

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**
(Special Original Jurisdiction)
WRIT PETITION No. OF 2025

BETWEEN

M/s. Vista Homes,
2nd Floor, 5-4-187/3 and 4, Soham Mansion
MG Road, Rangareddy, Telangana-500003.

Represented by its Partner,
Soham Satish Modi, S/o. Satish Modi
Aged 56 years, R/o. Plot No. 280, Road No. 25,
Near Peddamma Temple, Jubilee Hills,
Khairatabad, Banjara Hills,
Hyderabad- 500034

... Petitioner

-Vs-

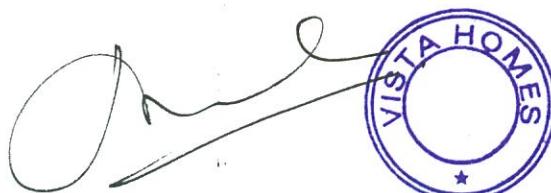
1. The Joint Commissioner of Central Taxes,
Appeals II Commissionerate, Hyderabad Commissionerate,
7th Floor, GST Bhavan, L.B Stadium Road,
Basheer Bagh, Hyderabad-500004.
2. The Superintendent of Central tax,
Ramgopalpet-III Range, Door no.2-4-416 & 417,
Ramgopalpet, MG Road, Secunderabad- 500003.
3. Union of India,
Ministry of Finance,
Represented by its Secretary,
North Block, New Delhi-110 001

... Respondents

AFFIDAVIT FILED ON BEHALF OF THE PETITIONER

I, Soham Satish Modi, S/o.Satish Modi aged 56 years, residing at Plot No.
280, Road No. 25, Near Peddamma Temple, Jubilee Hills, Khairatabad, Banjara
Hills, Hyderabad- 500034 do hereby solemnly affirm and sincerely state as follows:

1. I am the Partner of the Petitioner firm herein and as such I am well acquainted
with the facts of the case. I am authorized to file this affidavit on behalf of the
Petitioner.




Factual background:

2. The petitioner is engaged in the business of construction and sale of villas and is registered under the GST law bearing GSTIN 36AAGFV2068P1ZJ w.e.f. 01.07.2017 in the state of Telangana.
3. Respondent no.2 conducted a scrutiny of returns for the FY 2019-20 and allegedly noticed certain discrepancies. Accordingly, a notice in Form GST ASMT-10 bearing ref no. ZM360523052062D dated 23.02.2024 was issued followed by a notice in Form GST DRC-01A bearing DIN - 20240356YO000000F6EB dated 25.03.2024 (Copy enclosed as Annexure-P8& P9). This was further followed by SCN No. 07/2024-25-GST dated 04.04.2024 along with summary in Form GST DRC-01 dated 05-04-2024 (Copy enclosed as Annexure P7).
4. Thereafter, the Respondent No. 2 proceeded to pass an *ex-parte* OIO No. 02/2024-25(GST-Adjn) dated 01-07-2024 (Copy enclosed as Annexure P6) received through post on 07-07-2024 (copy of postal cover enclosed as annexure P5) while summary in Form GST DRC 07 bearing ref no: ZD360724014192N dated 03.07.2024 uploaded in GST portal.
5. Aggrieved, the petitioner filed appeal in Form APL-01 on 05.10.2024 (copy enclosed as annexure P4) treating the postal communication date for counting appeal time limit of three months and the Form APL-01 filled by the Petitioner also mentioned that the OIO was communicated on 07-07-2024. Thereafter, petitioner attended the hearing on 30.05.2025 (copy of PH record enclosed as annexure P3) and filed additional submissions on 09.06.2025 (Copy enclosed as Annexure-P2).



6. Respondent No. 1, however, passed the Order-in-Appeal bearing No. HYD-GST-SC-AP2-371-2025-26-GST dated 29.09.2025 received through post on 29.10.2025 (copy enclosed as annexure P1), summarily rejecting the appeal as time-barred. At no point of time, the first respondent either while filing appeal or thereafter including till the date of filing additional submissions, no defect or questions were raised about delayed filing of the appeal.

