

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. ZD360824097649J dated 24-08-2024 for the FY 2019-20 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 28-11-2024 against the OIO Ref No. ZD360824097649J dated 24-08-2024
 - c. OIO vide Ref No. ZD360824097649J dated 24-08-2024 Pertaining to M/s. Modi Reality (Miryalaguda) LLP for the period April 2019 to March 2020.
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. ZD360824097649J dated 24-08-2024, we filed an appeal dated 28-11-2024. (The Copy of the Appeal filed along with the OIO dated 24-08-2024 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 amount aggregating to Rs. 7,90,186/-. The details of the pre-deposit paid are duly reflected in the appeal filed in Form GST APL-01 dated 28-11-2024 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."

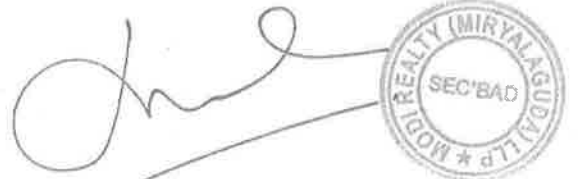
Since we have duly fulfilled the mandatory condition of making the pre-deposit of 10% of the disputed tax amounting to Rs. 7,90,186/- as required under Section 107(6), the recovery of the balance disputed demand is automatically and statutorily stayed by operation of law.

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. ZD360824097649J dated 24-08-2024 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:

1. Notice for payment of arrears received via email dated 25-10-2025
2. Appeal filed vide APL-01 dated 28-11-2024 against the OIO Ref No. ZD360824097649J dated 24-08-2024
3. OIO vide Ref No. ZD360824097649J dated 24-08-2024 Pertaining to M/s. Modi Realty (Miryalaguda) LLP for the period April 2019 to March 2020.

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-19 To Mar-20	ZD360824097649J	24-08-2024	0	6795585	6795585

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,

Date: 06.12.2024

To

The Appellate Joint Commissioner of State tax,
Punjagutta Division,
Commissioner of Commercial Taxes Department
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 Order-In-Original vide Ref. No. ZD360824097649J dated 24.08.2024 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 (GSTIN: 36ABCFM6774G2ZZ) 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 dated 28.11.2024 in Form GST APL-01 along with authorization and annexures against the above-referred order which has been acknowledged vide provisional acknowledgment number AD361124020961E.
3. Further, we are hereby submitting the physical copy of the Appeal memorandum along with annexures and online filing acknowledgments for easy reference. Therefore, request you to take the same on record and admit the appeal.

Kindly acknowledge 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
(Formerly known as Hiregange & Associates LLP)
Chartered Accountants

LAKSHMAN

KUMAR KADALI

CA K. Lakshman Kumar

Partner

Enclosures:

1. Provisional Acknowledgment along with APL-01 form filed online.
2. 2 Copies of the Complete Appeal Memorandum along with the attested copy of order.



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

040 2331 8128, 3516 2881

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Modi Realty Miryalguda LLP

Date: 28.11.2024

To

**The Appellate Joint Commissioner of State Tax,
Punjagutta division,
Commissioner of Commercial Taxes Department,
C.T complex, Nampally, Hyderabad-500 001.
Dear Sir/Madam,**

Sub: Application for condonation of delay in filing the Appeal.

Ref: Appeal against the Order vide Reference No. ZD360824097649J dated 24.08.2024 related to M/s. **Modi Realty (Miryalaguda) LLP** vide GSTN: 36ABCFM6774G2ZZ.

1. As per Section 107 of CGST Act, 2017, an appeal against the order to the Adjudicating authority shall be filed within 3 months from the date of receipt of the order. In the instant case, the order was received on 24.08.2024, thereby, the due date for filing the appeal falls on 24.11.2024.
2. In this regard, we would like to submit that the delay in filing was due to our involvement in the ongoing tax audit for the financial year 2023-24, as required under the Income Tax Act, 1961. Unfortunately, the complexity and volume of the audit work led to delay, causing us to lose track of the due date for the submission of the impugned order. Despite our best efforts to meet the deadlines, the audit process consumed more time than anticipated, and as a result, we were unable to file within the stipulated time.
3. The actual due date for filing the appeal is 24.11.2024 whereas the present appeal is being filed on 28.11.2024. As explained in the above paragraphs, the delay is unintentional, and we have made sincere efforts to file the appeal within the time limit. Hence, we humbly request your good self to consider the same and allow the application for condonation of delay.

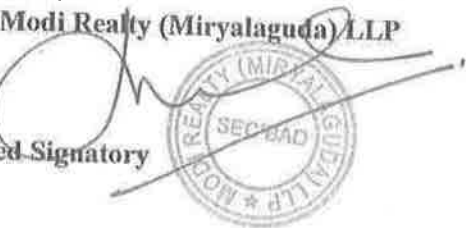
We sincerely regret the inconvenience caused in this regard. Kindly acknowledge receipt of this letter and do the needful.

Thanking You,

Yours faithfully,

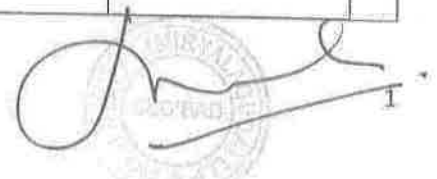
For M/s. **Modi Realty (Miryalaguda) LLP**

Authorized Signatory



Form GST APL – 01**Form of Appeal to Appellate Authority****[Under Section 107(1) of Central Goods and Service Tax Act, 2017]****[See rule 108(1)]****BEFORE THE APPELLATE JOINT COMMISSIONER OF STATE TAX, PUNJAGUTTA
DIVISION, COMMISSIONER OF COMMERCIAL TAXES DEPARTMENT, C.T COMPLEX,
NAMPALLY, 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.	ZD360824097649J	Order Date	24.08.2024	
(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	24.08.2024			
(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	a. Short reporting of turnover in GSTR-09 when compared to financials			
b. Description and classification of goods/services in dispute	NA			
c. Period of dispute	FY 2019-20			
d. Amount under dispute				
Description	Central tax	State/UT tax	Integrated tax	Cess
a. Tax/Cess	Rs.39,50,922	Rs.39,50,922	NA	NA
b. Interest	Rs.28,44,664	Rs.28,44,664	NA	NA
c. Penalty	Rs.3,95,092	Rs.3,95,092	NA	NA
d. Fees	NA	NA	NA	NA
e. Other charges	NA	NA	NA	NA
TOTAL	Rs.71,90,678	Rs.71,90,678	NA	NA



e. 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 of demand/Refund	Particulars	CGST	SGST	IGST	Cess	Total amount
Amount of demand created (A)	a) Tax/Cess	39,50,92 2	39,50,922	NA	NA	79,01,844
	b) Interest	28,44,664	28,44,664	NA	NA	56,89,328
	c) Penalty	3,95,092	3,95,092	NA	NA	7,90,184
	d) Fees	NA	NA	NA	NA	NA
	e) Other charges	NA	NA	NA	NA	NA
	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 admitted (B)	a) Tax/Cess	39,50,922	39,50,922	NA	NA	79,01,844
	b) Interest	28,44,664	28,44,664	NA	NA	56,89,328
	c) Penalty	3,95,092	3,95,092	NA	NA	7,90,184
	d) Fees	NA	NA	NA	NA	NA
	e) Other charges	NA	NA	NA	NA	NA
	a) Tax/Cess	39,50,922	39,50,922	NA	NA	79,01,844
	b) Interest	28,44,664	28,44,664	NA	NA	56,89,328
	c) Penalty	3,95,092	3,95,092	NA	NA	7,90,184
	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	3,95,093	3,95,093	NA	NA	7,90,186



