d. To hold that penalty is not payable/imposable.
- e. To provide any other consequential relief.



Signature

VERIFICATION

I, M JAYA PRAKASH, MANAGER, Authorized Signatory of M/s. Modi Realty (Miryalaguda) LLP 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: 21.07.2024



Signature

BEFORE JOINT/ADDITIONAL COMMISSIONER OF STATE TAX (APPEALS),
PANJAGUTTA, 5th FLOOR, CT COMPLEX, HYDERABAD-500 001.

Sub: Filing of Appeal against Order-in-Original vide Ref. No. ZD360424048614D dated 23.04.2024 in the case of M/s. Modi Realty (Miryalaguda) LLP.

I, M JAYA PRAKASH, MANAGER of M/s. Modi Realty (Miryalaguda) LLP, hereby authorizes and appoint H N A & Co. LLP, Chartered Accountants, Hyderabad or their partners and qualified staff who are authorized to act as an authorized representative under the relevant provisions of the law, to do all or any of the following acts: -

- a. 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.
- b. 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.
- c. 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 27 July 2024 at Hyderabad



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.

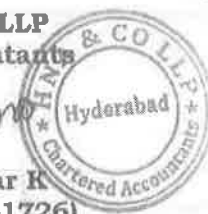
Dated: 27.07.2024

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

K. Lakshman Kumar
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	Revanth Krishna K	CA	262586	
5	Akash Heda	CA	269711	



BEFORE JOINT/ADDITIONAL COMMISSIONER OF STATE TAX (APPEALS),
PANJAGUTTA, 5th FLOOR, CT COMPLEX, HYDERABAD-500 001

Sub: Filing of Appeal against DRC-07 vide Ref. No. ZD360424048614D dated 23.04.2024 in the case of M/s. Modi Realty (Miryalaguda) LLP.

I, M. JAYA PRAKASH, MANAGER of M/s. Modi Realty (Miryalaguda) LLP hereby authorizes and appoint H N A Law Chambers, Hyderabad or their partners and qualified staff who are authorized to act as an authorized representative under the relevant provisions of the law, to do all or any of the following acts: -

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

This authorization will remain in force till it is duly revoked by me/
Executed this on 27 July 2024 at Telangana.



Signature

I, the undersigned partner of M/s. H N A Law Chambers, do hereby declare that the said M/s. H N A Law Chambers is a firm of Advocates duly qualified to represent in the above proceedings under Section 116 of the CGST Act, 2017. I accept the above-said appointment on behalf of M/s. H N A Law Chambers. 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: 27.07.2024

Address for service:

**H N A Law Chambers,
4th Floor, West Block, Anushka Pride,
Above Himalaya Book World,
Road Number 12, Banjara Hills,
Hyderabad, Telangana 500034**

For H N A Law Chambers

**Venkata Prasad. P
Partner**

I, Partner/employee/associate of M/s H N A Law Chambers 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	Lakshman Kumar K	CA	241726	
3	Md Shabaz	BA LLB	TS/2223/2016	
4	Ankita Mehta	BBA LLB	TS/1578/2021	

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

Reference No. : ZD360424048614D

Date : 23/04/2024

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. : ZD3611210252690

Date : 14/11/2021

Tax Period : APR 2018 - MAR 2019

F.Y. : 2018-2019

Act/ Rules Provisions :

GST ACT

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	APR 2018	MAR 2019	CGST	NA	2,44,618.00	0.00	24,462.00	0.00	0.00	2,69,080.00
2	0	0.00	APR 2018	MAR 2019	SGST	NA	2,44,618.00	0.00	24,462.00	0.00	0.00	2,69,080.00
Total							4,89,236.00	0.00	48,924.00	0.00	0.00	5,38,160.00

You are hereby directed to make the payment by 23/05/2024 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. : ZD360424048614D

Date : 23/04/2024

1. Tax Period :- APR 2018 - MAR 2019

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	APR 2018	MAR 2019	CGST	NA	2,44,618.00	0.00	24,462.00	0.00	0.00	2,69,080.00
2	0	0.00	APR 2018	MAR 2019	SGST	NA	2,44,618.00	0.00	24,462.00	0.00	0.00	2,69,080.00
Total							4,89,236.00	0.00	48,924.00	0.00	0.00	5,38,160.00

You are hereby directed to make the payment by 23/05/2024 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 -

Validity unknown

Digitally signed by UPENDER REDDY BOPPIDI
UPENDER REDDY BOPPIDI
Date: 2024.04.23 17:16:07
IST

GOVERNMENT OF TELANGANA
COMMERCIAL TAX DEPARTMENT

DRC-07

[u/Sec 73 of TGST & CGST Act 2017]

Date: 23-04-2024

DIN	GST/36ABCFM6774G2ZZ/19
Office details	
Designation of the assessing officer	ASSISTANT COMMISSIONER (ST)
Unit	M.G.ROAD-S.D.ROAD
Division	BEGUMPET
Details of the Tax payer	
Name	M/s MODI REALTY (MIRYALAGUDA) LLP
Legal Name	MODI REALTY (MIRYALAGUDA) LLP
GSTIN	36ABCFM6774G2ZZ
Financial Year	2018-19

Ref: 1) SCN ARN No: **AD361121028612L**, Date: **14.11.2021**.