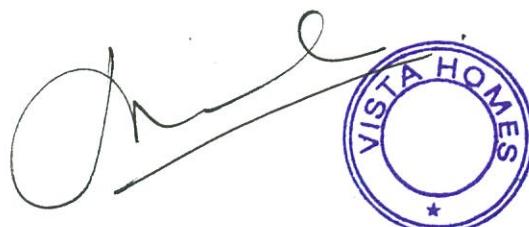
7. Aggrieved with the impugned Order-in-appeal, which is without jurisdiction, passed in violation of principles of natural justice, contrary to facts, law, and evidence, apart from being contrary to a catena of judicial decisions and beset with grave and incurable legal infirmities, the Petitioner is filing this Writ Petition before this Hon'ble High Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India on the following grounds which are without prejudice to one another.

GROUNDS

Arbitrary rejection of appeal as Time-Barred in Violation of Principles of Natural Justice

8. Petitioner submits that the impugned Order-in-Appeal is ex-facie unsustainable as it has been passed in complete violation of the principles of natural justice. The petitioner filed the appeal on 05.10.2024, and at no stage either at the time of filing, during scrutiny of the appeal papers, or thereafter was any objection regarding limitation ever communicated to the petitioner.

9. The petitioner duly appeared for the personal hearing on 30.05.2025 even at the time of the personal hearing, the Appellate Authority did not raise any issue

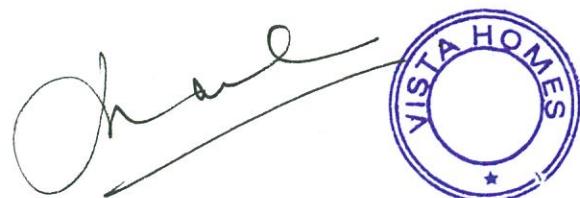


relating to delay or limitation, nor did it call upon the petitioner to offer an explanation or file a condonation request. The petitioner not only attended the hearing but also submitted detailed additional submissions on 09.06.2025, addressing every issue raised in the appeal proceedings. The conduct of the authority created a legitimate expectation that the appeal had been admitted and would be considered on merits.

10. However, nearly one year from the date of filing the appeal and four months of hearing, the Appellate Authority, for the first time, raised the issue of limitation while passing the impugned OIA and rejected the appeal as time-barred, without granting any opportunity to the petitioner to explain or seek condonation of even the alleged delay. Such rejection without notice is arbitrary, contrary to fair procedure, and vitiates the impugned order.

11. More importantly, the appeal was filed *within* the statutory period of 3 months under Section 107(1) of the CGST Act. The Order-in-Original dated 03.07.2024 was communicated to the petitioner only on 07.07.2024 through post, and the appeal filed on 05.10.2024 was well within three months limitation period, which expired only on 07.10.2024. Therefore, there was no delay whatsoever, and the finding of the Appellate Authority that the appeal was time-barred is factually incorrect, legally untenable, and demonstrates complete non-application of mind.

12. By rejecting an appeal that was filed within the statutory limitation period, and by doing so without notice or opportunity, the Appellate Authority has acted contrary to the statutory scheme of Section 107, the principles of natural justice,



and settled jurisprudence. The impugned order, being arbitrary, illegal, and passed without jurisdiction, is liable to be set aside.

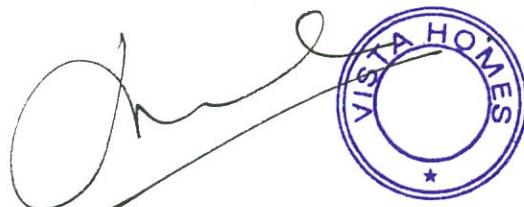
The Form DRC-07 and Form DRC-01 is unsigned and has no legal sanctity

13. The petitioner submits that the impugned show cause notice in Form GST DRC-01 dated 05.04.2024 and impugned order in Form GST DRC-07 bearing reference no. ZD360724014192N dated 03/07/2024 was not signed either physically or digitally. Pertinently, no such authentication is done by affixing the E signature. Accordingly, impugned order should be set aside on this ground alone. Unless SCN/order uploaded is signed, the same has no legal sanctity as held by this Hon'ble High Court in **Bigleap Technologies and Solutions Pvt. Ltd. vs. State of Telangana 2025 (98) G.S.T.L. 72 (Telangana)**.

