ANNEXURE-A

STATEMENT OF FACTS

1) M/s ----, (hereinafter referred to as the Appellant) is filing the present appeal against the impugned Order-in-Original in Form GST DRC-07 issued vide Ref No.---------- dated -------- the Learned Excise & Taxation Officer cum Proper Officer of State Tax,. Copy of the impugned Order-in-Original is enclosed **as Annexure-1.**

2) Vide the above impugned Order-in-Original in Form GST DRC-07 issued vide Ref No.--------dated -------- the Learned Excise & Taxation Officer cum Proper Officer of State Tax, has observed that:-

(1) In response to the aforesaid notice, served through online portal and also served to the tax payer manually neither the taxpayer nor his representative appeared before the undersigned and failed to submit any reply/document in response to the show cause notice. Hence the undersigned has no other option but to decide the case exapte on merits. Therefore, keeping in view facts of the case and relevant record placed on file, the proposed tax, interest and penalty is hereby confirmed and the taxpayer is directed to pay the following amount within thirty days of the receipt of this order, failing which action will be taken as per law;-

3) M/s ---------- (hereinafter also referred as 'the appellant'), is registered as Normal tax Payer under section 22 of the CGST Act 2017 having GSTIN ---------- and are engaged in the activities of manufacturing of Blocks falling under HSN ----. Principal input i.e. Cement required for doing taxable activities is procured by the appellant from registered Dealers (GST Normal Tax Payers) including M/s ---------- under cover of Tax invoice as prescribed under rule 46 of the CGST Act 2017. The appellant is also filing regularly and properly the Tax returns i.e. GSTR-1 & GSTR-3B as prescribed under section 39 of the CGST Act 2017. The appellant is also maintaining necessary record/accountal of final products as well as the inputs.

SHOW CAUSE NOTICE AND ALLEGATIONS IMPOSED THEREIN

4) The appellant has been served a Show Cause Notice issued Reference Number ---------- dated ------- under section 74(1) of Haryana Goods and Service Tax At 2017 vide Form DRC-01 (under section 142(I) of the CGST Act 2017 for proposing the under mentioned demands:

5) While raising show cause notice, the following objections were raised;-

a) *Whereas on -------, an inspection/search was conducted by the officers of the department at business premises of M/s----------, in compliance of order of Additional Commissioner of State Tax (Enf-II) Panchkula issued vide order dt. ----------. Officers of the department seized various documents from business premises of the firm under section 67 of HGST 2017. Statement of Sh.--------- was also reported before the officers of the department.*

b) *On ----------, present Sh.----------, Prop. Of the firm, sale/purchase bill book seized from the business premises of the firm were examined. The difference of Rs. --------- was noticed in sale as per bill book seized when compared with the sale shown by the dealer in his GST online returns in the month of -------- and ------. Therefore, it is clear that as per bill book seized, excess sale of Rs. ---------- is shown as compared to returns involving tax amount of Rs. ---------.*

c) *The inspection team has seized tax invoices of M/s --------- GSTIN ---------- amounting to Rs. ---------- involving tax amount of Rs. -------- from business premises of M/s----------. This purchase has also been reflected in GST returns 2A of the dealer. The reports regarding physical verifications of M/s ---------- have been received from the concerned jurisdictional Taxation inspectors under rule 25 of SGST/CGST Act 2017. The registered person M/s ---------- was not found functional at the registered place of business mentioned in their registration certificate therefore panchnama was prepared to this effect by the concerned taxation inspector -------- on dt. ---------- after proper inquiry. Also the proprietors of the firms were not traceable. Therefore, considering all the aforesaid facts, a FIR No.----- dt. ------ was lodged at Police Station, ----------, ------ by the concerned proper officer.*

d) *From the above facts, it is evident that registered person M/s ---------- were non-existent and got themselves registered under SGST/CGST Act 2017 on the basis of fake and forged documents and deceived the Government Authorities fraudulently by uploading forged documents and used Government GST online portal for passing input tax credit to other registered person by issuing invoices and generating Eway bills with intention of evade payment of tax. In this regard GSTR-1 returns filed by the above non-existent registered persons for the period in question were examined and it was noticed that these registered persons have shown to be made huge supplies to M/s ----------.*

e) *Statement of owners of the vehicles numbers was recorded wherein they disclosed that their vehicle has not been used for movement goods mentioned in the aforesaid invoices. In the other words it establishes that the tax invoices were issued only to pass wrongful input tax credit without movement of goods.*

f) *On the basis of detailed inquiry in this regard, it is proved that the registered person in question has not conducted active business with the non-existent registered person named above and rather have indulged in claiming wrong input tax credit on the strength of fake invoices. Therefore, from the above discussion and enquiry it is clear that;-*

a) *The difference of Rs------- was noticed in sale as per bill book seized when compared with the sale shown by you in GST online returns.*

b) *You have shown purchases from M/s ---------- which is non-existent dubious registered person as per taxation inspector report and has uploaded fake/forged documents on GST common portal.*

c) *From the statements of vehicle owners mentioned in the tax invoices of M/s----------, it is clear that only invoices have been issued without movement of goods.*

6) However, neither appellant has been granted sufficient time for filing of reply to the show cause notice nor any opportunity of personal hearing was granted to the appellant before adjudication of the matter violating the Principles of Natural Justice. Consequently Order has been passed without any submissions made by the appellant towards allegations made in the show cause notice.

7) Being aggrieved by the above mentioned Order-in-Original, the appellant herein is filing the present appeal, *inter alia*, on the following grounds which are independent of and without prejudice to each other:

ANNEXURE-B

GROUNDS OF APPEAL

8) At the outset the appellant refuted all accusation fabricated against them in totality. The contentions made in the show cause notice are fallacious and incorrect and are based entirely on assumptions and presumptions and without appraising the facts and circumstances in the legal perspectives. The appellant denied to have contravened any rule/provisions of the CGST Act 2017/SGST 2017/CGST Rules 2017. The appellant submit that the proceedings as initiated vide the impugned show cause notice are only arbitrary and against the legislative laws.