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 –

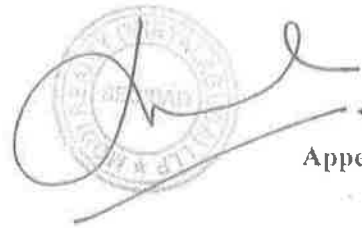
a. Period of delay - NA

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

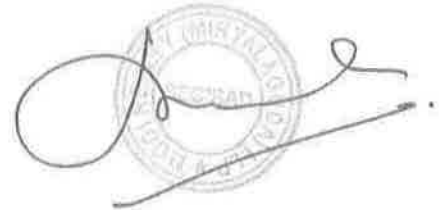


Appellant

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 regularly discharging GST liability on such supply of services and filing periodical returns. Noticee has filed GSTR-09 for the FY 2019-20.
- C. Appellant received the ADT-01 vide Ref No: ZD360424037386B dated 20.04.2024. Accordingly, the required information was submitted at the good office of the Ld. Adjudicating office. (Copy of ADT-01 dated 20.04.2024 is enclosed as **Annexure IV**).
- D. Subsequently, Appellant is in receipt of the Show Cause Notice issued under section 73 vide ref. no. Ref. No. ZD360524058370H dated 29.05.2024 for the period April 2018 – March 2019 proposing to demand tax amount of Rs. 43,10,409/- in CGST and Rs.43,10,409/- in SGST along with interest u/s 50 and penalty u/s 73 of the CGST Act, 2017. (Copy of Show Cause Notice is enclosed as **Annexure III**).
- E. Later, Appellant received "ERRATA NOTICE" dated 22.06.2024 stating that there is a typographical error noticed in the Output Turnover as per the financial statements in the notice (of Rs.71,92,08,021/-) and as per actual turnover reported in financial statements (of Rs.7,28,11,291/-).
- F. In response to the above, Appellant has submitted the detailed comprehensive reply as to why the demand proposed in show cause notice is not payable. (Copy of the reply made to the show cause notice is enclosed as **Annexure II**.)
- G. Without considering the submissions made in the reply, Appellant is in receipt of the present order vide ref. no. ZD360824097649J dated 24.08.2024 confirming demand of Rs.39,50,922/- in CGST and Rs.39,50,922/- in SGST along with interest of Rs.28,44,664/- in CGST and Rs.28,44,664/- in SGST and penalty u/s 73 of Rs.3,95,092/- in CGST and Rs.3,95,092/- in SGST for short reporting of output tax in GSTR-09 when compared to Financial Statements. (Copy of the order is enclosed as **Annexure I**)
- H. 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 OFS 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 short reporting of turnover in GSTR-09 when compared to financials

3. Appellant submits that the impugned order has made a finding that there is short reporting of turnover in GSTR-09 when compared to financials and confirmed demand of Rs.39,50,922/- in CGST and Rs.39,50,922/- in SGST.
4. In this regard, Appellant submits that Appellant is engaged in the provision of construction services where GST liability arises upon the receipt of advance payments as per Section 13 of CGST Act, 2017 read with the definition of continuous supply of service.
5. However, as per the accounting standards prescribed by the Institute of Chartered Accountants of India ICAI revenue from construction contracts is recognized in the financial statements based on the percentage of completion method. This method is mandated by ICAI which results in revenue being recognized progressively over the life of the project reflecting the actual work completed rather than at the point of receiving advances.
6. Consequently, there will be differences between the turnover reported in the GSTR-9 and the revenue recognized in the financial statements. The present difference is a natural outcome of complying with both GST regulations and ICAI accounting standards. Therefore, the proposal to levy GST again such amounts recognized in the financial statements but not aligned with the GSTR-9 is incorrect and the same needs to be dropped.
7. Appellant submits that the Appellant has already paid the GST on all advances received during the disputed period and disclosed the same in the GSTR-3B returns. The same can be evidenced from the GSTR-3B and GSTR-09 which was enclosed as **Annexure V**.
8. Further, Appellant is enclosing the statement of details with respect to advances received for the amount of Rs.3,08,09,513/- reported in table-3.1(a) of GSTR-3B as an **Annexure VI**. Appellant



submits that the amount was also reported in Income tax return, the same has been extracted here for easy reference and the IT return is enclosed as an **Annexure VII**.

Information regarding Turnover/Gross Receipt Reported for GST	
GSTR No.	36ABCFM8774G2ZZ
Amount of turnover/Gross receipt as per the GST return filed	30809513

SOHAM SATISH MODI
(Managing Partner)

9. Appellant submits that the Appellant had already disclosed the details of advances received during the disputed period in GST returns and paid the applicable GST. Therefore, there is no short payment of GST as stated in the impugned order. Further, Appellant submits that out of the turnover of Rs.3,08,09,513/- declared in GSTR-3B returns, an amount of Rs.18,97,353/- pertains to October 2018 which was disclosed in August 2019 GSTR-3B. Once the same is excluded, the advances received for the period April 2019 to March 2020 amounts to Rs.2,89,12,160/- which was disclosed in GSTR-01 and GSTR-09. For easy understanding, Appellant is herewith enclosing the following table:

S.No	Particulars	Taxable value	CGST	SGST
A	Tax paid on outward supplies	3,48,24,660	31,34,219	31,34,219
B	Less: Credit notes	59,12,500	5,32,125	5,32,125
C	Turnover reported as per GSTR 1	2,89,12,160	26,02,094	26,02,094
D	Less: Turnover reported as per GSTR-3B	3,08,09,513	27,72,856	27,72,856
E	Diff. due to GST liability of Oct'18 paid in Aug'19	18,97,353	1,70,762	1,70,762

10. To further substantiate the claim that the liability of October 2018 is paid in the month of August 2019, Appellant is herewith enclosing the tax liability comparison table for the FY 2019-20 as under:

Tax Period	Tax liability declared in GSTR-3B during the month [as per table 3.1(a)]			Tax liability declared in GSTR-1 (other than reverse charge supply) during the month [as per table 4A, 4C, 5, 6C, 7, 9A, 9B, 9C, 10, 11]			Shortfall (-)/ Excess (+) in liability (GSTR-3B - GSTR-1)		
	IGS T	CGST	SGST	IGS T	CGST	SGST	IGS T	CGST	SGST
Apr-19	0	3,26,048	3,26,048	0	3,26,048	3,26,048	0	0	0
May-19	0	35,595	35,595	0	35,595	35,595	0	0	0
Jun-19	0	1,30,500	1,30,500	0	1,30,500	1,30,500	0	0	0
Jul-19	0	1,45,125	1,45,125	0	1,45,125	1,45,125	0	0	0

Aug-19	0	4,38,512	4,38,512	0	2,67,750	2,67,750	0	1,70,762	1,70,762
Sep-19	0	3,20,963	3,20,963	0	3,20,963	3,20,963	0	0	0
Oct-19	0	3,96,000	3,96,000	0	3,96,000	3,96,000	0	0	0
Nov-19	0	2,72,115	2,72,115	0	2,72,115	2,72,115	0	0	0
Dec-19	0	3,16,688	3,16,688	0	3,16,688	3,16,688	0	0	0
Jan-20	0	2,59,875	2,59,875	0	2,59,875	2,59,875	0	0	0
Feb-20	0	8,812	8,812	0	8,812	8,812	0	0	0
Mar-20	0	1,22,625	1,22,625	0	1,22,625	1,22,625	0	0	0
Total	0	27,72,856	27,72,856	0	26,02,094	26,02,094	0	1,70,762	1,70,762

11. All the above explanations made implies that there is no short payment of GST as stated in impugned order, thereby, the demand confirmed shall be set aside.