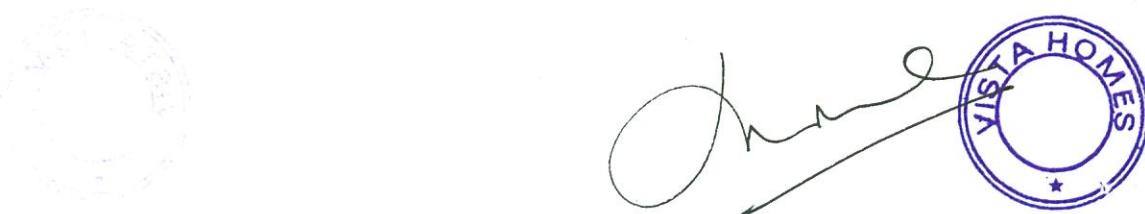
14. Petitioner further submits that the prescribed forms viz., Form GST DRC-01 contains field for 'signature'. Similar mandate is there for various forms of notices/orders prescribed under registration rules and also other rules like Refund, Assessment. Thus, the law intends and mandates for the affixing of the signature on the orders uploaded in GST portal.

No proper verification of documents was done by the respondent no.1, therefore, violation of principles of natural justice

15. Alleged excess availment of ITC of Rs. 2,35,488 based on comparison of GSTR-3B and GSTR-2A for FY 2019-20: The impugned order proceeds on an incorrect factual and legal premise that the Appellant availed excess ITC merely because certain invoices were not reflected in GSTR-2A. The Appellant submits that there is no excess availment of ITC for FY 2019-20.



16. The Appellant has availed ITC in table 4(C) of GSTR-3B after adjusting reversals in table 4(B)(2), strictly based on invoices received from registered suppliers and in compliance with section 16(2) of the CGST Act. The correct comparison must therefore be between net ITC availed in GSTR-3B and net eligible ITC reflected in GSTR-2A.
17. This difference of Rs. 2,13,673 (not Rs. 2,35,488) pertains to invoices which were not reflected in GSTR-2A but were fully supported by valid tax invoices and payment proofs. Declarations from the relevant suppliers confirming tax payment and supply have been furnished. Therefore, the ITC cannot be denied. Further, during FY 2019-20, Rule 36(4) permitted additional ITC of 20 percent for the period 9.10.2019–31.12.2019 and 10 percent for the period 1.1.2020–31.12.2020. The Appellant's claim is well within the permissible limits.
18. The CBIC Circular No. 193/05/2023-GST dated 17.07.2023 clarifies that for FY 2019-20, ITC cannot be denied solely due to GSTR-2A mismatch and proper reconciliation must be accepted. The impugned order mechanically treats mismatch as excess availment without examining the Appellant's supporting documents, which is contrary to the Circular and settled jurisprudence including Arise India (Delhi HC), LGW Industries (Calcutta HC), and several similar rulings which hold that recipient cannot be penalised for supplier default in the absence of fraud or collusion. Thus, the demand of Rs. 2,35,488 under this issue is factually incorrect, legally unsustainable, and liable to be dropped.



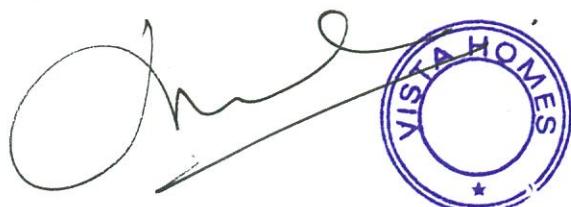
19. ITC of Rs. 8,640 pertaining to suppliers who allegedly did not file GSTR-3B: The order alleges that ITC from two suppliers totalling Rs. 8,640 is irregular since their GSTR-3B for the relevant period was not filed. This reasoning is unsustainable.

