



**GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT**

**ATTACHMENT TO FORM GST DRC-07
SUMMARY OF ORDER PROCEEDINGS**

**For the Financial Year 2021-22 under the GST Act, 2017
[See Rule 142 (1) and Section 73]**

Reference No: ZD361225051636D

Date: 15-12-2025

Sub: Goods and Services Tax Act, 2017 (for brevity 'GST Act, 2017') —M/s. MODI REALTY (MIRYALAGUDA) LLP (for brevity 'taxpayer') — Conduct of general audit for the financial year **2021-22** 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 - 'Summary of Show Cause Notice' issued in FORM GST DRC-01- Objections called for – Reply filed- examined- Orders issued- Regarding.

Ref: 1. Notice for Audit in Form GST ADT-01 vide Ref. No. ZD360424037386B, dated: 20-04-2024.

2. Joint Commissioner (ST), Begumpet Division Authorization for Assessment under Section 73 of the TGST Act Ref. No. R.C.No.BGPT-DIVN/STO-II/52/MGSD/2024-25, Date: 05-11-2024.

3. Show cause notice in FORM GST DRC-01 Ref. No. ZD361124013289K, dated. 13-11-2024.

4. Notice of Personal Hearing dated.11-03-2025 & 18-03-2025.

5. Taxpayers reply filed dated. 21-03-2025 & 28-08-2025.

6. The authorized person of the taxpayer appeared for the personal hearing dated 11-11-2025.

M/s. MODI REALTY (MIRYALAGUDA) LLP, located at SOHAM MANSION, 2ND FLOOR, 5-4-187/3 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 **2021-22**, 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 **2021-22** 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 notice in FORM GST ADT-01, produced the Profit and Loss Account, Balance Sheet, Purchase and Sale Statements, etc. On due examination of the same with reference to the material available on the GST Common Portal, their tax liabilities and other discharged liabilities are hereby proposed to assess with the following lines.

Input Tax on Inward Supplies :-

The Tax Payer claimed Input Tax Credit in GSTR3B / GSTR 9 returns filed by them for the year **2021-22** as under:

IGST Rs.00.00

CGST Rs. 50,78,147.00

SGST Rs. 50,78,147.00

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 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	5078147	5078147	10156294
Less: Net ITC Eligible as per Table 8A of GSTR 9	3267296	3267296	6534592
Excess ITC Claimed	1810851	1810851	3621702

1) Output Tax on Outward Supplies :-

The Tax Payer reported Output Tax in GSTR3B / GSTR 9 Returns filed by them for the year **2021-22** as under:

IGST Rs.00.00

CGST Rs. 63,20,249.00

SGST Rs. 63,20,249.00

A) The Tax Payer claimed Exemption on the Output Turnover of Rs. 3,15,69,561/- in the GSTR3B / GSTR 9 Returns filed by them, but they have failed to file documentary evidences for their claim of exemption, hence the same is Proposed to Tax @ 18% as under:

Particulars	Turnover	CGST Propose @ 9%	SGST Propose @ 9%	Total Output Proposed
Exempted Turnover Reported Tax in absence of documentary evidences	31569561	2841260	2841260	5682520

Note: If the Tax Payer submits the documentary evidence for their claim of Exempted Output Turnover, the Input Tax to be reversed on non-business transactions & exempt supplies under Section 17(1) & (2) where the goods or services or both are used by the registered person partly for the purpose of business, partly for other purposes or partly used for effecting exempt supply and partly for taxable supply then the amount of credit shall be restricted to so much of the input tax as is attributable to the taxable supplies in the course of business. Therefore the taxable person needs to make an apportionment of available input tax credit under Rule 42 & 43 to arrive at the eligible ITC, resulting in excess claim of ITC than you are eligible. The details of the working are as under:

Sl. No	Issue	Table no. In GSTR-3B	Value of out ward supply	CGST	SGST
1	Total supplies	3.1-3.1(D)	9,38,16,250		
2	Exempt supplies	3.1(c)+3.1(e)	2,49,77,061		
3	Proportion of common ITC which has to be reversed to the extent of exempt supply (2/1 above)		0.266233		
	Common input tax credit	4A+Trans1 + Trans2		50,98,441	50,98,441
	ITC to be reversed	[S.No.2]/[S.No.1] X[S.No.4]4B(1)		13,57,373	13,57,373
	ITC reversed			0	0
	Difference/Excess ITCclaimed	S.No.5 (-) S.No.6		13,57,373	13,57,373

B) The Tax Payer claimed Exemption on the Credit Notes Turnover of Rs. 13,85,802/- in the GSTR3B / GSTR 9 Returns filed by them, but they have failed to file documentary evidences for their claim of exemption, hence the same is Proposed to Tax @ 18% as under:

Particulars	Turnover	CGST Proposed @9%	SGST Proposed @9%	Total Output Tax Proposed
Credit Notes Turnover Reported Proposed to Tax in absence of documentary evidences	1385802	124722	124722	249444

C) As seen from the Sales Register filed compared with the Output Taxes reported in GSTR 3B / GSTR 9 the following variations noticed in Output Turnovers and Taxes Reported.

Particulars	Turnover	Turnover	CGST Proposed	SGST Proposed	Total Output Tax
Gross Output Turnover as per Sales Register filed		117779753			
Less: Output Turnover		11443505			
1. GST Output Turnover	7022499				
2. CGST Tax	6320249				
3. SGST Tax	6320249				
4. Non-GST Output Turnover	3156956				
Total	11443505				
Short Reported Output Turnover Now Proposed to Tax @ 18%		3344703	301023	301023	602046

Therefore, it is proposed to assess for year **April 2021 to March 2022** 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	1810851	1810851	3621701
2A	Exempted Turnover Reported Proposed to Tax in absence of documentary evidences	2841260	2841260	5682521
2B	Credit Notes Turnover Reported Proposed to Tax in absence of documentary evidences	124722	124722	249444
2C	Short Reported Output Tax proposed compared with Sales Register filed and GSTR 3B / GSTR 9 returns filed	301023	301023	602047
Total Tax Due to the Department		5077857	5077857	10155713

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.