In Re: Interest under section 50 is not applicable:

12. Appellant submits that when tax is not applicable, the question of interest & also penalties does not arise. It is a natural corollary that when the principal is not payable there can be no question of paying any interest as held by the Supreme Court in Prathiba Processors Vs. UOI, 1996 (88) ELT 12 (SC).

13. Appellant submits that the impugned order has confirmed that the Appellant is liable to interest under Section 50 of CGST Act, 2017. In this regard, it is pertinent to examine Section 50 of CGST Act, 2017 which is extracted below for ready reference

(1) 'Every person who is liable to pay tax in accordance with the provisions of this Act or the Rules made thereunder, but failed to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council'

(2) the interest under sub-section(1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid

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

14. Appellant submits that the impugned order has demanded that interest rate prescribed under Section 50 is applicable. In this regard, Appellant submits that the proposal in impugned order is not at all tenable. Hence, the demand of interest does not sustain.

In Re: Penalty under section 73 is not imposable:

15. Appellant submits that the impugned Order has imposed the penalty u/s 73 @ 10% which is not correct. Appellant submits that Appellant is of the vehement belief that the input availed by Appellant is not required to reverse and there is no short payment of GST, 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 interest and penalty as held by the Supreme Court in **Prathiba Processors Vs UOI, 1996 (88) ELT 12 (SC)**.

16. 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".

17. Appellant submits that the impugned order has imposed the penalty u/s 73 of the CGST Act, 2017. The relevant extract is reproduced below: -

"9. Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3).....

...

...

(8).....

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short



paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund."

18. From the above-referred sub-section, it is clear that 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 not availed any excess ITC in GSTR-03B. Hence, the penalty under Section 73(11) is not applicable in the instant case.
19. 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.
20. Appellant submits that from the above-referred decision of the Supreme Court, penalties cannot be imposed merely because the assessee has claimed certain ITC which was not accepted or was not acceptable to the revenue when the assessee has acted on the bonafide belief that the ITC is eligible. In the instant case also, Order has availed the ITC on the 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 dropped.
21. 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 the imposition of penalties.
22. 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 dropped.
23. Appellant would like to submit further that in addition to above, Appellant submits that where an authority is vested with discretionary powers, discretion has to be exercised by application of mind and by recording reasons to promote fairness, transparency and equity. In this regard the reliance is placed on the judgement of 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

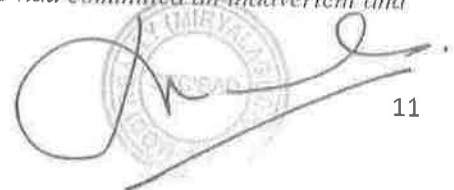
"14. It is in the light of the above pronouncements unnecessary to say anything beyond what has been so eloquently said in support of the need to give reasons for notices made by Courts and statutory or other authorities exercising quasi-judicial functions. All that we may mention is that in a system 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."

24. Appellant further 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 notice imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."*
25. 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 particular statute."* Hence, Penalty cannot be imposed in the absence of deliberate defiance of law even if the statute provides for a penalty.

26. 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.

27. Appellant submits that from all the above submissions, it is clear that imposition of penalties is not warranted therefore the impugned order needs to be dropped.

28. Appellant submits that the GST is still under trial and error phase and the assesseees are facing genuine difficulties and the same was also held by various courts by deciding in favour of assessee. Therefore, the imposition of 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 :

1. 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"*

2. The Tyre Plaza Vs UOI 2019 (30) GSTL 22 (Del)

3. Kusum Enterprises Pvt Ltd Vs UOI 2019-TIOL-1509-HC-Del. GST

29. The Appellant submits that, as submitted supra, there was confusion that existed at such point in time and the issue involved interpretation of provisions and law is at nascent stages. Therefore, the penalties cannot be imposed. Relied on CCE Vs Gujarat Narmada Fertilizers Co. Ltd 2009 (240) E.L.T 661 (S.C).

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

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

31. Appellant submits that 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 the annual return of the corresponding FY. For FY 2019-20, the annual return due date falls on 31.03.2021 and the 3-year time limit expires by 31.03.2024 however citing the difficulties caused due to Covid-19, the Government has extended the time limit from 31.03.2024 to 30.06.2024 by exercising the powers u/s. 168A by the Notification No. 09/2023 dated 31.03.2023. However, again exercising the powers u/s. 168A, ibid the time limit was further extended to 31.08.2024 by Notification No. 09/2023-C.T



dated 31.03.2023 and later was further extended to 31.08.2024 by Notification No. 56/2023- Central Tax dated 28.12.2023.

32. In this regard, it is submitted that an 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' is as defined u/s. 168A, ibid had never occurred from 2022 till the expiry of the extended due date of 30.06.2024. Hence, the second extension of time runs beyond the mandate of Section 168A and is not sustained in the law. Accordingly, the demand for FY 2019-20 deserves to be dropped as the Show Cause Notice in the instant case is not issued prior to 31.12.2023 as envisaged under Section 73 of CGST Act, 2017.
33. It is settled law that any delegated legislation travelling beyond the Statutory provisions be 'ultra vires' i.e meaning it is beyond the powers granted to the tax authorities. Such a circular is invalid and unenforceable and is not sustained in law and for the same reliance is placed on the following case laws:
- a. Mohit Minerals Pvt Ltd Versus Union of India 2022 (61) G.S.T.L. 257 (S.C.)
 - b. Munjaal Manish bhai Bhatt Versus Union of India 2022 (62) G.S.T.L. 262 (Guj.)
34. Appellant craves leave to alter, add to, and or amend the aforesaid grounds.
35. Appellant wishes to be heard in person before passing any order in this regard.

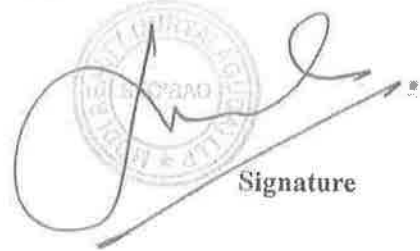
For M/s. Modi Realty (Miryalaguda) LLP.


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 short reporting of turnover in GSTR-09 when compared to financials;
- c. To hold that the impugned order is ultra vires the constitution;
- d. To hold that interest and penalty is not payable/imposable.
- e. To provide any other consequential relief.