20. Section 16(2)(c) does not shift the burden upon the recipient to ensure filing of returns by suppliers. Multiple courts including Delhi HC in Arise India, Madras HC in D.Y. Beathel, Calcutta HC in LGW Industries, Karnataka HC in M/s. Onyx India, and Telangana HC in Aastha Enterprises have held that unless connivance or fraud by the recipient is proved, ITC cannot be denied merely because the supplier defaulted in filing GSTR-3B.

21. The Appellant has valid tax invoices, has received the goods, and has made full payment including tax to the suppliers. The department has not undertaken any verification of the supplier nor established any fraud or collusion. Therefore, ITC cannot be denied solely on the ground of supplier non-filing. Hence, the demand of Rs. 8,640 is liable to be dropped.

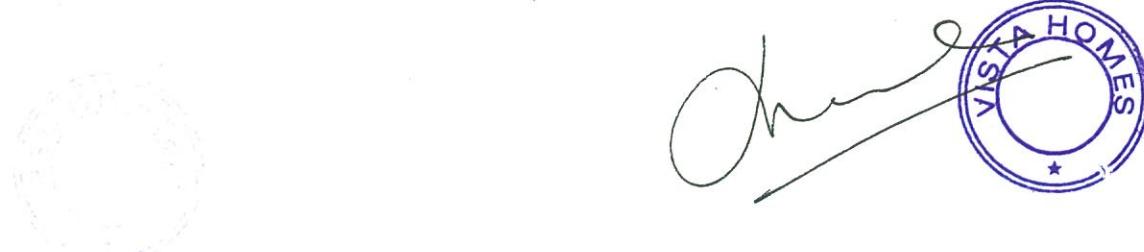
22. Alleged non-payment of late fee for delayed filing of GSTR-1, GSTR-3B and GSTR-9 for FY 2019-20: The impugned order alleges that the Appellant has not discharged late fee of Rs. 11,300 (CGST 5,650 + SGST 5,650) towards delayed filing of GSTR-1, GSTR-3B and GSTR-9 for FY 2019-20.

23. The Appellant respectfully submits that the late fee has already been fully paid through DRC-03 vide ARN No. AD361024000592N dated 03.10.2024. This payment pertains exclusively to the late fee for FY 2019-20. A copy of the DRC-03 challan is enclosed as Annexure P10. Accordingly, the allegation that late fee



remains unpaid is factually incorrect and the proceedings initiated in this regard deserve to be dropped.

24. Non-reversal of ITC under Rule 42 and 43 amounting to Rs. 7,12,228: The impugned order has treated the amount reported under Table 3.1(c) of GSTR-3B (“Other Outward Supplies – Nil Rated / Exempted”) as exempt supply and has invoked Rule 42 to compute ITC reversal. The Appellant submits that this treatment is incorrect for the following reasons:
25. The amount of Rs. 55,74,251 represents sale consideration received towards sale of villas after receipt of occupancy certificate (OC). Post-OC sale of constructed property amounts to sale of immovable property. Sale of immovable property is neither a supply of goods nor a supply of services as per Entry 5 of Schedule III of CGST Act.
26. A transaction which is neither supply of goods nor supply of services cannot be treated as exempt supply under Section 17(2) read with Section 17(3). Schedule III activities are excluded from the scope of “exempt supply” by virtue of the Explanation to Section 17(3). Therefore, the amount reported under 3.1(c) does not represent exempt supplies, but only non-GST (Schedule III) transactions.
27. When there is no exempt supply, Rule 42 cannot be invoked and no reversal of common ITC is warranted.
28. Section 7(2) of the CGST Act clearly provides that activities specified in Schedule III shall be treated “neither as supply of goods nor as supply of services”. Sale of

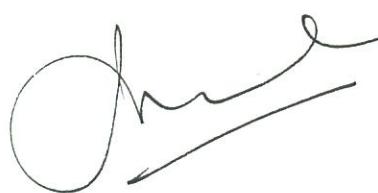


land and sale of building after receipt of completion certificate are covered under Entry 5 of Schedule III.