As per Section 47(2) of CGST Act, 2017 enumerates that, “any registered person who fails to furnish the return required under Section 44 by the due date shall be liable to pay a Late Fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent of his turnover in the State or Union Territory.

In the light of the above legal positions, the amount of Late fee to be paid on account of belated filing of Form GSTR 9C and GSTR-1 Returns is hereby enumerated by due calculative exercise as under:

Nature of return	Period	Due Date of Filing	Date of Filing Return	No. of Days Delayed	Late Fee @ Rs.100 per day
GSTR 1	April, 2021	11-05-2021	24-08-2021	105	10500
GSTR 1	May, 2021	11-06-2021	30-09-2021	111	11100
GSTR 1	June, 2021	11-07-2021	30-09-2021	81	8100
GSTR 1	July, 2021	11-08-2021	18-10-2021	68	6800
GSTR 1	Aug-21	11-09-2021	19-10-2021	38	3800
GSTR 1	Sept.2021	11-10-2021	01-11-2021	21	2100
GSTR 1	Oct.2021	11-11-2021	12-11-2021	1	100
GSTR 1	Jan.2022	11-02-2022	12-02-2022	1	100
GSTR 1	Feb.2022	11-03-2022	17-03-2022	6	600
GSTR 1	Mar.2022	11-04-2022	25-04-2022	14	1400
Total					44600

While bringing forward to the notice of the taxpayer about the above Late Fee calculated for belated filing of Form GSTR-01 returns amounting to Rs.44,600/- (i.e., Rs.22,300/- towards CGST and Rs.22,300/- 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.

Thus, the total Tax, Penalty and Interest for the period from **April 2021 to March 2022** is proposed in addition to the Taxes reported as under:

S. No.	Act	Tax	Interest	Penalty	Late Fee	Total
1	CGST	5077857	2285035	507786	22300	7892978
2	SGST	5077857	2285035	507786	22300	7892978
3	TOTA	10155714	4570070	1015572	44600	1578595

The registered tax payer may therefore pay the tax in DRC-03. However, if the registered tax payer is not agreeing with the proposals in this notice they may file their objections in DRC-06 within (15) days from the date of receipt of this notice, failing which orders as deemed fit will be passed without any further correspondence in the matter.

“Accordingly, a notice in FORM GST DRC-01 was issued vide Reference No. ZD361124013289K, dated 13.11.2024, wherein the taxpayer was informed of the discrepancies noticed during the verification of the returns and records. The notice clearly outlined the basis of the proposed demand and the grounds for initiation of proceedings under the relevant provisions of the GST Act, 2017. The taxpayer was advised to examine the issues raised and was called upon to submit their objections, along with all supporting documentary evidence, within the stipulated time.

Upon receipt of the notice, the taxpayer filed their reply in FORM GST DRC-06 dated 21-03-2025 & 28.08.2024. The reply submitted, along with the supporting documentary evidence, was duly verified. Further, an opportunity for personal hearing was also provided to the taxpayer to present their case before the proper officer. Upon receipt of the personal hearing notice, the authorized representative, Sri. Praful Jain appeared as on dated 11-11-2025 for the personal hearing and explained in detail the taxpayer’s contentions with respect to the discrepancies pointed out in the notice. The submissions made during the hearing, along with the written reply and records furnished, have been carefully examined and are considered as detailed below:”

1. Input Tax on Inward Supplies

Response of the taxpayer

In Re: No Excess claim of ITC

Noticee submits that the impugned notice has alleged that there is an excess availment of ITC in GSTR-3B when compared to GSTR-Table 8A of GSTR-9 for Rs.5,93,604/- (Rs 2,96,802/- in CGST and Rs.2,96,802/- in SGST).

Noticee submits that your good selves have arrived excess ITC claimed by Noticee by considering the auto populated statistical data of ITC as per Table 8 (A) shown in the Annual Return GSTR-9 & 9C filed for the year 2021-22 instead of considering ITC as per updated GSTR-2A for the said period. On consideration of updated GSTR-2A there will not be any excess claimed by the Noticee in GSTR-3B for the said period.

In this regard, Noticee would like to submit that Noticee has not availed any excess ITC. The authority while calculating excess ITC has not considered the ITC reflected in updated GSTR-2A and ITC reversals in GSTR-3B. If the same is considered then in actuality there is short availment of ITC. Noticee hereby submits the reconciliation table for your perusal:

S. No.	Particulars	CGST (Rs)	SGST (Rs)
A	ITC as per updated GSTR-2A	33,16,718	33,16,718
B	Net ITC availed as per GSTR-3B	50,78,147	50,78,147
C	Difference of ITC (A-B)	17,61,428	17,61,428

D	Reversal of wrongly availed ITC through DRC-03 vide Ref.No.ARN :AD3612220129765	3,40,260	0
E	Reversal of ineligible ITC through DRC-03 vide Ref.No.ARN :AD3612220129765	14,949	14,949
F	Reversal of ITC in the April 2022	15,05,419	18,45,679
G	Total ITC reversed	18,60,628	18,60,628
H	Short availment of ITC (C-G)	99,199	99,199

From the above table, it can be observed that there is in fact short availment of ITC of Rs1,98,398/- (CGST Rs 99,199/- and SGST Rs99,398/-) 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 and DRC-03 vide Ref.No.ARN :AD3612220129765 dated 29.12.2024 is enclosed as an **Annexure-III & IV**. Hence, the demand to this extent needs to be dropped.

Observations and conclusion of the Assessing Authority:

Agreed with the taxpayer

The reply submitted by the taxpayer has been duly examined. It is observed that the taxpayer has already reversed Input Tax Credit (ITC) in the GSTR-3B return amounting to Rs.15,05,419/- towards CGST and Rs.18,45,679/- towards SGST for the month of April 2022. Further, it is also noted that the taxpayer has reversed ITC of Rs.14,949/- towards CGST and Rs.3,40,260/- towards IGST through Form DRC-03, vide ARN AD3612220129765 dated 29/12/2022.