Signature

VERIFICATION

I, Soham Satish Modi, Partner, 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: 23.11.2024

For M/s. Modi Realty (Miryalaguda) LLP.



Authorized Signatory

**BEFORE THE APPELLATE JOINT COMMISSIONER OF STATE TAX, PUNJAGUTTA
DIVISION, COMMISSIONER OF COMMERCIAL TAXES DEPARTMENT, C.T COMPLEX,
NAMPALLY, HYDERABAD-500 001.**

Sub: Filing of Appeal against Order-in-Original vide Ref. No. ZD360824097649J dated 24.08.2024 in the case of M/s. Modi Realty (Miryalaguda) LLP.

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

- 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 23.11.2024 at Hyderabad


Signature

I, the undersigned partner of M/s H N A & Co. LLP, Chartered Accountants, do hereby declare that the said M/s H N A & Co. LLP is a registered firm of Chartered Accountants, and all its partners are Chartered Accountants holding certificate of practice and duly qualified to represent in above proceedings under Section 116 of the CGST Act, 2017. I accept the above-said appointment on behalf of M/s H N A & Co. LLP. The firm will represent through any one or more of its partners or Staff members who are qualified to represent before the above authorities.

Dated: 23.11.2024

Address for service:

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

**For HNA & Co. LLP
Chartered Accountants**

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

I, Partner/employee/associate of M/s H N A & Co. LLP duly qualified to represent in above proceedings in terms of the relevant law, also accept the above said authorization and appointment.

S.No.	Name	Qualification	Membership No.	Signature
1	Sudhir V S	CA	219109	
2	Venkata Prasad P	BA LLB	AP/3511/2023	
3	Srimannarayan S	CA	261612	
4	Akash Heda	CA	269711	
5	Revant Krishna	CA	262586	
6	Manikanta	CA	277705	
7	Asha Latha	CA	280346	
8	Shiva Mohan	CA	267701	

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 - ZD360824097649J Order Date - 24/08/2024
6 Designation and address of the officer passing the order appealed against
against State Tax Officer and M.G.ROAD -
Demand Id - S.D.ROAD: Begumpet: Telangana
ZD360824097649J
7 Date of communication of the order to be appealed against - 24/08/2024
8 Name of the authorised representative - SOHAM MODI[ABMPM6725H]

Category of the case under dispute -

1	Incorrect determination of the liability to pay tax on any goods or services or both
2	Others - Short reporting of turnover in GSTR-09 when compared to financials

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 - 01/04/2019 To - 31/03/2020

(iv) Amount under Dispute

Description		Central tax (₹)	State/UT tax (₹)	Integrated tax (₹)	Cess (₹)	Total Amount (₹)
Amount of Dispute	Tax/Cess	3950922	3950922	0	0	7901844
	Interest	2844664	2844664	0	0	5689328
	Penalty	395092	395092	0	0	790184
	Fees	0	0	0	0	0
	Other Charges	0	0	0	0	0
						14381356

(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	3950922	3950922	0	7901844	14381356
	Interest	2844664	2844664	0	5689328	
	Penalty	395092	395092	0	790184	
	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	3950922	3950922	0	7901844	14381356
	Interest	2844664	2844664	0	5689328	
	Penalty	395092	395092	0	790184	
	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	790186
	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	395093	395093	0	790186	

(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	395093	395093	0	790186	790186
	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 -

Modi realty miryalguda
LLP_2019-20_TS_APL-01.pdf

Upload Supporting Documents (Relied upon), if any -

Order	A-I Order.pdf
A-II to A-VII	A-II to A-VII.pdf

Verification

☒ I, SOHAM MODI , hereby solomenly 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: 28/11/2024

Name of the Applicant

MODI REALTY (MIRYALAGUDA) LLP

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

Reference No. : ZD360824097649J

Date : 24/08/2024

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. : ZD360524058370H

Date : 29/05/2024

Tax Period : APR 2019 - MAR 2020

F.Y. : 2019-2020

Act/ Rules Provisions :	
	Under the provisions of the 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 2019	MAR 2020	CGST	NA	39,50,922.00	28,44,664.00	3,95,092.00	0.00	0.00	71,90,678.00
2	0	0.00	APR 2019	MAR 2020	SGST	NA	39,50,922.00	28,44,664.00	3,95,092.00	0.00	0.00	71,90,678.00
Total							79,01,844.00	56,89,328.00	7,90,184.00	0.00	0.00	1,43,81,356.00

You are hereby directed to make the payment by 24/09/2024 failing which proceedings shall be initiated against you to recover the outstanding dues.

Signature
Name : VENKATESHWAR RAO SHERI
Designation : State Tax Officer
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. : ZD360824097649J

Date : 24/08/2024

1. Tax Period :- APR 2019 - MAR 2020

2. Issues involved :- TAX

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 2019	MAR 2020	CGST	NA	39,50,922.00	28,44,664.00	3,95,092.00	0.00	0.00	71,90,678.00
2	0	0.00	APR 2019	MAR 2020	SGST	NA	39,50,922.00	28,44,664.00	3,95,092.00	0.00	0.00	71,90,678.00
Total							79,01,844.00	56,89,328.00	7,90,184.00	0.00	0.00	1,43,81,356.00

You are hereby directed to make the payment by 24/09/2024 failing which proceedings shall be initiated against you to recover the outstanding dues.

Signature

Name : VENKATESHWAR RAO SHERI

Designation : State Tax Officer

Jurisdiction : M.G.ROAD -

S.D.ROAD:Begumpet,Telangana

Copy to -

Revenue



Proceedings of the
STATE TAX OFFICER-II,
M.G.ROAD-S.D.ROAD CIRCLE, BEGUMPET DIVISION.
(Present : Venkateshwar Rao Sheri)

GSTIN: 36ABCFM6774G2ZZ
ARN: AD3604240088518

Date: 24-08-2024

SUMMARY OF ORDER PROCEEDINGS
for the Financial Year 2019-20 under GST Act, 2017
[See Rule 142 (1) and Section 73]

SUB: Goods and Services Tax Act, 2017 (for brevity 'GST Act, 2017') – M.G.Road-S.D.Road Circle - Begumpet Division, Hyderabad –M/s. MODI REALTY (MIRYALAGUDA) LLP (for brevity 'taxpayer') – Conduct of general audit for the financial year 2019-20 under GST Act – Notice issued in ADT-01 - Records produced - Examination/scrutiny made of the same – Certain discrepancies / deficiencies/ anomalies noticed - Proposed to assess under Section 73 of CGST Act, 2017 - Show Cause Notice issued in DRC 01 – Reply Filed – Orders Passed – Regarding.