On examination of the information furnished in this return under various heads and also the information furnished in TRAN-1, GSTR-01, GSTR-2A, 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. The summary of under declared tax is as follows:

SGST Rs.800614.64

CGST Rs.800614.64

Total Rs.1601229.28

Responding to the show cause notice issued in the reference first cited above the tax payer has filed his written objections through DRC-06 vide ARN: ZD361221027817H, Dt.09.12.2021. The same are discussed item wise along with the conclusions of the assessing authority as under:

1. Net tax liability under declared on account of non-reconciliation of information declared in GSTR-09:

a. The tax on outward supplies under declared on reconciliation of data in GSTR-09:

It is observed that the tax payer has not correctly declared tax on his outward supplies on reconciliation of turnovers in GSTR-09. Resulting in a tax payable to a tune of **Rs.362613.80**

S.No	Issue	Table No. in GSTR-09	SGST	CGST	Total
1	Tax on taxable supplies as declared in GSTR-09	4N	1557626.13	1557626.13	3115252.26
2	Add net increase due to amendments (Increase in amendments (-) decrease in amendments)	10 (-) 11	170761.77	170761.77	341523.54
3	Add tax on deemed supplies	16B	0.00	0.00	0.00
4	Add tax on unreturned goods	16C	0.00	0.00	0.00
5	Add pending demands	15G	0.00	0.00	0.00
6	Total output tax liability as per the above in GSTR-09		1728387.90	1728387.90	3456775.80
7	Less Total tax paid in cash	9	0.00	0.00	0.00
8	Less Tax paid by adjustment of ITC	9	1547081.00	1547081.00	3094162.00

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	Under declared tax in GSTR-09		181306.90	181306.90	362613.80

Response of the tax payer:

The tax payer has '**Not agreed**' for the following amount in the SCN.

SGST: Rs.181306.90

CGST: Rs.181306.90

The reasons cited by the tax payer for disagreeing are:

- The tax payer has replied that the difference is paid in subsequent GSTR-3B while filing GSTR-09 for the F.Y 2018-19:

GSTR-3B	ARN	Date	SGST	CGST
Aug,2019	AA360819182075S	18.09.2019	Rs.170761.70	Rs.170761.70

- Difference amount has already been paid through DRC-03:

ARN	Date	SGST	CGST
AD361220001522X	11.12.2020	Rs.10545.00	Rs.10545.00

Observations and conclusion of the assessing authority:

Agreed with TP

- The excess input tax credit(ITC) claimed on account of non-reconciliation of information declared in GSTR-09:**

The Under Sec 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 tax payer has not correctly availed input tax on his inward supplies on reconciliation of turnovers in GSTR-09. Resulting in tax payable to a tune of **Rs.489235.56**

S.No	Issue	Table No. in GSTR-09	SGST	CGST	Total
1	Excess claim of ITC declared in GSTR-09	8D	244617.78	244617.78	489235.56
2	Add excess claim of IGST on imports in GSTR-09	8I	0.00	0.00	0.00
3	Total excess claimed of ITC as per GSTR-09		244617.78	244617.78	489235.56

Response of the tax payer:

The tax payer has '**Not agreed**' for the following amount in the SCN.

SGST: Rs.244617.78

CGST: Rs.244617.78

The reasons cited by the tax payer for disagreeing are:

- The tax payer has submitted that ITC cannot be denied merely due to non-reflection of invoices in GSTR-2A as all the conditions specified under Sec.16 of CGST Act, 2017 has been satisfied.
- Also the tax payer has replied that even if there is differential ITC, they said that they are accompanied by a valid tax invoices containing all the particulars specified in Rule 36 of SGST/CGST rules.

Observations and conclusion of the assessing authority

Disagreed with TP.

- i. Though the tax payer has mentioned that they are accompanied by a valid tax invoices containing all the particulars specified in Rule 36 of SGST/CGST rules, they have failed to produce any Invoices as per circular 183/15/2022, dt.27.12.2022 even after granting sufficient time and reminding them of the same in many instances. Hence the demand proposed under this head is hereby confirmed as below:

SGST: Rs.244617.78 CGST: Rs.244617.78 *

2. Excess claim of ITC:

a. Excess ITC reversed in GSTR-09 over and above GSTR-3B:

You have reversed ITC in GSTR-09 over and above the amount reversed in GSTR-3B which has resulted in an underpayment of tax as follows:

S.No	Description	Table No. in GSTR-09	SGST	CGST	Total
1	Reversals in GSTR-09 related to current year	7I (-) 7E	368643.21	368643.21	737286.42
2	Net reversals in GSTR-09 in the current year after reducing the reversals pertaining to previous year.	{12 of previous FY GSTR-09} (-) {12 of current FY GSTR-09}	0.00	0.00	0.00
3	Reversals in GSTR-3B	4B(1) + 4B(2) of GSTR-3B	0.00	0.00	0.00
4	Excess reversals in GSTR-09	S.No.1 (-) {S. No.3 (-) S.No.2}	368643.21	368643.21	737286.42

Response of the tax payer:

The tax payer has '**Not agreed**' for the following amount in the SCN.