LEGAL OBJECTIONS

SHOW CAUSE NOTICE IS INVALID ISSUED VIDE DIN

9) In keeping with the Government's objectives of transparency and accountability in indirect tax administration through widespread use of information technology, the CBIC is implementing a system for electronic (digital) generation of a **Document Identification Number (DIN)** for all communications sent by its offices to taxpayers and other concerned persons. To begin with, the DIN would be used for search authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry. This measure would create a digital directory for maintaining a proper audit trail of such communication. Importantly, it would provide the recipients of such communication a digital facility to ascertain their genuineness. Seeing this circular was being issued by the department, the first thing that comes in our mind is a prominent film where some fake officers enter premises of some leading business showing search warrant which in the end turns out to be fake. The Government has issued **Circular No. 122/41/2019-GST dt. 5.11.2019** which mandates in case of all the search authorization, summons, arrest memo, inspection notices and letters issued in the course of enquiry to quote unique **Document Identification Number (DIN).** This issuance of DIN is mandated by the board under the power conferred under section 168(1) of the Central Goods and Services Tax Act and is made effection **from 8th November 2019.** The para no. 2 & 4 of the referred circular is extracted as below:-

"2. The Board in exercise of its power under section 168(1) of the CGST Act, 2017/ Section 37B of the Central Excise Act, 1944 directs that no search authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry shall be issued by any officer under the Board to a taxpayer or any other person, on or after the 8th day of November, 2019 without a computer-generated Document Identification Number (DIN) being duly quoted prominently in the body of such communication".

"4. The Board also directs that any specified communication which does not bear the electronically generated DIN and is not covered by the exceptions mentioned in para 3 above, shall be treated as invalid and shall be deemed to have never been issued".

10) At the time of implantation of GST, the three kinds of tax structure were implemented to enable taxpayers to take the credit against one another, in this way guaranteeing "One Nation, One Tax". India is a federal nation where both the Center and the States have been appointed the powers to impose and collect taxes. The two Governments have particular responsibilities to perform, according to the Constitution, for which they have to raise tax revenue. The Center and States have simultaneously levied GST. Therefore, apply these terms, DIN procedure adopted under CGST act and provisions made thereunder shall also apply to the SGST Act *mutatis mutandis* and therefore, show cause notice issued without DIN have no legal values.

11) Whereas in the present case, show cause notice has been issued on dt.--------- which does not bear any DIN and thus according to the para 2 & 4 of the referred circular, this show cause notice is entirely invalid and is deemed to have never been issued and consequently entire adjudicating process goes redundant. Accordingly impugned order dt. ------- is liable to be quashed.

UNRELIED UPON DOCUMENTS NOT RETURNED TO THE APPELLANT & RELIED UPON DOCUMENTS NOT PROVIDED

12) Without prejudice to the above submissions, At the time of investigation and during visit of the appellant's premises by investigation team, certain documents were seized by the department in original, out of which some of documents were relied upon by the department and some were irrelevant to investigation as not relied upon, the appellant have not been provided photocopies of the relied upon documents and original copies of non-relied upon documents were not provided to the appellant so as to reconcile the records which is tantamount to violation of Principle of Natural Justice.

13) It is further stated that documents seized during investigation which were not relied on in show cause notice as they belong to party from whom they are seized, Department does not have absolute right to retain them, unless they were required for further investigation. For their return, Department cannot insist that assessee identify those documents which were required for their defence. Show cause notice alleging availment of ITC on the basis of tax invoices raise by non-existent registered person, vehicle numbers mentioned not used for movement of goods, sales as per GST record does not match with the tax invoices issued etc. These documents are relevant for assessee to prepare their defence reply, and by not returning them to assessee, Department caused prejudice to assessee. Regarding retention of un-relied upon documents, Revenue authorities have no use for and right to the un-relied upon documents and continued retention of such documents wholly unjustified. The appellant may also have use of those documents in preparing its defence reply and written submissions at the time of personal hearing. The Hon'ble High Court of Allahabad in the matter of M/s PARMARTH IRON PVT. LTD. Versus COMMISSIONER OF CENTRAL EXCISE-I reported in 2010 (255) E.L.T. 496 (All.) that, - it is obligatory on the part of the revenue to return non-relied upon documents and photocopies of the relied upon documents must also be furnished to the affected parties.

14) It has also been held by the Hon'ble Apex Court in the matter of TRIBHUVANDAS BHIMJI ZAVERI Versus the COLLECTOR OF CENTRAL EXCISE reported in 1997 (92) E.L.T. 467 (S.C.), that when assessee is asking for photostate copies of relied upon documents, then non-return of documents may severely prejudice right of party to offer proper explanation and the suffered must be permitted to inspect original documents and materials sought to be used against them. As regards the contention relating to the non-return of the un-relied seized records, your attention is also drawn to Circular No. 207/09/2006-C.X.6, dated 8-9-2006. Undoubtedly, the circular being issued by the Board, the authorities are bound by the said circular. The Board circular also envisages the non-return of such documents also causes undue hardship to the appellant as they require such records for various statutory obligations. The appellant prays to the learned adjudicating authority to provide photocopies of the relied upon documents and to return the original copies of non-relied upon documents so that appellant may be able to submit their written submissions in their defence and also to comply their statutory obligations under the various acts/law.

15) Whereas the learned adjudicating authority failed to provide the under mentioned documents to prepare defence reply in the absence of which the appellant could not submit their defence reply;-

a) Verification report submitted by Department officer at the time Registration of ---------- under the provisions of the GST Act.

b) Copy of Panchnama drawn

c) Statement of all persons on which were relied for raising allegation in Show Cause Notice.

d) FIR No.-----Dated----

e) Report of investigating officer against FIR No.---------- Dated ----------.

f) Statement of vehicle owner /driver of transporter.

g) Vehicle in which goods transported whether they are public or private carrier

h) Date on which the GST registration of ---------- was cancelled and proof of cancellation; and date on which the Bank Accounts of ---------- were seized and proof of seizure; and reason for the cancellation of Registration and seizure of Bank Account.

i) Purchase invoices of ----------

j) All Documents on which Departments relied for raising allegation in Show Cause Notice.

k) Detail of documents seized at the time of search by department officers at the premises of the appellant.

l) Copy of statement of Proprietor/Partner/Authorized signatory/Owner of ----------

m) Sale Invoices of Appellant.

OPPORTUNITY OF CROSS EXAMINATION OF THE RELIED PERSON ALSO WAS NOT AFFORDED TO THE APPELLANT

16) The learned adjudicating authority in the present proceedings has only relied upon the statement of truck owners and verification report of the premises of M/s ------. Whereas no opportunity has been granted by the revenue to cross examine the statement tendered by the truck owners and owner of M/s ----------and other related person.

17) In the present case, the statements of some persons/witnesses have been relied upon by the learned adjudicating authority during investigations. The appellant shall also be allowed an opportunity of cross-examining the persons whose statements have been relied upon and referred to in the show cause notice. It is natural that a person facing such an enquiry to have opportunity to cross-examine an author of a document or a person who has deposed against him during the course of an enquiry. Accordingly, hope the learned Deputy Commissioner shall consider the request of the appellant and allow the appellant aforesaid opportunities. In the absence of above opportunities, the appellant could not submit their defence reply.