Accordingly, the excess ITC claimed in GSTR-3B / GSTR-9, as compared to Table 8A of GSTR-9, has been computed as under:

S. No.	Particulars	CGST (Rs)	SGST (Rs)
1	ITC claimed in GSTR 3B / GSTR 9	50,78,147	50,78,147
2	ITC as per updated GSTR-2A	33,16,718	33,16,718
3	Reversal of ITC in the April 2022	15,05,419	18,45,679
4	Reversal of wrongly availed ITC through	3,55,209	14,949
5	Total ITC reversed	18,60,628	18,60,628
6	Excess ITC claimed	-99,199	-99,199

Therefore, the net tax payable on account of excess ITC claimed in GSTR-3B/GSTR-9, when compared with Table 8A of GSTR-9, works out to **Rs. Nil**.

2A. Output Tax on Outward Supplies: -Exempted Turnover

Response of the taxpayer:

In Re: Exemption claimed on Turnover of Rs 3,15,69,561/- as per provisions of GST Law

Noticee submits that the impugned notice has alleged that Noticee has claimed exemption on the output turnover of Rs 3,15,69,561/- in the GSTR-3B / GSTR-09 Returns submitted but failed to

file documentary evidence for claim of exempted turnover and hence proposed to tax demand of Rs 56,82,520/- (Rs.28,41,260/- in CGST and Rs.28,41,260/- in SGST).

In this regard Noticee submits that the exempted turnover of Rs 3,15,69,561/- is related to sale of land and the sample documents related to sale of land are enclosed in Annexure-V.

Noticee submits that as per Entry 05 of Schedule III of CGST Act, 2017 sale of land and building is neither of supply of goods nor supply of services. Hence, Noticee correctly recorded the sale of land under non-GST supply. For the ease of reference, Noticee extracting the entry 05 as below:

5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

In view of the above submission the demand of Tax Rs 56,82,520/- along with interest and penalty needs to be dropped.

No reversal of proportionate ITC in case documentary evidence submitted for claim of exemption of Turnover:

Noticee submits that the impugned notice has alleged in the note to Para 2(A) of SCN that proportionate common ITC is to be reversed on non business transactions &exempt turnover supplies under section 17(1) & (2) where the goods or services or both are used by the registered person partly for the purpose of business, partly for other purposes or partly used for effecting exempt supply and partly for taxable supply then the amount of credit shall be restricted to so much of the input tax as is attributable to the taxable supplies in the course of business. Hence, Noticee proposed to make apportionment of available ITC under Rule 42 & 43 of CGST Rules to arrive at the eligible ITC as details given below-

Sl. No	Issue	Table no. In GSTR-3B	Value of out ward supply	CGST	SGST
1	Total supplies	3.1-3.1(D)	9,38,16,250		
2	Exempt supplies	3.1(c)+3.1(e)	2,49,77,061		
3	Proportion of common ITC which has to be reversed to the extent of exempt supply (2/1 above)		0.266233		
	Common input tax credit	4A+Trans1 + Trans2		50,98,441	50,98,441
	ITC to be reversed	[S.No.2]/[S.No.1] X[S.No.4]4B(1)		13,57,373	13,57,373
	ITC reversed			0	0
	Difference/Excess ITCclaimed	S.No.5 (-) S.No.6		13,57,373	13,57,373

In this regard Noticee submits that the Noticee has not availed ITC on exempted supply since the exempted supply being portion as sale of land value. The Noticee further refers to para 5 of Schedule III of CGST Act which states that activity of sale of land is neither supply of goods nor supply of services.

In this regard the Noticee submits that the Ld. Authority has arrived the amount of Rs 94,92,808/- (SGST RS 47,46,403/- & CGST RS 47,46,403/-) as common input credit erroneously from the Table 4(A) of GSTR-3B which provides the details of total ITC availed in GSTR-3B.

Noticee submits that the details of the turnover declared in table 5C, 5D, 5E and 5F of GSTR-09 are as follows:

Sl.No.in GSTR-09	Nature of supply	Amount
5C	Supplies on which tax is to be paid by the recipient on reverse charge	0
5D	Exempted	0
5E	Nil Rated	0
5F	Non-GST supply (includes 'no supply')	3,15,69,561
Total		3,15,69,561

In the present case, Noticee has been receiving advances from the customers before completion of the project, therefore, Noticee has discharged GST on the advances received and disclosed the same in GST returns.

Noticee submits that time of payment of tax as per CGST Act, 2017 is receipt of advance and the said compliance has been rightly by the Noticee, therefore, there is no short payment of GST as per CGST Act, 2017 and the allegation of impugned Notice are not valid.

Noticee submits that as explained in the previous Paras the basis on which the amounts disclosed in GST returns and Financials are different therefore the same cannot be compared, therefore the allegation of the impugned notice demanding tax on differences between the disclosures made in the Financial Statements and GST returns which are lead by two different statutes is not tenable and the same needs to be set aside. In this regard, Noticee wishes to rely on

A. Indian Oil Sky Tanking Ltd Vs. Commr. of Service Tax, Bangalore—2015(38) S.T.R 221 (Tri.-Bang)

B. P. Govindaraj Vs. CCE, Madurai—2014(36) S.T.R.400 (Tri.-Chennai)

Commissioner of Service Tax, Ahmedabad Vs. Purani Ads. Pvt. Ltd.—2010(19) S.T.R.242 (Tri.-Ahmd). Further Noticee would like to submit that the Noticee has not utilized any input or input services towards the sale of land and therefore, there is no requirement to the Noticee to reverse the ITC accumulated through the inputs or input services received.

From the above submissions it is clear that there is no need to reverse the ITC under rule 42 & 43. Therefore, it is requested to drop the proceedings to this extent. In view of the above submission the demand for reversal of ITC for Rs 27,14,746/- (SGST Rs 13,57,373/- & CGST Rs 13,57,373/-) along with interest and penalty needs to be dropped

Observations and conclusion of the Assessing Authority:

In the reply, the taxpayer has stated that the exemption claimed on the turnover of Rs. 3,15,69,561/- pertains to the sale of land. They have further submitted that, as per Entry 05 of Schedule III of the CGST Act, 2017, the sale of land and building is neither a supply of goods nor a supply of services, subject to clause (b) of paragraph 5 of Schedule II relating to the sale of building. In support of their contention, the taxpayer has furnished sample sale deed copies for verification. The documents submitted have been examined and found to be acceptable.