- REF: 1. Commissioner (ST), Telangana, Hyderabad Audit Authorization in GST Portal on dt. 20-04-2024
2. Joint Commissioner (ST), Begumpet Division, Hyderabad Audit Authorization In Ref No. BGPT-DIVN/STO-II/10/MGSD/2024-25 dt. 28-05-2024.
3. STO-II, M.G. Road - S.D. Road Circle notice issued in GST Form DRC-01 vide Ref No. ZD360524058370H, Dated. 29-05-2024.
4. M/s. MODI REALTY (MIRYALAGUDA) LLP, Reply filed in DRC-06, ARN : ZD360624021446H, dated. 09-06-2024.
5. STO-II, M.G. Road - S.D. Road Circle Reminder-01 notice issued for Reply and Personal Hearing vide Ref No. ZD360624021980F, Dated. 10-06-2024.
6. STO-II, M.G. Road - S.D. Road Circle, Errata to Summary of Show Cause Notice dt. 22-06-2024
7. M/s. MODI REALTY (MIRYALAGUDA) LLP, Reply filed in DRC-06, ARN : ZD3606240109670H, dated. 26-06-2024.
8. STO-II, M.G. Road - S.D. Road Circle Reminder-02 notice issued for Reply and Personal Hearing vide Ref No. ZD360624122967I, Dated. 29-06-2024.
9. STO-II, M.G. Road - S.D. Road Circle Reminder-03 notice issued for Reply and Personal Hearing vide Ref No. ZD360724073585Z, Dated. 20-07-2024.
10. STO-II, M.G. Road - S.D. Road Circle Final Opportunity-cum- Personal Hearing Notice-1 Dated. 30-07-2024.
11. STO-II, M.G. Road - S.D. Road Circle Final Opportunity-cum- Personal Hearing Notice -2 Dated. 09-08-2024.
12. M/s. MODI REALTY (MIRYALAGUDA) LLP, Reply filed in DRC-06, ARN : ZD360824054133B, dated. 17-08-2024.

M/s. MODI REALTY (MIRYALAGUDA) LLP, located at SOHAM MANSION, 2ND FLOOR, S-4-187/3 AND 4, M.G. ROAD, SECUNDERABAD, 500003 are a registered taxpayer under the provisions of GST Act, 2017 with GSTIN 36ABCFM6774G2ZZ and assessee on the rolls of the state jurisdictional tax office i.e., the Assistant Commissioner (ST), M.G.Road-S.D.Road Circle of Begumpet Division, Hyderabad. They are carrying on business in 'trading of Goods as per the Portal' is that, (HSN 00440290) CONSTRUCTION SERVICES IN RESPECT OF COMMERCIAL OR INDUSTRIAL BUILDINGS AND CIVIL STRUCTURES(HSN 00440410) WORKS CONTRACT SERVICES.

In consequent to the GST General Audit authorized as required under the provisions of Section 65, read with Rule 101 of CGST Act and Rules, 2017 in respect of the above-mentioned taxpayer for the financial year 2019-20, the audit of the taxpayer is accordingly undertaken.

In the course of and as a part of processing the Audit undertaken in due process of law, the taxpayer vide reference 1st cited, has been issued 'Notice for conducting Audit' via prescribed 'Form GST ADT-01' dated 20-04-2024 as required under the provisions of Rule 101 and Sec.65 of CGST Act, 2017 duly intimating / notifying the authorized Audit of their books of accounts and records and with a direction to attend in person or through an authorized representative on dated, 07-05-2024 before the undersigned at aforementioned address with the relevant books of accounts and records and in the light of Section 65 of CGST Act, 2017 they are asked to render their assistance for timely completion of the Audit for the financial year 2019-20 as required for Audit.

The Notice was served as prescribed under the provisions of Section 169 of CGST Act, 2017 i.e., by way of communicating to the e-Mail address of the taxpayer so given at the time of GST registration or as amended from time to time.

The taxpayer having received the ADT-01 appeared in person and produced Profit and Loss Account, Balance Sheet, Purchase and Sale Statements etc., On due examination of the same with reference to the material available in the GST Common Portal, their tax liabilities and other discharged liabilities are hereby proposed to assess with the following results:-

1) Input Tax on Inward Supplies :-

The Tax Payer claimed Input Tax Credit in GSTR3B / GSTR 9 returns filed by them for the year 2019-20 as under:

IGST	Rs.	00.00
CGST	Rs.	50,92,638.00
SGST	Rs.	50,92,638.00

On verification of the ITC claim of the taxpayer among the Form GSTR-3B / GSTR 9 and Purchase details filed to Audit, the following variations are noticed.

The eligible for Input Tax Credit as per the Table 8A of GSTR 9 is arrived as under:

Particulars	CGST	SGST	Total
Input Tax as per Table 8A of GSTR 9	4821333	4821333	9642667
Less: Credit Notes	88182	88182	176364
Net ITC Eligible	4733151	4733151	9466302

The Tax Payer claimed excess ITC in GSTR3B / GSTR 9 compared with the ITC as per the Table 8A of GSTR 9:

Particulars	CGST	SGST	Total
ITC claimed in GSTR 3B / GSTR 9	5092638	5092638	10185276
Less: Net ITC Eligible as per Table 8A of GSTR 9	4733151	4733151	9466302
Excess ITC Claimed	359487	359487	718974

While bringing forward to the notice of the taxpayer about the above excess claimed ITC amounting to Rs.7,18,974/- (i.e., Rs.3,59,487/- towards CGST and Rs.3,59,487/- towards SGST respectively), the taxpayer is hereby directed to pay the same by generating Form GST DRC-03 or if having any objections, as to file their reply.

2) Output Tax on Outward Supplies :-

The Tax Payer reported Output Tax in GSTR3B / GSTR 9 Returns filed by them for the year 2019-20 as under:

IGST Rs. 00.00
CGST Rs. 26,02,094.40
SGST Rs. 26,02,094.40

As seen from the Financial Statement (Profit and Loss Account) compared with the Output Taxes reported in GSTR 3B / GSTR 9 the following variations noticed in Output Turnovers and Taxes Reported.

Particulars	Output Turnover Reported
Supplies made to un-registered persons (B2C)	27887160
Supplies made to registered persons (B2B)	1025000
Total Reported	28912160

Particulars	Turnover	CGST Proposed at 9%	SGST Proposed at 9%	Total Output Tax Proposed
Output Turnover as per Financial Statements (Profit and Loss Account)	719208021			
Less: Output Turnover Reported	28912160			
Shortly Reported Output Turnover Now Proposed to Tax @ 18%	690295861	62126627	62126627	124253255

While bringing forward to the notice of the taxpayer about the above Shortly reported Output Tax amounting to Rs. 12,42,53,255/- (i.e., Rs.6,21,26,627/- towards CGST and Rs.6,21,26,627/- towards SGST respectively), the taxpayer is hereby directed to pay the same by generating Form GST DRC-03 or if having any objections, as to file their reply.

Therefore, it is proposed to assess for year April 2019 to March 2020 for the net tax proposed to be payable indicated under Section 73 of the SGST/CGST Act as under:

S. No.	Particulars	CGST Tax	SGST Tax	Total Tax
1	Proposed to Disallow Excess claim of Input Tax compared with Table 8A of GSTR 9 and GSTR 3B / GSTR 9	359487	359487	718974
2	Shortly Reported Output Tax proposed compared with Financial Statements (Profit and Loss Account) and GSTR 3B / GSTR 9	62126627	62126627	124253255
Total Tax Due to the Department		62486114	62486114	124972229

In addition to above, the following punitive measures will be taken up while passing final orders.

A) As per Section 73 read with Rule 122 of CGST Act, 2017, a Penalty as required on the tax due will be levied at the time of assessment proceedings without any further notice.