18) It is a settled law regarding cross examinations that when the Department is relying upon the statement of the any other registered person/person while making adverse comments against the respective parties, it was the bounden duty of the adjudicating authority to bring out supporting material on record on providing due opportunity to the assessee to meet the same. Thus, if Cross-examination of main accused has not been permitted, principles of natural justice of the appellant shall be violated. It has been held in the matter of ANIL PANNALAL SAROGI Versus the COMMR. OF CUS. (IMPORT), MUMBAI-II reported in 2009 (241) E.L.T. 219 (Tri. - Mumbai) that,- *"Natural justice - Denial of cross-examination of co-noticees based on whose statements liability of appellants was fixed, resulted in violation of principles of natural justice - Impugned order set aside - Penalty for abetment in duty evasion - Matter remanded for de novo adjudication after affording opportunity of cross-examination of co-noticees as requested by appellants - Section 112 of Customs Act, 1962. [para 5]".*

19) In such cases, where the buyers/dealers are alleged to be involved in taking of input tax credit on fake tax invoices/issuing of fake tax invoices etc. then being accused of an offence, the appellant has a fundamental right against testimonial compulsion under Article 20(3), ask for cross-examination of the others and its refusal results in violation of Principles of Natural Justice. So cross-examination is to be allowed as a matter of right of the appellant. Any statement or information given to the department by the others cannot be used against the appellant without giving opportunity of cross examination the others whose statement/averments have been relied upon by the department against the appellant. After conducting cross-examination, it would be able to reveal that whether the statements of the relied person are found to be worthy of reliance or not.

20) Regarding cross-examination of others Co-accused/relied person, it is submitted that their statements cannot be considered on face of it, without testing them for truthfulness. It is more so in a case where their statements were the only evidence available with Department in support of their case. Facts that the statements were voluntary or allegation are false or true must be cross examined at the earliest point of time, as the averments made in the statement found to be insufficient. It has been held by the Hon'ble High Court of Delhi in the matter of BASUDEV GARG

Versus COMMISSIONER OF CUSTOMS reported in 2013 (294) E.L.T. 353 (Del.) that,-

> *"Adjudication - Evidence - Statement against assessee cannot be used without giving them opportunity of cross-examining deponent - Cross-examination is valuable right of accused/noticee in quasi-judicial proceeding which can have adverse consequences for them - However, it can be taken away in exceptional circumstances stipulated in Section 9D of Central Excise Act, 1944 and Section 138B of Customs Act, 1962 - Unless such circumstances exist, noticee would have right to cross-examination. [paras 10, 14]".*

21) The appellant request the Hon'ble Appellate Authority to provide an opportunity of cross examination to the appellant so the appellant could be able to prepare appropriate defence reply against the allegation raised in the Show Cause Notice. It is the recognized principle of Natural Justice that an opportunity of cross examination be provided to the appellant. The appellant want to cross examine following persons:

a) Owner/Proprietor/Partner or Authorized signatory of ----------.

b) Owner/Driver of Truck of Transporter in which Goods were transported.

c) Any other person/s on whose statements department relied.

22) In the adjudication process any person, either the assessee or the revenue, is not agreeing with the statement that has been marked as evidence, then such person is eligible to cross examine the person/witness to find out the truth. It is legal right of a plaintiff. Not giving opportunity to cross examine would amount violation of principles of natural justice. Similarly, not providing relied upon documents which has been relied upon by the authority in investigation, which is prominent document for the appellant to prepare the defence reply and not returning the non-relied documents also tantamounts to violation of principles of natural justice.

ADJUDICATION ORDER DT. --------- IS BAD IN LAW AND PASSED AGAINST PRINCIPLE OF NATURAL JUSTICE- PROPER TIME OF FILING REPLY TO SHOW CAUSE NOTICE AND PERSONAL HEARING WAS NOT GRANTED TO THE APPELLANT

23) In the instant matter, the case has been adjudicated without giving sufficient time for filing of reply to the show cause notice and without giving the proper

opportunity of personal hearing to the appellant to present the case and defend himself which is quite wrong and against the Principle of Natural Justice.

24) As per Central Tax Law, the sufficient time for filing the reply to allegations raised in show cause notice must be given to party to defend the case so that party may present the case before the adjudicating authority in the Principle of Natural Justice. But in the present case of appellant, the sufficient time was not granted by the adjudicating authority to present the facts and defend himself. Hence it is clear that in the instant matter, the Principles of Natural Justice were not followed because that the appellant was not given sufficient time to reply the contentions of the department and defend himself. There is nothing even in the Code of Civil Procedure to prevent a plaintiff to make his reply and claim relief.

25) *The Provision of personal hearing is an essential requirement of* ***"Principle of Natural Justice".*** The Order should give decision on the points and objections raised by the assessee in reply to show cause notice or at personal hearing.

26) It has been provided in the Central Tax Act, 2017, adjudicating authority shall give opportunity of personal hearing to a party in proceeding. Hence, not providing opportunity of personal hearing is not correct and contrary to law. Such a mistake cannot be expected from such a learned adjudicating authority.

27) It is a settled law that before confirming the demand, proper opportunity of hearing must be afforded to the assessee in order to meet the ends of Natural Justice. After taking into consideration the pleas put forth by the appellant in the reply to show cause notice or at personal hearing, the proper order must have passed. But what the adjudicating authority did in the instant matter is squarely adverse to the legal perspective and amply against the Principle of Natural Justice.

28) The appellant has elaborated the matter in the light of some outstanding judgments in the matter:-

a) **MODERN LEATHER CLOTH CO. VERSUS COLLECTOR OF C.EX.- 1989 (43) E.L.T. 155 (Tribunal);-** "Natural Justice- Full opportunity to be heard not given- Order bad in law, there being violation of Principles of Natural Justice- Section 11A and 33 of the Central Excise and Salt Act, 1944" [para 8, 9)

"Adjudication order- Natural Justice-Ex parte order- Personal hearing necessary even f no reply to show cause filed- Copes of R.G.1 and Form IV register for co-relation of input and output requested by assessee- Department declined to return the register but fixed 8 days time for taking extracts therefrom- Assessee

requesting by them- such request not considered and ex parte order passed without affording any hearing- Duty demanded at statutory rate rather than the effective rate- It is incumbent on the adjudicating authority to grant personal hearing even if reply to show cause notice not filed- Order set aside- Case remanded back for de novo consideration after allowing perusal of the records, taking photo copies thereof, for replying to the show cause notice- sections 11A and 33 of the Central Excise and Salt Act, 1944". [Para 3, 5].

b) **MADHUMILAN SYNTEX PVT. LTD. AND ANOTHER VERSUS UNION OF INDIA AND ANOTHER- 1985 (19) E.L.T. 329 (M.P.);-** "Demand if invalid if it violates the principles of natural justice- show cause notice- A reasonable time should be given for reply- section 11A of the Central Excise Act.

c) **GARDEN REACH SHIPBUILDERS & ENGINEERS LTD. VERSUS COLLECTOR OF CENTRAL EXCISE, CALCUTTA-1987(31) E.L.T. 545 (Tribunal);-** "Natural Justice- Personal hearing is not an empty formality but to provide an effective opportunity and substantiate his case in defence- Failure thereof violates the principles o natural justice and vitiates the proceedings". [Para 21 & 22].