Therefore, the tax proposed on the exemption claimed on the turnover of Rs. 3,15,69,561/- is hereby withdrawn under the provisions of the GST Act, 2017.

Further, the taxpayer has clarified that no inputs or input services have been utilized in relation to the sale of land, and hence, no reversal of ITC is warranted on this account. The submission has been verified and found to be in order.

Accordingly, the tax proposed on the account of excess claim of ITC amounting to Rs. 27,14,746/- (SGST: Rs. 13,57,373/-, CGST: Rs. 13,57,373/-) is hereby withdrawn under the GST Act, 2017.

Response of the taxpayer:

In Re: No reversal of proportionate ITC in case documentary evidence submitted for claim of exemption of Turnover:

Without prejudice to the above, Noticee submits that as explained in the preceding paragraphs, the sale of land is not liable to GST as the same is covered under Entry 5 to Schedule -III of CGST Act, 2017. Therefore, the same need to be excluded while arriving at the GST liability. Further, the deemed deduction of 1/3rd land value is not correct when the actual land value is available. Noticee submits that it is a settled law that the Government cannot re-write the terms of contract entered into between people. Reliance is placed on the Supreme Court judgment in the case of Mangalore Ganesh Beedi Works Vs CIT [(2015) 378 ITR 640 (SC)] wherein it was held that the Act does not clothe the taxing authorities with any power or jurisdiction to re-write the terms of the agreement arrived at between the parties with each other at arm's length and with no allegation of any collusion between them.

Therefore, Noticee submits that a view is possible that deeming 1/3rd of contract value as land value for the purpose of taxation could amount to re-writing of the agreement which is not consistent with the facts involved and what the commercials agreed between the parties.

Hence, the Gujarat High Court's judgement in the case of Munjaal Manishbhai Bhatt Vs UOI [2022 (62) G.S.T.L. 262 (Guj.)] was the breath of relief to taxpayers wherein the Court read down the deeming fiction of 1/3rd land deduction provided in Notification No. 11/2017 as ultra vires to Schedule III (sale of land).

Therefore, Noticee submits that it was held that mandatory application of deeming fiction of 1/3rd of total agreement value towards land even though the actual value of land is ascertainable is clearly contrary to the provisions and scheme of the CGST Act and therefore ultra vires the statutory provisions.

Noticee submits that from the above referred decision, it is clear that the wherever the actual land value is available, the same can be taken as deduction for the purpose of payment of GST and the deeming fiction of 1/3rd land value as deduction is ultra-vires the statutory provisions.

Observations and conclusion of the Assessing Authority:

The turnover declared as Non-GST supplies in the GSTR-9 return pertains to the sale of land. The taxpayer has further submitted that no inputs or input services were utilized for affecting the sale of land and, therefore, there is no requirement to reverse any ITC accumulated on such inputs or input services. Accordingly, the taxpayer has requested that the demand raised on this account be dropped.

The submission of the taxpayer has been verified and is found to be acceptable. Therefore, the tax proposed on account of non-reversal of proportionate ITC relating to the exempt turnover is hereby withdrawn under the GST Act, 2017.

2B: Exemption claimed on Credit Notes of Turnover of Rs 13,85,802

Response of the taxpayer:

In Re: Exemption claimed on Credit Notes of Turnover of Rs 13,85,802/- as per provisions of GST Law

Noticee submits that the impugned notice has alleged that Noticee has claimed exemption on the credit notes of turnover of Rs 13,85,802/- in the GSTR-3B / GSTR-09 Returns submitted but failed to file documentary evidence for claim of exempted turnover and hence proposed to tax demand of Rs 2,49,444/- (Rs.1,24,722/- in CGST and Rs.1,24,722/- in SGST).

In this regard Noticee submits that the exempted turnover of Rs.315,9,561/-is pertaining to FY 2021-22 and the relevant documents are enclosed in Annexure-VI.

In view of the above submissions the demand of Tax Rs. 27,14,746/- along with interest and penalty needs to be dropped.

Observations and conclusion of the Assessing Authority:

Not Agreed with the Taxpayer

Upon verification of the credit notes furnished by the taxpayer, the following irregularities were noticed for the relevant financial year:

1. The credit notes do not contain the serial number(s) and date(s) of the corresponding tax invoice(s) or bill(s) of supply.
2. The credit notes are not duly signed—they do not bear the signature or digital signature of the supplier or his authorised representative.

As per Section 34 (1) of the CGST Act, 2017, where tax invoices have been issued and the taxable value or tax charged exceeds the actual taxable value or tax payable, or where goods are returned or found deficient, the registered supplier may issue a credit note to the recipient. Further, as per Section 34(2), such credit notes must be declared in the return for the month in which they are issued, but not later than 30th November following the end of the relevant financial year or the date of filing of the annual return, whichever is earlier.

Furthermore, Rule 53(1)(A) of the CGST Rules, 2017 prescribes the mandatory particulars to be contained in every credit note, including:

- Name, address, and GSTIN of the supplier;
- Nature of the document;
- A consecutive serial number;
- Date of issue;
- Name, address, and GSTIN/UIN of the recipient (if registered);
- Name and address of the recipient, address of delivery, State name & code (if unregistered);
- Serial number(s) and date(s) of the corresponding tax invoice(s);
- Value of taxable supply, rate and amount of tax;
- Signature or digital signature of the supplier or authorised representative.

As clearly laid down under Section 34 of the CGST Act, 2017 read with Rule 53 of the CGST Rules, 2017, a credit note must mandatorily contain the corresponding invoice number and date, as well as the signature or digital signature of the supplier. However, the credit notes submitted by the taxpayer do not contain these statutory particulars.

Further, the taxpayer has not clarified the reasons for issuing these credit notes to customers, nor have they furnished any documentary evidence to substantiate their issuance or the underlying transactions.