SGST: Rs.368643.21 CGST: Rs.368643.21

The reasons cited by the tax payer for partially disagreeing are:

- i. Difference amount has already been paid through DRC-03:

ARN	Date	SGST	CGST
AD361220001522X	11.12.2020	Rs.10545.00	Rs.10545.00

Observations and conclusion of the assessing authority:

Agreed with TP

b. ITC to be reversed on non-business transactions & exempt supplies:

Under Sec 17(1) & (2) where the goods or services or both are used by the registered person partly for the purpose of business, partly for other purposes or partly used for effecting exempt supply and partly for taxable supply then the amount of credit shall be restricted to so much of the input tax as is attributable to the taxable supplies in the course of business.

Therefore, the taxable person needs to make an apportionment of available input tax credit under Rule 42 & 43 to arrive at the eligible ITC.

However as seen from the GSTR-3B return filed it is evident that you have not made such apportionment resulting in excess claim of ITC than you are eligible. The details of the working are as under:

S.No	Issue	Table no. in GSTR-09	Value of outward supply	SGST	CGST	Total
1	Total supplies	5N+10-11	19108206.00	-	-	-

2	Exempt supplies	5C + 5D + 5E + 5F	21072.00	-	-	-
3	Proportion of common ITC which has to be reversed to the extent of exempt supply (2/1 above)		0.00	-	-	-
4	Common input tax credit	6O+13-12	-	4566313.78	4566313.78	9132627.56
5	ITC to be reversed	{S.No.4 (x) S. No.2}/S.No.1	-	5035.60	5035.60	10071.20
6	ITC reversed as per GSTR-09	7C + 7D +7F + 7G	-	0.00	0.00	0.00
7	Difference/Excess ITC claimed	S.No.5 (-) S. No.6	-	5035.60	5035.60	10071.20

Response of the tax payer:

The tax payer has 'Not agreed' for the following amount in the SCN.

SGST: Rs.5035.60

CGST: Rs.5035.60

The reasons cited by the tax payer for disagreeing are:

- The tax payer has replied that the exempt supplies mentioned in the notice belongs to Non-GST i.e.; Interest Income and enclosed their balance sheet.

Observations and conclusion of the assessing authority

Agreed with TP

c. Under declaration of Ineligible ITC:

Under Sec 17(5) of the SGST Act, 2017 input tax credit shall not be available in respect of the list of commodities & services mentioned therein subject to certain conditions.

It is seen from GSTR-09 and other information that they have claimed ITC on these commodities and therefore the ITC claimed on these commodities or services is proposed to be recovered.

S.No	Commodity/Service	HSN code	Table no. in GSTR-09	SGST	CGST	Total
1	Accident & Health Insurance	997133;		1011.15	1011.15	2022.30
A	Total ineligible ITC u/s 17(5)	-		1011.15	1011.15	2022.30
B	Ineligible ITC declared in GSTR-09	-	7E	0.00	0.00	0.00
C	Difference/excess ITC claimed	-		1011.15	1011.15	2022.30

Response of the tax payer:

The tax payer has 'not agreed' for the following amount in the SCN.

SGST: Rs.1011.15

CGST: Rs.1011.15

The reasons cited by the tax payer for disagreeing are:

- The tax payer has replied that they have not availed any ITC on the vendors mentioned in the impugned notice, as a proof of evidence the tax payer has enclosed the copy of ledger account of M/s. Star Health and allied Insurance Company Limited.

Observations and conclusion of the assessing authority

Agreed with TP

Summary:

Annexure with details for the above proposals are already sent with show cause notice.

The total tax payable on account of these deficiencies after giving credit to the payments made in cash and ITC adjusted is arrived as follows:

Statement of Computation of Liability					
S.No	Issue	Amt in SCN		Amt determined by AA	
		SGST	CGST	SGST	CGST
1	The tax on outward supplies under declared on reconciliation of data in GSTR-09	181306.90	181306.90	0.00	0.00
2	Excess claim of ITC declared in GSTR-09	244617.78	244617.78	244617.78	244617.78
3	Excess ITC reversed in GSTR-09 over and above GSTR-3B	368643.21	368643.21	0.00	0.00
4	ITC to be reversed on non-business transactions & exempt supplies	5035.60	5035.60	0.00	0.00
5	Under declaration of Ineligible ITC	1011.15	1011.15	0.00	0.00
	Total	800614.64	800614.64	244617.78	244617.78
Less Tax paid after issuing SCN but within (30) days				0.00	0.00
Less Tax paid after issuing SCN but after (30) days				0.00	0.00
Net liability				244617.78	244617.78
Penalty(/Sec 73 (9) of TGST & CGST Act 2017)				24461.77	24461.77

The Total due determined by the Assessing authority is Tax of SGST: Rs.244617.78 & CGST: Rs.244617.78 and Penalty of SGST: Rs.24461.77 & CGST: Rs.24461.77. You are hereby directed to make the payment within (30) days of issue of this order, failing which proceedings shall be initiated against you to recover the outstanding dues.

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