29) The adjudicating authority was in error in presuming that the appellant were not interested in further hearing without ascertaining the position from the appellant in this regard. The order has been passed without complying with the requirement of hearing and therefore, there is violation of Principle of Natural Justice. The position is that the case has been decided without considering the reply to show cause notice. This action of learned adjudicating authority has cut the very root of Natural Justice and the stand taken by the authority is contrary to law by which the appellant was not permitted to make his pleas and reply the inconsistent of sets of allegations and claim relief thereunder.

30) Also held in the matter of M/s TRANSCOASTAL CARGO & SHIPPING LTD., Versus UNION OF INDIA2016 (41) S.T.R. 379 (Mad. HC) that,-*the notice of personal hearing though sent by the Adjudicating Authority was not received by the petitioner. No acknowledgement of receipt was produced by the Department. The service tax demanded was confirmed by the Adjudicating Authority, creating adverse civil consequences for petitioner. The High Court held that inflicting such consequences, without hearing petitioner, violates settled principles of Natural Justice. The High Court set aside the adjudication order with remand for de-novo adjudication after hearing the petitioner.*

31) In the matter of COMMR. OF C.EX., RAIPUR Versus CHHATTISGARH STATE CIVIL SUPPLIES CORP. LTD. reported in 2016 (42) S.T.R. 558 (Tri. - Del.) *the Hon'ble Court found that the Commissioner, in the impugned order dated 09.06.2009 has*

clearly recorded that the letter dated 29.03.2008 of the respondent was received in the office of the Adjudicating Authority but it is seen that order dated 30.04.2008 was passed without granting any opportunity for personal hearing. The Revenue has not been able to produce any evidence to show that in the letter dated 29.03.2008 the respondent had given up its right to be heard in person. Thus it is clear that the order dated 30.04.2008 was passed without personal hearing when there was a request made for the same and without rejecting that request. It is certainly an error which is apparent from the records of appeal and such an error renders the order to be a nullity.

32) In this way, the demand of GST taxes failed due to violation of principle of natural justice, and the same is liable to be quashed on the basis of clarification made above and forthcoming paragraphs.

APPELLANT'S GROUNDS ON MERITS

DEMAND OF DIFFERENTIAL TAX OF RS. ------/- IS INVALID

33) At page no. 3 of the show cause notice dt. ----------, it has been alleged that as per bill book seized, excess sale of Rs. ---------- during the month of December 2017 and January 2018 is shown as compared to returns, involving tax amount of Rs. ----------. These allegations appears to be wrong and invalid which is explained in forthcoming paragraphs.

A) Sale Details for December 2017 as per Bill Book is as under;-

Sales details as per GST returns are as under;-

RETURN TYPE	TAXABLE VALUE	CGST	SGST
GSTR-1	----	-	-
GSTR-3B	-	-	-
DIFF.	-	-	-

B) Sale Details for January 2018 as per Bill Book is as under;-

Sales details as per GST returns are as under –January 2018 ;-

RETURN TYPE	TAXABLE VALUE	CGST	SGST

GSTR-1	-	-	-
GSTR-3B	-	-	-
DIFF.	0	0	0

Difference between sale bill book and GST returns –January 2018

RETURN TYPE	TAXABLE VALUE	CGST	SGST
Sale Bill Books	-	-	-
GST returns	-	-	-
DIFF.	-	-	-

34) Therefore, from the above calculations, it is clear that there has been mere difference of CGST for Rs.---- & SGST for Rs. ----, total amounting to Rs. ------ instead of Rs. ------/- as mentioned in show cause notice dt. -----. The amount payable of Rs. ---/- as CGST and Rs. ----/- as SGST alongwith interest payable for Rs. --/- as Interest CGST & Rs. ---/- as Interest SGST already stand paid by the appellant through Form DRC-03.

THE SGST DEPTT. HAS CANCELLED THE GST REGISTRATION OF M/S ---------- W.E.F--------–HENCE PURCHASE TRANSACTIONS BETWEEN PARTIES ARE VALID AND LEGAL

35) It has been alleged in the show cause notice as well as the order that ---------- were non-existent and got themselves registered under SGST/CGST Act 2017 on the basis of fake and forged documents and hence from the information available on GST Portal, the department has cancelled the GST registration of M/-------- **-**, which symbolizes that transactions held between the appellant and ---------. Thus input tax credit taken by the appellant upon the purchase invoices of ---------- --------amounting to Rs. ---------authenticated by SGST Department as proper, valid and legal and demand to this extent is also invalid & illegal and liable to be quashed on the basis of above submissions and discussions.

NORMAL PROCESS OF PHYSICAL VERIFICATION OF THE REGISTERED PREMISES WAS COMPLETED BY SGST DEPARTMENT ALREADY-NO IRREGULARITY FOUND BY THE SGST DEPARTMENT

36) As per rule 25 of the Haryana Goods and Services Rules 2017 –Chapter III-Registration, the following provisions has been made;-

25. Physical verification of business premises in certain cases-

"Where the proper officer is satisfied that the physical verification of the place of business of a registered person is required after the grant of registration, he may get such verification done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification".

37) In the period August 2017, Haryana excise and taxation department has asked its officers to find out whether premises companies from the state have mentioned in goods and services tax network registration are authentic, a move that seems to be aimed at identifying shell companies.

38) Making compliances of the above referred rules, and following of the instructions of the department, the Haryana SGST Department was required to adopt the procedure of normal physical verification of the registered premises of the taxpayer and submit the verification report upon the GST portal. It is hoped that department has completed verification process in the period 2017-2018 Whereas in the show cause notice as well as in the adjudication order, the SGST department has not provided any normal verification report of the registered premises of the ---------- which was completed in the 2017-2018. The cancellation has been done in the period 2019-20 retrospectively from dt. ---------- which is not legal and proper. Moreover, SGST department has also not provided any grounds on the basis of which the GST registration was cancelled of M/s ---------- whereas the M/s ---------- was supplying the subject goods to the appellant July 2017 onwards. It simply means that it is mere afterthought of the department and also shows inaction of the SGST department in physical verification of the premises of M/s ----------. Any inaction held at the end of the department in physical verification of the registered premises of M/s ---------- cannot be used against the appellant. Therefore, on these invalid grounds, demand raised upon the appellant is not sustainable.