In view of the deficiencies noted above, and considering the incomplete and unverifiable documentary evidence placed on record, the tax proposed on account of irregular credit notes is hereby confirmed at Rs. 2,49,444/- (CGST: Rs. 1,24,722/- and SGST: Rs. 1,24,722/-) under the GST Act, 2017.

2C. Short Reported Output Tax proposed compared with Sales Register

Response of the taxpayer:

In Re: No short reporting of turnover in GSTR-3B /GSTR-09 when compared to Sales Register

Noticee submits that the impugned notice has alleged that there is short reporting of turnover of Rs 33,44,703/- in GSTR-3B/GSTR-09 when compared to sales register and proposed to tax demand of Rs 602046/- (Rs.301023/- in CGST and Rs.301023/- in SGST) as details given below-

Particulars	Turnover	Turnover	CGST	SGST	Total
Gross output turnover as per sales register		11,77,79,753			
Less: Output turnover reported		11,44,35,050			
1. GST output turnover	7,02,24,991				
2. CGST	63,20,249				
3. SGST	63,20,249				
4. Non-GST Output Turnover	3,15,69,561				
Total	11,44,35,050				
Short reported output turnover now proposed to tax @18%		33,44,703	3,01,023	3,01,023	6,02,046

In this regard the Noticee would like to submit that, the impugned notice has arrived Rs.11,77,79,753/- as Gross output turnover as per sales register submitted during the audit by the department.

Further the Noticee would like to provide the reconciliation of turnover in the table below:

Sl. No.	Particulars	Amount(Rs.)
1	Supplies and advances in which tax to be paid as per table 4(N) of GSTR-9	7,04,16,039
2	Inward supplies on which RCM is paid as per table 4(G) of GSTR-9	1,91,048
3	GST paid in total outward supply(1-2)	7,02,24,991
4	CGST tax paid (excluding RCM)	63,20,249
5	SGST tax paid(Excluding RCM)	63,20,249
6	Non-GST turnover supply on which tax to be not paid as per GSTR-3B	3,15,69,561
7	Total turnover (Excluding credit notes)	11,44,35,050
8	Credit notes taxable value	27,03,693
9	CGST tax paid(Excluding RCM)	1,93,876
10	SGST tax paid(Excluding RCM)	1,93,876
11	Total net turnover	11,75,26,495
12	Output turnover as per sales register	11,77,79,753
13	Difference (12-11)	2,53,258

Noticee would like to submit that, the impugned notice has not considered the credit notes issued during the year while considering the sales register and the Noticee has inadvertently missed to disclose the credit notes separately in the GSTR-01/09 for the FY 2020-21 but disclosed the tax liability net of credit notes at the time of filing the GSTR-9.(Copy of ledger statements and Copy of GSTR-9 is enclosed as **Annexure-IX & VIII**).

From the above table it is clear that the impugned notice wrongly arrived the Turnover as per sales register in the notice therefore the notice to be set aside and drop the proceedings to this extent.

Therefore, from the above table it is clear that there is no under declaration of turnover. Therefore, the proceedings to this extent to be dropped.

Observations and Conclusion of Assessing Authority:

In the reply, the taxpayer has stated that the impugned notice did not consider the credit notes issued during the year while reconciling the sales register. The taxpayer further clarified that the credit notes were inadvertently not reported separately in GSTR-1/GSTR-9 for FY 2020-21, although the tax liability was disclosed net of credit notes at the time of filing the GSTR-9 return.

The reply filed by the taxpayer has been examined. It is observed that the non-disclosure of credit notes in GSTR-1/GSTR-9 for FY 2020-21 and the reporting of net sales therein have no relevance to the turnover reported for the subsequent financial year 2021-22, which is the period under scrutiny in the present proceedings.

However, the taxpayer has disclosed credit notes amounting to a taxable value of Rs. 13,85,802/- in both the GSTR-1 returns and the GSTR-9 Annual Return filed for FY 2021-22. Accordingly, after considering the credit note value reported in the GSTR-9 Annual Return for FY 2021-22, the turnover difference has been computed as under:

Sl. No.	Particulars	Amount(Rs.)
1	Supplies and advances in which tax to be paid as per table 4(N) of GSTR-9	7,04,16,039
2	Inward supplies on which RCM is paid as per table 4(G) of GSTR-9	1,91,048
3	GST paid in total outward supply (1-2)	7,02,24,991
4	CGST tax paid (excluding RCM)	63,20,249
5	SGST tax paid(Excluding RCM)	63,20,249
6	Non-GST turnover supply on which tax to be not paid as per GSTR-3B	3,15,69,561
7	Total turnover (Excluding credit notes)	11,44,35,050
8	Credit notes taxable value as per GSTR-9	13,85,802
9	CGST tax of Credit Notes (Excluding RCM)	1,24,722
10	SGST tax of Credit Notes (Excluding RCM)	1,24,722
11	Total turnover reported	11,60,70,296
12	Output turnover as per sales register	11,77,79,753
13	Difference (12-11)	17,09,457

Therefore, the taxpayer's net tax liability is hereby confirmed at Rs. 3,07,702/- (Rs.1,53,851/- towards CGST and Rs. 1,53,851/- towards SGST), calculated at 18% on the differential turnover of Rs. 17,09,457/- on account of short-reported output tax when compared with the Sales Register, under the provisions of the GST Act, 2017 for the financial year 2021-22.

Late Fee:

Response of the taxpayer:

In Re: Non-Payment of late fee on delay filing of GSTR-01:

The impugned notice has stated that during the course of scrutiny of returns, it was noticed that the Noticee has filed GSTR-01 belatedly for which interest is demanded amounting to Rs.44,600/- (SGST Rs.22,300/- and CGST Rs.22,300/-) for FY 2021-22.

The Noticee would like to discharge the late fee amount demanded in the notice as mentioned above. Therefore, it is requested to drop the proceedings to this extent.