B) As per Section 50 of CGST Act, 2017 the legitimate Interest @18% PA will be levied on the excess claim of Input Tax at the time of assessment proceedings without any further notice.

Thus, the total Tax, Penalty and Interest for the period from April 2019 to March 2020 is proposed in addition to the Taxes reported as under:

S. No.	Act	Tax	Interest	Penalty	Total
1	CGST	62486114	44990002	6248611	113724728
2	SGST	62486114	44990002	6248611	113724728
3	TOTAL	124972229	89980005	12497223	227449456

Accordingly a notice in DRC-01 has been issued vide Reference No. ZD36052405837011, Dated. 29-05-2024, and requested to file their objections if any on or before dated. 15-06-2024.

In response to the DRC-01 notice issued the Tax Payer filed DRC 06 vide ARN: ZD36062402144611, dated. 09-06-2024 and requested time of (15) days for filing of their reply.

A Reminder-I Notice filing the Reply along with Personal Hearing issued vide Ref No. ZD36062402198011, Dated. 10-06-2024 by providing the time as requested by them i.e. up to dated.26-06-2024.

On further scrutiny of the records it is noticed that, while issuing the Show Cause Notice, a Typographical Error was noticed in the Output Turnover as per Financial Statements (Profit and Loss Account). Output Turnover as per Financial Statements (Profit and Loss Account) mentioned in the Show Cause Notice is Rs. 71,92,08,021/-, where as actual Output Turnover as per Financial Statements (Profit and Loss Account) is Rs. 7,38,11,291/-, the same is now rectified and intimated the actual turnovers and taxes proposed will be as under:

Particulars	Turnover	CGST Proposed @ 9%	SGST Proposed @ 9%	Total Output Tax Proposed
Output Turnover as per Financial Statements (Profit and Loss Account)	72811291			
Less: Output Turnover Reported	28912160			
Shortly Reported Output Turnover Now Proposed to Tax @ 18%	43899131	3950922	3950922	7901844

Therefore, the net tax proposed to be payable indicated under Section 73 of the SGST/CGST Act for year April 2019 to March 2020 may be considered as under:

S. No.	Particulars	CGST Tax	SGST Tax	Total Tax
1	Proposed to Disallow Excess claim of Input Tax compared with Table 8A of GSTR 9 and GSTR 3B / GSTR 9	359487	359487	718974
2	Shortly Reported Output Tax proposed compared with Financial Statements (Profit and Loss Account) and GSTR 3B / GSTR 9	3950922	3950922	7901844
Total Tax Due to the Department		4310409	4310409	8620817

Accordingly, an ERRATA to the Show Cause Notice has been issued on dated. 22-06-2024 and requested to file their objections within (15) days from the date of notice issued.

In response to the ERRATA issued the Tax Payer filed DRC 06 vide ARN: ZD3606241096070H, dated. 26-06-2024 and requested time of (15) days for filing of their reply.

A Reminder-2 Notice filing the Reply along with Personal Hearing issued vide Ref No. ZD3606241229671, Dated. 29-06-2024 by providing the time as requested by them i.e. up to dated.15-07-2024, but the Tax Payer failed to file their objections within the stipulated time provided.

A Reminder-3 Notice filing the Reply along with Personal Hearing issued vide Ref No. ZD360724073585Z, Dated. 20-07-2024 by providing time up to dated. 29-07-2024, but the Tax Payer failed to file their objections within the stipulated time provided.

A Notice for Final Opportunity-cum-Personal Hearing has been issued on dt. 30-07-2024 by providing time up to dated. 08-08-2024, but the Tax Payer failed to file their objections within the stipulated time provided.

A Notice for Final Opportunity-cum-Personal Hearing-2 has been issued on dated. 09-08-2024 by providing time up to dated. 17-08-2024.

In receipt of the notices the Tax Payer filed their reply in DRC 06 vide ARN: ZD360824054433B, dated. 17-08-2024, and claimed as under:

In Re: No Excess claim of ITC

4. Noticee submits that the impugned notice has alleged that there is an excess availment of ITC in GSTR-3B when compared to GSTR-2A of Rs.3,59,487/- in CGST and Rs.3,59,487/- in SGST.

5. In this regard, Noticee is herewith providing the following table:

S.no.	Particulars	CGST (Rs.)	SGST (Rs.)
A	ITC as per updated GSTR-2A	53,75,223	53,75,223
B	Net ITC availed as per GSTR-3B	50,25,574	50,25,574
C	Short availment of ITC (A-B)	3,49,649	3,49,649

6. From the above table, it can be observed that there is in fact short availment of ITC of Rs.3,49,649 in CGST and Rs.3,49,649 in SGST and there is no excess availment of ITC as alleged in the impugned notice. To evidence the same, Noticee is herewith enclosing the Copy of Updated GSTR-2A is enclosed as an Annexure-III. Hence, the demand to this extent needs to be dropped.

7. Without prejudice to the above, Noticee submits that we are rightly eligible for ITC for the following reasons:

a. ITC cannot be denied merely due to non-reflection of invoices in GSTR-2A as all the conditions specified under Section 16 of CGST Act, 2017 have been satisfied.

b. GSTR-2A cannot be taken as a basis to deny the ITC in accordance with Section 41, Section 42, Rule 69 of CGST Rules, 2017.

c. We further submit that Finance Act, 2022 has omitted Section 42, 43 and 43A of the CGST Act, 2017 which deals ITC matching concept. Noticee 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

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

e. The Section 38 read with Rule 60 had prescribed the FORM GSTR 2 which is not made available till 30.09.2022. 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.

f. Section 42 clearly mentions the details and procedure of matching, reversal, and reclaim of input tax credit with regard to the inward supply.

However, Section 42 and Rule 69 to 71 have been omitted w.e.f. 01.10.2022.

g. Rule 70 of CGST Rules 2017 which prescribed the final acceptance of input tax credit and communication thereof in Form GST MIS-1 and Rule 71 prescribes the communication and rectification of discrepancy in the claim of input tax credit in form GST MIS-02 and reversal of claim of input tax credit. Further, Rule 70 has been omitted vide Notification No. 19/2022 Central Tax dated 28.09.2022 w.e.f. 01.10.2022.

h. It is submitted that neither the form has been prescribed by the law nor the same has been communicated to the We therefore it is not possible to comply with the condition given in Section 42 read with Rule 69, Rule 70 and 71. Hence, the allegation of the impugned notice is not correct.

i. We further submit that the fact that there is no requirement to reconcile the invoices reflected in GSTR-2A vs GSTR-3B is also evident from the amendment in Section 16 of CGST Act, 2017 vide Section 100 of Finance Act, 2021. Hence, there is no requirement to reverse any credit in the absence of the legal requirement during the subject period.

j. Similarly, it is only Rule 36(4) of CGST Rules, 2017 as inserted w.e.f. 09.10.2019 has mandated the condition of reflection of vendor invoices in GSTR-2A with adhoc addition of the 20% (which was later changed to 10% & further to 5%). At that time, the CBIC vide Circular 123/42/2019 dated 11.11.2019 categorically clarified that the matching u/r. 36(4) is required only for the ITC availed after 09.10.2019 and not prior to that. Hence, the denial of the ITC for non-reflection in GSTR-2A is incorrect during the subject period.