THERE HAS BEEN SUBSTANTIAL EVIDENCES OF RECEIPT OF INPUTS AND PAYMENT AGAINST SUCH SUPPLY

39) The impugned show cause notice as well as the adjudication order is based on assumptions and presumptions, as there is no evidence of non-receipt of goods so far as appellant is concerned and hence untenable in eyes of law. The impugned order is patently invalid, based on assumptions and presumptions and liable to be discharged as being untenable in law, as the alleged demand of Rs.---------- has been raised towards the input tax credit allegedly inadmissible and availed by the appellant on the basis of the referred invoices issued by ---------- during 2017-2018. The said input tax credit was sought to be denied and recovered on the alleged ground that suppler was non-existent and 'subject goods' of the said invoice were never received by the appellant. The appellant submitted that the alleged inferences, about 'non-receipt of goods/without movement of goods', drawn by the department based on the so-called evidences i.e. statement of third parties are improper, unjustified and mere conjectures in as much as the so-called evidences are inconclusive in nature and consequently, the alleged demand raised towards the inadmissible input tax credit cannot be maintained in law, specifically, in view of following undisputed facts;

a) That during the relevant period, the appellant have manufactured and cleared the final products on payment of appropriate tax by duly accounting the same in their prescribed records;

b) That the goods were manufactured by the appellant from the Inputs obtained by them from various suppliers i.e. manufacturers and registered dealers including M/s ----------.

c) The physical receipt of the 'goods', received under the cover of invoice of M/s ---------- have been duly accounted by the appellant in their stock registers in Tally Software maintained by the appellant.

d) That the said 'subject Goods' has been used in the manufacture of final products which have been ultimately cleared on payment of appropriate tax as is evident from the perusal of the prescribed records maintained in tally software by the appellant during the relevant period;

e) That the appellant have made the payment against the said supply made by ---------- by account payee cheques and such purchases have also been recorded in their books of accounts;

f) That there is neither allegation nor there is any evidence brought on records by the department that the appellant have procured any 'goods' from M/s ----------

----in cash and/or that entire or any part of the payment made to M/s ---------- ------ by cheque has been received back by the appellant in cash;

g) That there is absolutely no evidence nor any allegation in the impugned notice/order that the appellant have procured any 'such goods' from any other source and availed the credit on the basis of the invoices of ---------- by projecting such 'goods' as having been received under the said invoices;

40) From the above undisputed facts, it is clear that the purported allegations raised by the department about the alleged non-receipt of the 'input' covered by the said invoice issued by M/s ---------- are invalid and based on assumptions and presumptions and the consequential alleged demand raised on the basis thereof cannot be maintained in law. The referred inputs tax invoices are duly reflected in GSTR-2A of the appellant which are auto populated from GST Portal, copies of the same are attached herewith.

THE APPELLANT WAS NOT IN OBLIGATION TO VERIFY THE CORRECTNESS OF PURCHASE OF M/S ----------

41) Without prejudice to above, the appellant submitted that they have received the 'goods' from M/s ---------- under the cover of GST tax invoices and had availed the credit on the basis of the particulars mentioned therein. At the time of receipt of the Input' under the cover of the said invoices, the appellant had no reason to doubt the correctness of the details mentioned in the said invoices and it can be seen that the appellant have been purchasing subject inputs from other dealers also.

42) The appellant further submitted that they were under no legal obligation to make an inquiry and ensure that M/s ---------- have been issuing the cenvatable invoices only on the basis of valid input tax invoices and in respect of the goods actually received by them under such invoices. Such an obligation is not cast upon the assessee under the law nor is it possible to discharge such obligation.

43) The appellant further submit that except the statement of owners of the vehicles, the department has not been able to adduce any tangible, valid, positive and creditable evidence in support of the purported allegations made in the Show cause notice as well as the adjudication order. The appellant submitted that there is no admission of ----------, Prop. Of the appellant firm that the subject 'goods' have not been received under the cover of said invoice issued by M/s ----------. The appellant has received the 'subject inputs' under by the said invoices issued by ---------- and used the same in the manufacture of the final products and subsequently supplied on payment of appropriate tax - a fact neither disapproved:

nor challenged by the department, and hence the entire alleged premise of the impugned demand and impugned order disappear.

44) They referred to and relied upon following judicial pronouncements in support of above submissions:

1. **THE CESTAT, PRINCIPAL BENCH, NEW DELHI, in the matter of MALERKOTLA STEELS & ALLOYS PVT. LTD. Versus COMMR. OF C. EX., LUDHIANA, -2008 (229) E.L.T. 607 (Tri. - Del.):-**

   Cenvat/Modvat - Documents for availing credit - Invoice did not bear the correct vehicle number - Appellants allegedly not received the inputs since the registered dealer had not received the inputs - Appellants produced copy of invoice and G/R issued by transport company showing the same truck numbers - Octroi receipts and weighment slips also bear the same truck numbers - Denial of credit on the ground that since the registered dealer had not received the inputs, therefore, appellants also received the inputs not sustainable – Rule 57G of erstwhile Central Excise Rules, 1944 - Rule 9 of Cenvat Credit Rules, 2004. [para 4]. Appeals allowed

   And finally, when Department preferred an appeal in the above case,

2. **THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH, COMMR. OF C. EX., LUDHIANA Versus MALERKOTLA STEELS & ALLOYS PVT. LTD. 2009 (244) E.L.T. 48 (P & H),** held that
   Evidence - Reappreciation of evidence - Once Tribunal taken particular view on basis of evidence than any other view, even if possible cannot be preferred - High Court under Section 35G of Central Excise Act, 1944 does not sit as Court of appeal to re-appreciate evidence and record a new finding of fact. [para 2]

   Cenvat/Modvat - Inputs, receipt of - Proof - Tribunal recording categorical finding that dealer produced copy of invoice showing truck number and G/R issued by transport company showing same truck number - Octroi receipts and even weighment slips bore same truck number - Tribunal held that credit hence not deniable on basis that registered dealer notreceived material - Findings recorded by Tribunal not suffer from any legal infirmity warranting interference of Court - No question of law arising - High Court does not sit as court of appeal to re-appreciate evidence - Appeal dismissed - Rule 3 of Cenvat Credit Rules, 2004. [paras 1, 2] Appeal dismissed

3. **THE CESTAT, PRINCIPAL BENCH, NEW DELHI, in the matter of SHREE JAGDAMBA CASTINGS (P) LTD. Versus COMMISSIONER OF C. EX., BHOPAL, 2006 (206) E.L.T. 695 (Tri. - Del.):-**