Observations and conclusions of Assessing Authority:

The taxpayer has admitted liability towards the late fee for the belated filing of GSTR-1 returns. Accordingly, the late fee of Rs. 44,600/- (Rs.22,300/- towards CGST and Rs. 22,300/- towards SGST). Further the taxpayer have recalculated Late fee as Rs.28,100/- (Rs.14,050/- each towards CGST and SGST) for FY 2021-22. The same has been verified and found in order. Hence the same is hereby confirmed on account of the delayed filing of GSTR-1 returns during the said financial year 2021-22.

Recovery of Late fee details: DRC-03 ARN AD3608250120683, Date:29-08-2025.

SGST : Rs. 14,050/- & CGST : Rs. 14,050/-

Therefore, Late fee payable on account of belated filing of GSTR-1 returns is Rs. Nil

Summary:

In view of the foregoing discrepancies discussed hereinabove, and after careful consideration of the submissions made by the taxpayer in their written reply along with the documentary evidence furnished during the course of proceedings, the net tax liability arising in the present case is summarized as under:

Tax:

Sl. 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	0	0	0
2A	Exempted Turnover Reported Proposed to Tax in absence of documentary evidences	0	0	0
2B	Credit Notes Turnover Reported Proposed to Tax in absence of documentary evidences	124722	124722	249444
2C	Short Reported Output Tax proposed compared with Sales Register filed and GSTR 3B / GSTR 9 returns filed	153851	153851	307702
Total Tax Due to the Department		278573	278573	557146

Interest:

Response of the taxpayer:

In Re: Interest under section 50 is not applicable:

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 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).

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 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.

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.

Observations and conclusion of Assessing Authority:

After examining the submissions made by the Noticee, the following findings are recorded:

1. Interest under Section 50 is mandatory and automatic

The taxpayer has argued that when the principal tax is not payable, interest also does not arise. However, in the present case, upon verification of the records and reconciliation submitted by the taxpayer, short payment of output tax has been established for the financial year 2021–22. Once a tax liability stands confirmed, levy of interest under Section 50(1) becomes automatic and mandatory, as the provision uses the expression “*shall pay interest*”.

Section 50 does not provide any discretion to the taxpayer or the proper officer to waive interest once tax remains unpaid beyond the prescribed due date.

2. Interest is compensatory in nature, not penal

The taxpayer has relied on *Prathiba Processors v. UOI* to argue that interest cannot be levied when the principal is not payable. However, this reliance is misplaced. In the present case, the

principal tax liability has now been determined and confirmed. Therefore, the core premise of the taxpayer that the principal tax is not payable is incorrect.

It is a well-settled principle that interest is compensatory in nature and arises due to the delay in payment of tax that was otherwise due. This has also been reiterated by the Supreme Court in various decisions interpreting fiscal statutes.

3. Interest liability arises from the date the tax was originally due

Section 50(2) clearly stipulates that interest is to be calculated from the day succeeding the due date on which the tax ought to have been paid. Since the taxpayer failed to discharge the correct output tax liability on the due dates prescribed under Section 39, the liability to pay interest arises automatically under law.

4. Arguments regarding system issues or bona fide belief are irrelevant

The Taxpayer has attempted to rely on principles of bona fide belief and other case law from the pre-GST era. However, such arguments have no application to the levy of interest under GST because of that Interest under Section 50 is not a penalty. Interest is not dependent on intention, wilful default. The only condition for levy of interest is delay in payment of tax. Hence, the taxpayer's contention that interest is not payable on account of bona fide belief is not tenable.

5. The taxpayers claim that interest in the show cause notice was incorrect is also not acceptable

The interest proposed in the show cause notice was tentative, as it was based on discrepancies identified prior to final reconciliation. After examining the documents furnished by the taxpayer, the tax liability has now been quantified and confirmed. Accordingly, interest is now recalculated strictly in terms of Section 50 and is payable on the confirmed tax amount.

The taxpayer's submissions neither contradict nor override the clear mandate of Section 50. Statutory interest under Section 50(1) must be paid whenever tax remains unpaid beyond the due date irrespective of the cause or circumstances.

In view of the above the taxpayer's arguments regarding non-applicability of interest are not acceptable. Since the differential output tax for FY 2021–22 has been established and confirmed, interest under Section 50 of the CGST Act, 2017 is payable by the taxpayer. Accordingly, the interest amount on the confirmed tax liability is hereby confirmed under the GST Act as detailed in the computation below.

Act	Tax in DRC-07	Interest calculated date from	Interest calculated date to	No of days delay	Interest @18%
CGST	278573	01-04-2022	14-12-2025	1353	185873
SGST	278573	01-04-2022	14-12-2025	1353	185873
Total	557146				371746

Penalty under section 73

Response of the taxpayer:

In Re: Penalty under section 73 is not imposable:

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 Prathiba Processors Vs UOI, 1996 (88) ELT 12 (SC).

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".

Noticee submits that the impugned notice 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."

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.

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.

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.

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.

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.

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 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.”

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.”

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.

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.

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.

Noticee submits that the GST is still under trial and error phase and the assessees 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 :

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”

1. The Tyre Plaza Vs UOI 2019 (30) GSTL 22 (Del)
2. Kusum Enterprises Pvt Ltd Vs UOI 2019-TIOL-1509-HC-Del. GST

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).

Observations and conclusions of Assessing Authority:

After careful examination of the submissions and the available records, the following observations are made:

1. Penalty under Section 73 is a statutory requirement.

Section 73(9) of the CGST Act, 2017 clearly mandates that upon determination of tax not paid or short paid for reasons other than fraud or willful misstatement, the proper officer shall impose a penalty of 10% of the tax amount or ₹10,000, whichever is higher. The use of the expression “*shall*” make the imposition of penalty obligatory once the tax short payment is established.

2. The Taxpayer’s reliance on case laws pertaining to earlier laws is not directly applicable.

The judgments cited by the taxpayer largely arise under the Income Tax Act, Central Excise Act, or pre-GST Service Tax regime, where the statutory framework for penalties was materially different. Under GST, Section 73 specifically prescribes a fixed penalty structure, leaving no discretion to waive penalty once tax short payment is confirmed.

3. The argument of bona fide belief is not sustainable.

The discrepancy in turnover and resultant short payment of output tax has been established after detailed verification of the records. The taxpayer’s explanation of confusion or bona fide belief does not alter the statutory mandate under Section 73(9). No evidence has been provided by the taxpayer to substantiate that the short reporting occurred due to system-related glitches or unavoidable errors.