k. The fact of payment or otherwise of the tax by the supplier is neither known to We nor is verifiable by We. 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:

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

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.

l. In the same context, we also wish to place reliance on the decision in case of *Arise India Limited vs. Commissioner of Trade and Taxes, Delhi* - 2018-TIOL-11-SC-VAT and *M/s Tarapore and Company Jamshedpur v. State of Jharkhand* - 2020-TIOL-93-HC-JHARKHAND-VAT

m. Section 41 allows the provisional availment and utilization of ITC, there is no violation of section 16(2)(c) of CGST Act 2017

n. The above view is also fortified from press release dated 18.10.2018

o. Even if there is differential ITC availed, if the same is accompanied by a valid tax invoice containing all the particulars specified in Rule 36 of CGST Rules and the payment was also made to the suppliers, the We is rightly eligible for ITC.

p. Noticee 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.

q. We wish to rely on recent decisions in case of

➤ *Suncraft Energy Private Limited Versus The Assistant Commissioner, State Tax, Ballygunge Charge And Others 2023 (8) TMI 174-Calcutta High court affirmed by Supreme Court in case of The Assistant Commissioner of State Tax Vs Suncraft Energy Private Limited 2023 (12) TMI 739-SC order*

➤ *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*

➤ *M/S. Gargo Traders Vs The Joint Commissioner, Commercial Taxes (State Tax) & Ors. 2023 (6) TMI 533 Calcutta High Court*

➤ *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*

➤ *D.Y. Beathel Enterprises Vs State Tax officer (Data Cell), (Investigation Wing), Tirunelveli 2021(3) TMI 1020-Madras High Court*

➤ *Bhagyanagar Copper Pvt Ltd Vs CBIC and Others 2021-TIOL-2143-HC-Telangana-GST*

➤ *LOW Industries limited Vs UOI 2021 (12) TMI 1834-Calcutta High Court*

➤ *Bharat Aluminium Company Limited Vs Uot & Others 2021 (0) TMI 1052-Chattishgarh High Court*

➤ *Sanchita Kundu & Anr. Va Assistant Commissioner of State Tax 2722 (5) TMI 786 Calcutta High Court*

In Re: No short reporting of turnover in OSTR-09 when compared to financials

8. Noticee submits that the impugned notice has alleged that there is short reporting of turnover in GSTR-09 when compared to financials and proposed to demand Rs.39,50,922/-in CGST and Rs.39,50,922/-in SGST

9. Noticee submits that Noticee is engaged in the provision of construction services where GST liability arises upon the receipt of advance payments. However, as per the accounting standards prescribed by the Institute of Chartered Accountants of India ICAI revenue from construction contracts is recognized in the financial statements based on the percentage of completion method. This method is mandated by ICAI which results in revenue being recognized progressively over the life of the project reflecting the actual work completed rather than at the point of receiving advances.

10. Consequently, there will be differences between the turnover reported in the GSTR-9 and the revenue recognized in the financial statements. The present difference is a natural outcome of complying with both GST regulations and ICAI accounting standards. Therefore, the proposal to

levy GST again such amounts recognized in the financial statements but not aligned with the GSTR-9 is incorrect and the same needs to be dropped

11. Noticee submits that the Noticee has already paid the GST on all advances revived during the disputed period and disclosed the same in the GSTR-3B returns. The same can be evidenced from the GSTR-3B and GSTR-09 which was enclosed as Annexure IV & V.

In Re: Interest under section 50 is not applicable:

12. Noticee submits that when tax is not applicable, the question of interest & also penalties does not arise it is a natural corollary that when the principal is payable there can be no question of paying any interest as held by the Supreme Court in *Prathiha Processors Vs UOI, 1996 (88) ELT 12 (SC)*

13. Noticee submits that the impugned notice confirmed that the Noticee is liable to interest, under Section 50 of CGST Act, 2017 In this regard, it is pertinent to examine Section 50 of CGST Act, 2017 which is extracted below for ready reference

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the Rules made there under, but failed to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council'

(2) the interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid

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

14. Noticee submits that the impugned notice has demanded that interest rate prescribed under Section 50 is applicable. In this regard, Noticee submits that the proposal in impugned notice is not at all tenable. Hence, the demand of interest does not sustain.

In Re: Penalty under section 73 is not imposable:

15. Noticee submits that the impugned notice has imposed the penalty of 10% of the tax due or Rs. 10,000/- whichever is higher. Noticee submits that Noticee is of the vehement belief that the input availed by Noticee is not required to reverse and there is no short payment of GST, 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 interest and penalty as held by the Supreme Court in *Prathiha Processors Vs UOI, 1996 (88) ELT 12 (SC)*.

16. Further, Noticee submits that the impugned show cause notice 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".

17. Noticee submits that the impugned notice has imposed the penalty u/s 73 of the COST Act, 2017. The relevant extract is reproduced below :-

"9. Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made there under.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3)

... ..

... ..

(8)

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent of tax or ten thousand rupees, whichever is higher, due from such person and issue an order

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund."

18. From the above-referred sub-section, it is clear that 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 Noticee has not availed any excess ITC in GSTR-03B. Hence, the penalty under Section 73(11) is not applicable in the instant case.

19. Noticee 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.

20. Noticee submits that from the above-referred decision of the Supreme Court, penalties cannot be imposed merely because the assessee has claimed certain ITC which was not accepted or was not acceptable to the revenue when the assessee has acted on the bonafide belief that the ITC is eligible. In the instant case also, Noticee has availed the ITC on the 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 dropped.

21. Noticee 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 the imposition of penalties.

22. Noticee submits that GST being a new law, the imposition of penalties during the initial years of implementation is not warranted. Further, Noticee 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 dropped.

23. Noticee would like to submit further that in addition to above, Noticee submits that where an authority is vested with discretionary powers, discretion has to be exercised by application of mind and by recording reasons to promote fairness, transparency and equity. In this regard, the reliance is placed on the judgment of 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 notices 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."

24. Noticee further 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 notice imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation, Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

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

26. Noticee 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.

27. Notice submits that from all the above submissions, it is clear that imposition of penalties is not warranted therefore the impugned notice needs to be dropped.

28. Noticee submits that the GST is still under trial and error phase and the assesseees are facing genuine difficulties and the same was also held by various courts by deciding in favour of assessee. Therefore, the imposition of 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:

1. *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 (Tars Exports Union of India)* (2019 (20) GSTL 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"

2. *The Tyre Plaza Vs UOI* 2019 (30) GSTL 22 (Del)

3. *Kusum Enterprises Pvt Ltd Vs UOI* 2019-TIOL-1509-HC-Del, GST

29. The Noticee submits that, as submitted supra, there was confusion that existed at such point in time and the issue involved interpretation of provisions and law is at nascent stages. Therefore, the penalties cannot be imposed. Relied on *CCE Vs Gujarat Narmada Fertilizers Co. Ltd* 2009 (240) E.L.T 661 (S.C).