Demand - Cenvat/Modvat on inputs - Denial of credit on ground that inputs covered by invoices, not actually received by appellant - Appellant brought on record overwhelming evidence in the form of weighbridge slip, consignment notes of transporters etc. which suggests that inputs were received in their factory - Revenue produced no evidence to refute appellant's claim - Credit not deniable - Demand not sustainable - Section 11A of Central Excise Act, 1944. [paras 5, 7]

Demand - Limitation - Extended period - Suppression - Cenvat/Modvat - Denial of credit on ground that inputs covered by invoices, not actually received by appellant - Appellant filed RT 12 returns - Revenue before assessing such returns, should have made enquiries as to consumption of inputs, and manufacture of finished goods - Revenue having failed to do so, and detect non-receipt of inputs on such examination, cannot now turn around and allege suppression, mis-statement and fraud - Demand not sustainable on ground of limitation also - Proviso to Section 11A(1) of Central Excise Act, 1944. [paras 6, 7] Assessee's appeal allowed/Department's appeal dismissed.

4. **THE CESTAT, WEST ZONAL BENCH, MUMBAI, in the matter of CIPLA LTD. Versus COMMISSIONER OF CUS. & C. EX., PUNE-III- 2011 (273) E.L.T. 391 (Tri. - Mumbai);-**

Cenvat credit - Denial of credit - Assessees received inputs manufactured and supplied by their sister concerns on payment of duty - Credit cannot be varied are recipient's end on the ground that supplier should have paid lesser duty - Rule 3 of Cenvat Credit Rules, 2002 allowed credit of duty paid on inputs/capital goods rather than payable on goods – Whether duty was paid by manufacturer/supplier should be available as credit to manufactures of final product - Parties cannot be compelled to reverse credit availed on inputs being credits of amounts of duty paid by input manufacturers/suppliers and covered by statutory invoices issued by them - Demand of duty and imposition of penalty not justified - Revenue's appeal dismissed - Rule 3 ibid. [paras 5, 6, 7] Assessee's appeal allowed/Revenue's appeal dismissed.

5. **THE CESTAT, WEST ZONAL BENCH, AHMEDABAD , in the matter of MONARCH METALS P. LTD. Versus COMMISSIONER OF C. EX., AHMEDABAD, 2010 (261) E.L.T. 508 (Tri. - Ahmd.);-**

Cenvat/Modvat - Non-transportation of inputs, proof - SCN issued on the ground that LR do not bear the check post stamp and statement of transporter confirming non-transport - Statement of transporter being in nature of co-accused, cannot be made basis for holding against appellant unless corroborated with other evidence - Assessee produced ample evidence in shape of documentary record to prove that they had actually received inputs from first dealer and made payments through Demand Draft - Non-stamping of LR in respect of goods received by registered dealer would not reflect upon fact of non-receipt of inputs - Credit available - Rules 3 and 9 of Cenvat Credit Rules, 2004. [paras 7, 8, 9].

Cenvat/Modvat - Inputs - Credit denied on ground that inputs such as copper scrap, copper wire scrap, copper rod etc. were not actually received by appellants and only invoices were issued by dealer - LRs issued by transporter showing appellant as the consignee of goods -Mere fact that Goods Register maintained by transporter indicating description of goods as 'miscellaneous would not be sufficient to prove that inputs were not actually received by appellant - In the light of all other documentary evidence in support of appellant, credit available - Rule 3 of Cenvat Credit Rules, 2004. [para 9] Appeals allowed.

6. **THE HIGH COURT OF GUJARAT AT AHMEDABADCOMMISSIONER Versus DHANLAXMI TUBES & METAL INDUSTRIES -2012 (282) E.L.T. 206 (Guj.):-**

Cenvat credit - Availment of - On invoices only, and allegedly without receipt of goods - Department alleging that vehicles which transported impugned goods had actually transported other goods, based on two types of LRs issued by transporter for 'miscellaneous' and other goods - However, firm to which they were transshipped and assessee to whom they were sold stating that goods were transported and received by them under proper invoices, and both of them had entered their receipt in their RG-23D and RG-23A Part-I registers, respectively - Official records maintained at checkpost indicate receipt of impugned goods - No evidence on record reflected that inputs were not actually received by assessee - In that view, registers of transporter indicating

description of goods as "miscellaneous" was not sufficient for arriving at conclusion that inputs were never transported to assessee's factory - Rules 3 and 9 of Cenvat Credit Rules, 2004. [paras 4, 5] -Appeal dismissed

7. THE CESTAT, WEST ZONAL BENCH, AHMEDABAD MOTABHAI IRON & STEEL INDUSTRIES Versus COMMR. OF C. EX., AHMEDABAD-II-2014 (302) E.L.T. 69 (Tri. - Ahmd.);-

Demand - Cenvat credit - Availed on bogus invoices issued by firms without actual delivery of goods - Evidence - HELD : Credit cannot be disallowed on basis of statements not corroborated by other evidence of goods not received by assessee - Invoices issued by registered dealer Star Associates duly recorded in statutory record books and payment made through banking channels - No evidence that said amount received back by assessee and that records maintained not correct - Form 40 of Sales tax and purchase tax paid by supplier produced in support of contention that goods duly transported - As no investigation conducted at consignor's place, statement of transporters cannot be relied upon - No statement by supplier that goods supplied to third parties - Demand cannot be confirmed on basis of statements by third parties when no evidence to support such statements - Impugned order set aside - Section 11A of Central Excise Act, 1944 and Rule 13 of Cenvat Credit Rules, 2004. [para 6].- Appeals allowed.