4. GST not being in a “trial and error phase” for the relevant period.

The judicial references cited pertain primarily to transitional credit (TRAN-1) issues and procedural difficulties during the initial rollout of GST. The present case relates to short reporting of taxable turnover, which is independent of transitional or system-related challenges.

5. Burden of proof discharged.

The show cause notice clearly identified the discrepancies in reported turnover, the differential tax liability, and the statutory basis for proposing penalty. After considering the taxpayer's reply and documentary evidence, the tax liability has now been confirmed. Accordingly, penalty under Section 73(9) is attracted automatically.

In view of the above the arguments advanced by the taxpayer regarding non-applicability of penalty are not acceptable. Since the short payment of tax for FY 2021–22 has been established and confirmed, the penalty under Section 73(9) of the CGST Act, 2017 becomes mandatory. Sub-section (9), read with sub-section (8) of Section 73 of the TGST Act, 2017, clearly stipulates that the taxpayer is liable to a penalty of ten percent of the tax or ten thousand rupees, whichever is higher, if the tax determined is not paid within thirty (30) days from the date of initiation of assessment proceedings.

In the present case, the taxpayer has failed to pay the tax determined as above within the stipulated time. Accordingly, as per Section 73(9) of the CGST Act, 2017, a penalty of *ten per cent of the tax due or ₹10,000, whichever is higher*, becomes applicable. Therefore, the penalty on the confirmed tax liability has been computed as detailed below and is hereby confirmed for the Financial Year 2021–22 under the GST Act, 2017:

Act	Tax confirmed	Penalty
CGST	278573	27857
SGST	278573	27857
Total	557146	55714

Response of the taxpayer

In Re: Impugned notice is not valid.

Notice issued on assumptions and presumptions:

Noticee submits that the impugned notice has been issued proposing to demand an amount of Rs.1,01,55,714/- on the various grounds as mentioned in the impugned notice.

In this regard, Noticee submits that Section 61 read with Rule 99 specifies that scrutiny of the returns shall be done based on the information available with the proper officer and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, under Rule 99(1), informing him of such discrepancy and seeking his explanation thereto. In case the explanation provided by the Noticee is satisfactory, then no further action shall be taken in that

regard. If the explanation provided is not satisfactory, then the proper officer can initiate appropriate action under Section 73 or Section 74.

However, in the instant case Noticee has not received any notice in FORM ASMT-10 requiring the Noticee to provide explanation for the discrepancy noticed in the returns. Instead, the proper officer has directly issued Form GST DRC-01 under Section 73 which shows that the impugned notice has been issued without following the procedure prescribed in Section 61 of CGST Act, 2017 and Rule 99 of CGST Rules, 2017. In this regard, reliance is placed on M/s. Vadivel Pyrotech Pvt Ltd Vs Assistant Commissioner (ST), Circle-II, CTD, Sivakasi West 2022 (10) TMI 784 – Madras High Court wherein it was held that “6. To a pointed question as to whether Form ASMT 10 which ought to have been issued in respect of aspects forming the subject matter of the proceedings in GST DRC-01 culminating in GST DRC-07 in view of the fact that the proceedings are pursuant to scrutiny of assessments, the learned Additional Government Pleader submitted that Form ASMT 10 was not issued other than the one issued on 22.12.2021, which does not cover the issues raised in the impugned proceeding. The learned Additional Government Pleader sought leave to issue notice in Form ASMT 10 in respect of the aspects forming the subject matter of the impugned proceedings and thereafter to assess in compliance with the procedure contemplated under the Act including Section 61.

Recording the same, the impugned Notice dated 09.05.2022 is set aside and the matter is remitted back to the Assessing Officer for redoing the assessment. It is open to the Respondent to issue appropriate Form (Form ASMT 10) and after affording a reasonable opportunity to the petitioner in the manner contemplated under the Act proceed further in accordance with law. The petitioner shall also co-operate in the proceedings.”

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) E.L.T. 422 (S.C.).

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.

Observation and Conclusion of the Assessing Authority

1. The contention of the taxpayer that issuance of FORM GST ASMT-10 under Section 61 read with Rule 99 is mandatory before initiating proceedings under Section 73 is misconceived and legally untenable. Section 61 is an enabling provision, empowering the proper officer to

scrutinize returns and call for clarification if discrepancies are noticed. However, Section 61 is not a prerequisite nor a condition precedent for invoking Section 73 proceedings.

Section 73 expressly empowers the proper officer to issue a Show Cause Notice if “tax has not been paid or short paid or erroneously refunded, or input tax credit has been wrongly availed or utilized.” Neither Section 73 nor Rule 99 mandates issuance of ASMT-10 before initiating a demand proceeding.

- i. In the case of – NKAS Services Pvt. Ltd. (2021) the Honourable High Court of Jharkhand declared that proceedings under Section 73 can be initiated independently, without first resorting to Section 61.

Therefore, the taxpayer’s reliance on the *Vadivel Pyrotech* case is misplaced, as that judgment was fact-specific and did not lay down a universal principle that ASMT-10 is mandatory before Section 73. Hence the Issuance of ASMT-10 is discretionary, not mandatory and the under signed was authorized to issue SCN under Section 73 for directly.

The under signed has relied on multiple data sources such as, GSTR-1 vs GSTR-3B mismatch, GSTR-3Bvs GSTR-9 mismatch, sales register furnished by the taxpayer, return analytics available on the GST portal

These inputs fall squarely within the officer’s powers under Section 73, independent of Section 61. Section 61 procedure is only one of the mechanisms for detection of discrepancies. Non-issuance of ASMT-10 does not invalidate the SCN.

2. Further, the *Vadivel Pyrotech* judgment cited by the noticee is distinguishable because, in that case, the Department accepted in court that ASMT-10 was required because the assessment was strictly a “scrutiny of returns” case.