In Re: Impugned notice is not valid. Notice issued on assumptions and presumptions:

30. Noticee submits that impugned SCN was issued with prejudged and premeditated conclusions on various issues raised in the notice. That being the case, issuance of SCN in that fashion is bad in law and requires to be dropped. In this regard, reliance is placed on *Oryx Fisheries Pvt. Ltd v. Union of India* 2011 (266) ELT 422 (S.C.).

31. Noticee submits that the subject SCN is issued based on mere assumption and unwarranted inference, interpretation of the law without considering the intention of the law, documents on record, the scope of activities undertaken, and the nature of activity involved, the incorrect basis of computation, creating its own assumptions, presumptions. Further, they have arrived at the conclusion without actual examination of facts, and provisions of the CGST Act, 2017. In this regard, Noticee relies on the decision of the Hon'ble Supreme Court in the case *Oudh Sugar Mills Limited v. UOI*, 1978 (2) ELT 172 (SC). Therefore, the impugned Noticee is invalid and needs to be dropped.

Impugned notice is time barred and Notification No. 56/2023-CT dated 28.12.2023, is bad in law for the FY 2019-20,

32. Notice submits that the show cause notice for the FY2019-20 needs to be issued at least three months prior to the time limit specified in section 73(10) for issuance of order as per section 73(2) of the CGST Act, 2017 and accordingly the time limit as per the section 73(10) of the CGST Act 2017 read with Notification 56/2023 dated 28.12.2023 for passing the order for FY2019- 20 is 31 August 2024. Consequently, the show cause notice for FY2019-20 should have been issued by 31 May 2024. However, in the instant case, the ERRATA show cause notice had been served to the Noticee on 22.06.2024 which is beyond the time limit specified under the Act. Therefore, the issuance of show cause notice is void-ab-initio and the proceedings to this extent need to be dropped.

33. Noticee submits that the impugned SCN was issued under section 73 of CGST Act, 2017 which provides for adjudication of demand within 3 years from the due date of the annual return of the corresponding FY. For FY 2019-20, the annual return due date falls on 31.03.2021 and the 3-year time limit expires by 31.03.2024 however citing the difficulties caused due to Covid-19, the Government has extended the time limit from 31.03.2024 to 30.06.2024 by exercising the powers u/s. 168A by the Notification No. 09/2023 dated 31.03.2023. However, again exercising the powers u/s. 168A, ibid the time limit was further extended to 31.08.2024 by the Notification No. 09/2023-CT dated 31.03.2023.

34. In this regard, it is submitted that an 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 is as defined u/s. 168A, ibid was never occurred from 2022 till the expiry of the extended due date of 30.06.2024. Hence, the second extension of time runs beyond the mandate of Section 168A and is not sustained in the law. Accordingly, the demand for FY 2019-20 deserves to be dropped as the Show under Section 73 of CGST Act, 2017.

35. It is settled law that any delegated legislation travelling beyond the Statutory provisions be *ultra vires* and do not sustain in law. In view of the above, it is requested that a lenient view may be adopted, and the penalty be waived.

Sri. Shiva Mohan, C.A. of H NA & Co. LLP, authorized signatory of the company appeared for Personal Hearing on dated. 17-08-2024 and explained their submissions and requested for 3 days of time to provide additional submissions required, but they have failed to provide additional submissions within the stipulated time as requested by them.

The Reply filed by the Tax Payer has been verified and considered as under:

1) **Excess claim of Input Tax compared with Table 8A of GSTR 9 and GSTR 3B / GSTR 9 Rs. 7,18,974/-:**

Tax Payer claimed that as per the GSTR2A they are having sufficient Input Tax for the Input Tax claimed by them in the GSTR-3B and GSTR-09 returns filed by them.

The Reply filed by the Tax Payer has been verified along with documents filed and GSTR-2A and found in order, hence the **Tax of Rs.7,18,974/- (CGST of Rs.3,59,487/- and SGST of Rs.3,59,487/-) proposed in the notice is hereby withdrawn.**

2) **Short Reported Output Tax compared with Financial Statements (Profit and Loss Account) and GSTR 3B / GSTR 9 Rs.79,01,844/-**

The Tax Payer claimed that, they are engaged in construction services, where GST liability arises upon the receipt of advance payments, and as per the accounting standards revenue from construction contracts is recognized in the financial statements based on the percentage of completion method, revenue being recognized progressively over the life of the project reflecting the actual work completed rather than at the point of receiving advances, consequently, there will be differences between the turnover reported in the GSTR-9 and the revenue recognized in the financial statements.

The Reply filed by the Tax Payer has been verified along with documents filed i.e. GSTR-3B, GSTR-09 returns & Financial Statements. The Tax Payer failed to furnish documentary evidences such as Party Ledgers, Copies of Agreements, Copies of Occupancy Certificates and also break up lists for earlier receipts (advances) shown during this year financial statements and present year receipts (advances) which were not shown during this year financial statements. Advances Schedule of Financial Statements, detailed lists of advances as on dated 01-04-2019 and as on dated 31-03-2020. Thus the under signed couldn't come to conclusion with the information available to arrive actual taxable turnover for the year financial year 2019-20.

Hence the claim of the Tax payer is hereby rejected and the **Tax of Rs. 79,01,844/- (CGST of Rs.39,50,922/- and CGST of Rs.39,50,922/-) as proposed in the notice (Errata) is hereby confirmed.**

3) **Interest and Penalties :**


The case laws referred by the Tax Payer clearly mentioned that "when the principle is not payable" the question of any Interest / Penalty arise. But whereas the present Tax Payer is liable for Tax, which is payable during the financial year 2019-20 itself. Hence Interest / Penalty are applicable on the Tax payable amount. Thus, the Interest / Penalty proposed as per the provisions of the GST Act are here by confirmed.

Thus the Tax, Penalty and Interest proposed in the notice issued in ARN: AD3604240088518 with DRC 01 in Ref. No. ZD360524058370H dt. 29-05-2024 are hereby confirmed and Passed Orders accordingly for the year 2019-20. The details of confirmed Tax, Penalty and Interest are as follows.

S. No	Issue	SGST	CGST	Total
1	Shortly Reported Output Tax proposed compared with Financial Statements (Profit and Loss Account) and GSTR 3B / GSTR 9	3950922	3950922	7901844
	Net Tax liability	3950922	3950922	7901844
	Interest (Under Section 50 of TGST & CGST Act 2017)	2844664	2844664	5689328
	Penalty (Under Section 73(9) of TGST & CGST Act 2017)	395092	395092	790184

Therefore Tax Payer is here by requested to Pay the Tax along with interest under Section 50 of GST Act, 2017 and Penalty under Section 73 read with Rule 122 of GST Act, 2017 in DRC-03 within (30) days from the date of receipt of this order.

NOTE : An appeal against this order lies before the Appellate Joint Commissioner (ST), Punjagutta Division, Hyderabad within (90) days from the date of receipt of this Order.


STATE TAX OFFICER-II,
M.G. ROAD - S.D. ROAD CIRCLE.

State Tax Officer-II
M.G. Road-S.D. Road Circle,
Begumpet Division, Hyderabad

To,
M/s. MODI REALTY (MIRYALAGUDA) LLP,
SOHAM MANSION, 2ND FLOOR, 5-4-187/3 AND 4,
M.G ROAD, SECUNDERABAD, 500003