8. THE HIGH COURT OF GUJARAT AT AHMEDABAD-COMMISSIONER Versus MOTABHAI IRON AND STEEL INDUSTRIES -2015 (316) E.L.T. 374 (Guj.);-

Demand - Clandestine removal - Demands based on statements of transporters or drivers of the truck which were not corroborated by any evidence - No investigation conducted at consignor's place or at the place where the said goods are alleged to have been supplied - Tribunal was justified in holding that only on the basis of third party statements, such demand cannot be made - Section 11A of Central Excise Act, 1944. [para 13]

Demand - Clandestine removal - Demand based upon the fact that vehicles which were shown to have transported the goods were not capable of carrying such goods - Tribunal upon appreciation of evidence on record has found as a

matter of fact that goods were duly found to have been recorded in assessee's factory and were consumed in production - Payment was made through banking channels and no investigation had been made at consignor's end - No error can be found in the findings recorded by Tribunal so as to warrant interference. [para 15]

Demand - Cenvat - Consignor only issued invoices to assessee, alleged - Payment to consignor made through banking channels - Tribunal found that all the purchases were duly recorded in statutory books of assessee goods were also found to be entered in its statutory records - Department had not made any investigation at the unit of assessee - None of the consignors of goods have denied clearance of goods to the assessee - Tribunal justified in holding that on the basis of statements of some transporters which were not corroborated by any material on record, a huge credit could not be disallowed - Demand and penalties on assessee and co-noticees rightly set aside. [para 19]. Deptt. Appeals dismissed

9. THE CESTAT, WEST ZONAL BENCH, AHMEDABAD-SIDDHARTHA BRONZE PRODUCTS PVT. LTD. Versus C.C.E. & S.T., BHAVNAGAR2015 (328) E.L.T. 429 (Tri. - Ahmd.);-

Cenvat credit - Denial of - Wrongly availed credit without actual receipt of inputs - Evidence - Cross examination of witnesses - Disallowance of - HELD : Present proceedings are second round of litigation and Tribunal had remanded matter for de novo adjudication after observing principles of natural justice which included right to cross examine - Right to cross examine can only be taken away in exceptional circumstances specified in Section 9D of Central Excise Act, 1944 - Revenue alleging goods not transported to assessee's factory in Gujarat as transporters did not avail route through RTO Check post and relied on statements of transporters, CHAs and buyers etc. but no opportunity provided to assessee to cross examine witnesses - Statements of transporters and others cannot be relied upon as no cross examination allowed - Mere fact that transporters' Lorry receipt did not bear stamp of Check Post no ground to presume that goods never transported to assessee's factory - Evident from Panchnama dated 10-2-2006 that sufficient machinery installed in assessee's factory to manufacture scrap and no evidence on record that said machinery removed after said date - Chartered Accountant's certificate of utilization of inputs in manufacture of final product produced - Documents submitted to support Assessee's contention that finished products actually cleared to buyers -

Evidentiary value of records cannot be discarded on basis of statements of third party which is not testified by allowing cross examination. [paras 8.2, 8.3, 8.4, 10, 10.1, 10.2, 10.3, 11, 11.1, 11.2, 12].

Cenvat credit - Denial of - Wrongly availed credit without actual receipt of inputs - Evidence - Revenue alleging manufacture of copper scrap out of copper ingots not commercially viable leading to presumption that inputs sold of by assessee - Certificates of Chartered Accountant produced regarding purchase of 103 consignments of material, duly recorded in account books and reflected in audited balance Sheet - No evidence that such huge quantity of inputs disposed of in open market - Cost Accountant's certificate produced to substantiate viability of cost of final product not disputed by adjudicating authority - No direction made under Section 14AA of Central Excise Act, 1944 to get accounts audited by another cost accountant nominated by Commissioner - Evidence placed by department ought to be convincing, even if not proving allegation beyond reasonable doubt, as test of preponderance of probability applicable on both sides - In present case inference of proof by relevant facts and records in favour of assessee - Demand of duty and penalty not sustainable - Impugned order set aside - Rules 14 and 15 of Cenvat Credit Rules 2004. [paras 8, 13.1, 13.2, 13.3, 13.4, 14, 14.3, 14.4, 14.5]. Appeal allowed

10. THE CESTAT, WEST ZONAL BENCH, AHMEDABAD-SM ENERGY TEKNIK & ELECTRONICS LTD. Versus C.C.E. & S.T., VADODARA-II 2015 (328) E.L.T. 443 (Tri. - Ahmd.);-

Cenvat/Modvat credit - Recovery of - Credit wrongfully availed during April 1996 to November 1998 against invoices without actually receiving raw materials - Evidence - Cross examination of witnesses - Disallowance of - HELD : Revenue's case rests mainly on statement of transporters denying transportation of material to assessee's premises - However, No opportunity given to assessee to cross examine transporters which is a valuable right of accused/notice in quasi-judicial proceedings - None of the transporters appealed when summons issued, proving their statements cannot be relied upon - Since statement of executive director denying receipt of raw material in factory subsequently retracted, it cannot be relied upon - RTO's report that vehicle numbers mentioned in invoices incapable of transporting such huge quantities of material, related only to 11 consignments out of 66 consignments and it is doubtful if it can be applicable in respect of all 66 consignments credit cannot be denied merely on basis of RTO report - Not disputed that invoices genuine and goods cleared from suppliers'

end - As per statements of suppliers, goods transported through transport brokers - Assesse made payments to suppliers by cheque and entire transaction duly recorded in statutory records - Assessee eligible to Modvat credit - Impugned order set aside as not sustainable - Rules 14 and 15 of Cenvat Credit Rules 2004. [paras 9, 10, 11, 12, 13, 14, 15, 16]. Appeal allowed.

11. THE CESTAT, REGIONAL BENCH AT HYDERABAD [COURT NO. II]- AKSHAY LPG VALVES Versus COMMISSIONER OF CUS. & C.EX., HYDERABAD-IV -2016 (337) E.L.T. 129 (Tri. - Hyd.);-

Cenvat credit - Disallowance of - Credit allegedly availed fraudulently without actual receipt of imported goods in factory - Burden of proof - HELD : Burden to prove allegations made in show cause notice on Revenue - No material evidence brought out by Revenue to establish imported goods diverted/disposed of in Delhi itself and not transported to assessee's factory in Hyderabad - Revenue relying mainly on statements of transporter's partner retracted before Magistrate and statement of father of proprietor recorded under duress retracted during cross-examination - On other hand all relevant documents like weighment slips, job work challans, production register showing manufacture and clearance of goods on payment of duty, produced by assessee evidencing that imported goods actually received - No shortage of raw material detected and no evidence of substitution of impugned raw material - Transactions entered in statutory records supported by proper banking channel - Documentary evidence produced by assessee to prevail over retracted confessional statements - In absence of cogent evidence produced by Revenue to support allegation of non-receipt of imported goods by assessee, disallowance of Cenvat credit not sustainable - Rule 14 of Cenvat Credit Rules, 2004. [paras 8, 9, 10] -Appeal allowed.

45) The appellant submit that charges of availment of input tax credit without receipt of inputs are serious allegations which cannot be held as correct without adequate/cogent evidences and it is also imperative that the witnesses be cross-examined to bring the truth on record as to how they have stated that the goods were never transported to the appellant. Revenue's case mostly based upon the statements recorded of various persons and not on any corroborative evidences. Prop of the appellant company affirmed that the statutory records indicate the true and correct entries as regards receipt and consumption of the goods. Thus the allegation of non-receipt of the inputs is not sustainable.