29. Section 17(3) includes sale of land and sale of building only for the purpose of computing value of exempt supply except where the activity falls under Schedule III. Explanation to Section 17(3) categorically excludes Schedule III activities from the meaning of exempt supply.
30. Post-completion sale of villas falls under Schedule III; hence it is not supply at all. Rule 42 applies only when credit is common for taxable and exempt supplies. Where there are no exempt supplies, the Rule does not apply.
31. Thus, the impugned order has incorrectly assumed that reporting the value under 3.1(c) automatically makes it exempt. GSTR-3B categorisation is only a summary reporting requirement and cannot override statutory definitions under Sections 7 and 17. Since the sale of villas after OC is not a supply under Section 7 read with Schedule III, the reported amount cannot be treated as exempt supply. Consequently, the Rule 42 reversal computed on this basis is illegal and deserves to be deleted in entirety.

Only efficacious remedy is to file the present Petition:

32. The Petitioner submits that there is no efficacious or alternative remedy available as the impugned order is passed without jurisdiction, authority of law and being violative of principles of natural justice. The Petitioner has been left with no other efficacious alternative remedy but to challenge the impugned order by way of this writ petition.



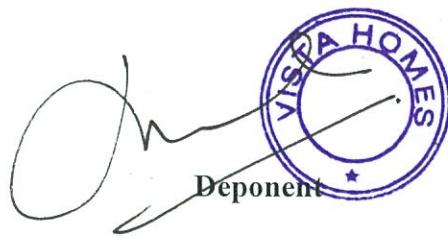

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33. The petitioner respectfully submits that the instant case squarely falls under the exception to alternative remedy and fit case for entertaining the discretion of Hon'ble High court to invoke writ jurisdiction under Article 226. Hence, the Petitioner prays to the Hon'ble High Court to set aside the impugned order.
34. The Petitioner has not filed any other writ petition in this or any other court in regard to matters in issue in the present writ petition. The Petitioner has no effective alternative remedy except to approach the Hon'ble High Court under Article 226 of the Constitution of India.
35. The entire cause of action has arisen within the jurisdiction of this Hon'ble Court. This Hon'ble Court, therefore, has jurisdiction to entertain, try and dispose of this petition.
36. For the above reasons, it is humbly prayed that the Hon'ble High Court may be pleased to issue a writ, order, or direction more particularly one in the nature of a Writ of Mandamus declaring that impugned Order in appeal no.HYD-GST-SC-AP2-371-2025-26-GST dated 29.09.2025 passed by the Respondent No. 1 under the provisions of CGST/TGST Act, 2017 as being void, arbitrary, illegal, without jurisdiction, without authority of law apart from being violative of Articles 14, 19(1)(g) and 265 of the Constitution of India and/or to pass such further or other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.



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Pending disposal of the writ petition, it is humbly prayed that this Hon'ble Court may be pleased to stay operation of impugned Order in appeal no.HYD-GST-SC-AP2-371-2025-26-GST dated 29.09.2025 passed by the Respondent No.1 and pass such further or other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.



**Solemnly affirmed and signed
on this the _____ day of December 2025
Hyderabad**

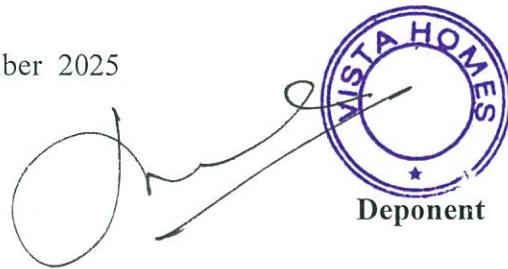
BEFORE ME

ADVOCATE/HYDERABAD

VERIFICATION STATEMENT

I, Soham Satish Modi, S/o.Satish Modi aged 56 years, residing at Plot No. 280, Road No.25, Near Peddamma Temple, Jubilee Hills, Khairatabad, Banjara Hills, Hyderabad- 500034, do hereby verify that the facts stated above in the Affidavit filed on support of the writ petition as true and correct to the best of my knowledge, information and belief.

Verified on this _____ day of December 2025



Vista Homes
Deponent

COUNSEL FOR THE PETITIONER