In the present matter, a Show Cause Notice was issued to the taxpayer after identifying various discrepancies arising from the information declared in the statutory returns filed by the taxpayer, as well as from the documents and records subsequently furnished during the course of proceedings. The verification carried out in this case was not confined to a limited scrutiny under Section 61 of the GST Act. Rather, it involved a comprehensive examination of the taxpayer’s declarations, books of accounts, sales and purchase data, and other available records.

The scope of this verification extended beyond mere arithmetical corrections or *prima facie* mismatches. It included a detailed assessment of the correctness of reported turnovers, reconciliation of outward supplies with sales registers, evaluation of input tax credit claims, and examination of compliance with statutory provisions under the GST law. Therefore, the findings and conclusions drawn in this order are based on a thorough and substantive scrutiny of the taxpayer’s submissions and records, undertaken in accordance with the powers vested in the proper officer under the GST Act.

Thus, The SCN is validly issued under Section 73 and Section 61 procedure is optional and non-mandatory.

3. Further the taxpayer reliance on *Oryx Fisheries Pvt. Ltd.* (2011) is misplaced. In the present case the SCN clearly sets out the factual discrepancies, provides the basis of computation, invites the taxpayer for explanation, and does not contain any conclusive remarks.

A typical SCN under Section 73 must necessarily state that the basis of demand, the quantum involved, and the legal provisions invoked. Stating these facts does not amount to prejudgment, but is a statutory requirement. Further the taxpayer has been given full opportunity to submit replies and present evidence.

Thus, the SCN is not prejudged; it is a valid notice in accordance with Section 73(1) and the case law *Oryx Fisheries* is not applicable.

4. The taxpayer's claim that the SCN is based on assumptions is unfounded. The SCN is based on verifiable documentary evidence, including but not limited to GST returns filed by the taxpayer, E-way bill data, financial statements, Departmental analytics, Ledger comparisons and other information available under Section 150 and 151. The computations are based on actual transactional data and statutory provisions.

The reliance on *Oudh Sugar Mills v. UOI* (1978) is also misplaced because that case pertained to assumptions unsupported by facts. In contrast, the present SCN is supported by specific discrepancies, data-driven analytics, and audit findings.

Thus, the SCN is not based on assumptions; it is based on concrete data. There is no violation of natural justice or incorrect interpretation of law. Therefore, the proceedings under Section 73 are legally sustainable.

Therefore, the SCN has been issued validly under Section 73. There is no requirement to issue ASMT-10 before invoking Section 73. There is no prejudgment, and the notice is not based on assumptions. All demands in the SCN are supported by factual records and statutory authority. Hence, the contentions of the taxpayer are rejected, and the SCN is legally sustainable.

In view of the foregoing discussion, and upon a thorough examination of the reply furnished by the taxpayer along with the documentary evidence submitted during the course of adjudication, it is concluded that the taxpayer has not correctly discharged the tax liability as required under the provisions of the GST Act, 2017. The submissions made by the taxpayer have been duly

considered; however, the same do not substantiate or justify the discrepancies identified during verification. Accordingly, the differential tax liability stands confirmed.

Further, in accordance with the provisions of Section 73 of the CGST Act, 2017, the applicable interest has been computed under Section 50 on the delayed payment of tax. Additionally, the penalty has been imposed as per Section 73(9), being ten percent of the tax due or ₹10,000, whichever is higher.

Therefore, the total tax, interest, and penalty payable by the taxpayer for the Financial Year 2021–22 is summarized in the abstract below and stands confirmed under the GST Act, 2017:

ABSTRACT

Act	Tax	Interest	Penalty	Fees	Total
CGST	2,78,573	1,85,873	27,857	0	4,92,303
SGST	2,78,573	1,85,873	27,857	0	4,92,303
Total	5,57,146	3,71,746	55,714	0	9,84,606

The taxpayer is hereby directed to pay the above-determined tax, interest, and penalty amounts within a period of thirty (30) days from the date of receipt of this Assessment Order / Summary Assessment Order issued in FORM GST DRC-07.

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

Muppa
Srinivas
Reddy

Digitally signed by
Muppa Srinivas
Reddy
Date: 2025.12.15
17:15:27 +05'30'

STATE TAX OFFICER-III
BEGUMPET DIVISON, HYDERABAD.

To,

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

**Office of the State Tax Officer
Jurisdiction : Begumpet, Telangana, State/UT : Telangana**

Reference No. : ZD361225051636D

Date : 15/12/2025

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. : ZD361124013289K

Tax Period : APR 2021 - MAR 2022

Date : 13/11/2024

F.Y. : 2021-2022

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. Show Cause Notice/ Statement referred to above was made available on the common portal on 13/11/2024. 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 2021	MAR 2022	CGST	NA	2,78,573.00	1,85,873.00	27,857.00	0.00	0.00	4,92,303.00
2	0	0.00	APR 2021	MAR 2022	SGST	NA	2,78,573.00	1,85,873.00	27,857.00	0.00	0.00	4,92,303.00
Total							5,57,146.00	3,71,746.00	55,714.00	0.00	0.00	9,84,606.00

You are hereby directed to make the payment by 15/01/2026 failing which proceedings shall be initiated against you to recover the outstanding dues.

Signature

SRINIVAS REDDY MUPPA
Name :
Designation : State Tax Officer
Jurisdiction : Begumpet:Telangana

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

Reference No. : ZD361225051636D

1. Tax Period :- APR 2021 - MAR 2022

2. Issues involved :- CREDIT NOTES

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	0	0.00	APR 2021	MAR 2022	CGST	NA	2,78,573.00	1,85,873.00	27,857.00	0.00	0.00	4,92,303.00
2	0	0.00	APR 2021	MAR 2022	SGST	NA	2,78,573.00	1,85,873.00	27,857.00	0.00	0.00	4,92,303.00
Total							5,57,146.00	3,71,746.00	55,714.00	0.00	0.00	9,84,606.00

You are hereby directed to make the payment by 15/01/2026 failing which proceedings shall be initiated against you to recover the outstanding dues.

Date : 15/12/2025

Signature : SRINIVAS REDDY MUPPA
Name : State Tax Officer
Designation : Begumpet:Telangana
Jurisdiction :

Copy to -