46) It is also stated that mere statement is not sufficient to establish charge of fraudulent input tax credit. Whether the goods were physically received or otherwise by the appellants is a positive act, which must be proved with tangible evidence beyond any doubt and not with circumstantial evidences. In the present case charge of non-receipt of goods was made against the appellant. The Prop. of the appellant firm in his statement categorically stated that they have received the goods covered under the sale invoices of dealers, the entries of such receipts were made in the stock registers maintained in tally software, the payments of the said purchases were made through cheques. This statement of the prop. could not be negated by the department. The statement of vehicle owners or others can only be relied upon if the same is corroborated by independent and cogent evidence, which department failed to adduce. Therefore statements of third person without cross-examination and without support of corroborative evidence cannot be used against the appellants.

47) The eligibility criteria for availing the input tax credit (ITC) and the conditions which are required to be fulfilled for the said purpose are elaborated here in section 16 of the CGST Act 2017 which are summarized as under;-

16. Eligibility and conditions for taking input tax credit.

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,––

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

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

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Analysis of the eligibility criteria as per facts and circumstances of the present case;-

(1) Only Registered person will be eligible to take credit of ITC paid on inward supplies of goods or service or both, which are used in the course or furtherance of business. If a person is not a registered person or is a registered person but has not used the supply of goods or services or both in the course or furtherance of business, he will not be entitled to claim ITC- **In the present case inputs used in course or furtherance of business.**

(2) The Credit of Input Tax will be available to a registered person. As per the definition contained under clause (62) of section 2 of CGST Act, 2017, Input Tax specifically excludes the tax paid under composition scheme. Therefore, if a person has paid the composition tax on its inward supply, he will not be

entitled to claim ITC of that amount-**Being regular tax payers, the appellant is entitled to take input tax credit.**

(3) As per sub section (2) of section 16, four conditions need to be fulfilled which are:

a) Possession of tax invoice, debit note or such other tax paying document which includes invoice issued by Input Service Distributer (ISD) and bill of entry as prescribed under Customs Act, 1962- **The appellant is in possession of proper and valid tax invoice.**

b) Goods or services have been received. – **In the present case, subject inputs have been received and duly accounted for in the books of account of the appellant.**

c) Tax on supply is actually paid to the Govt. – **The suppliers including M/s ---------- have duly furnished their returns i.e. GSTR-1 and GSTR-3B for the relevant period. The referred inputs tax invoices are duly reflected in GSTR-2A of the appellant which are auto populated from GST Portal.**

d) The recipient shall furnish the return under section 39 - **The appellant have also filed their prescribed GST returns i.e. GSTR-1 and GSTR-3B.**

(4) The recipient shall make the payment for the supply of taxable goods or services or both within a period of 180 days. Payment for both value for goods or services and tax thereon shall be paid within a period of 180 days from the date of issue of invoice by the supplier. If the payment is not made within the stipulated time, ITC which was availed by the recipient at the time of receipt of inward supply shall be reversed along with interest at applicable rates. ITC can be availed when the payment for the value of supply and tax thereon, is made in at a future date.- **Payment of value of taxable goods alongwith tax has been made to the supplier M/s ----------much before expiry of period of 180 days.**

48) From the above discussions, it is clear that all conditions for taking input tax credit as prescribed under Section 16 readwith Rule 36 & 37 has been complied by the appellant and thus demand of input tax credit raised by the SGST department is invalid and illegal and thus liable to be quashed.

BUYER (APPELLANT) IS NOT RESPONSIBLE FOR FRAUD OF SUPPLIER, IF ANY

49) The appellant in above referred paras has proved that there has been genuine sale purchase transactions between the appellant and M/s ----------, and fraud if any, has been committed at part of the M/s ---------- and for which the appellant cannot be held responsible.

50) Kind attention is drawn to the **CBEC circular No. 766/82/2003-CX dt. 15.12.2003,** in which it has been clarified that cenvat credit should not be denied to user-manufacturer as long as bonafide nature of the consignee's transaction is not doubted. Further, if the supplier has received the payment from the buyer in respect of goods supplied including excise duty, action should be initiated against the supplier.

51) For further clarifications the appellant want to rely upon the following legal pronouncements;-

a) R.S. INDUSTRIES versus COMMISSIONER OF C. EX., NEW DELHI-I-2003 (153) E.L.T. 114 (Tri. - Del.);-

Modvat/Cenvat - Modvat credit - Fraudulent credit taken by input supplier who sold the same to assessee on invoices carrying duty payment particulars - Revenue confirming demand of duty against input supplier - Credit of duty could not be denied to assessees especially since receipt of inputs by them was not disputed - Rule 57A of erstwhile Central Excise Rules, 1944. [para 5]

Demand - Modvat credit taken fraudulently by supplier of inputs which were sold to assessee on invoices carrying duty payment particulars - HELD : There was no error or any misconstruction on the part of assessee and credit could not be recovered from them by application of Rule 57-I of erstwhile Central Excise Rules, 1944. [para 5]

(Matter further affirmed by the Hon'ble High Court of Delhi as reported in -2008 (228) E.L.T. 347 (Del.)-COMMISSIONER OF C. EX., DELHI-II Versus R.S. INDUSTRIES.

b) UNI DERITEND LTD. Versus COMMISSIONER OF C. EX., NAGPUR -2011 (272) E.L.T. 280 (Tri. - Mumbai);-

Cenvat/Modvat - Inputs received by appellant alleged not being those inputs which were mentioned in the invoice - Such allegation can be verified only by inspection of input in the factory of appellants only, which could not be done as the inputs have already gone in the process of manufacturing - Being a prudent buyer the appellant taken the credit on a duty paying document and same has been cleared after processing after payment of duty - If there is an allegation that appellant has taken credit at bona fide belief same is to be dealt with in accordance with C.B.E. & C. Circular No. 766/82/2003-CX., dated 15-12-2003 - Credit held to be taken on duty paid invoice in accordance with law. [para 5].

c) SURINDER STEEL ROLLING MILLS Versus COMMR. OF C. EX., CHANDIGARH2016 (343) E.L.T. 935 (Tri. - Chan.);-

Cenvat - Non-existent supplier - Investigation at the end of appellant has been done after four and half years of investigation started at the end of manufacturer/supplier - Factory of appellant was not even searched - Appellant taken the credit on the goods and informed the department during investigation - Goods were found entered in statutory records - Same has been issued for further manufacturing and duty paid on manufactured goods - No investigation conducted at the end of transporter to reveal the truth whether they were transported the goods or not - As per provisions of Central Excise Act or the Rules no duty cast on appellant for verification of contents of manufacturer/supplier before procuring the goods - Credit cannot be denied to appellant. [para 6]

52) From the above it is clear that the revenue has not given cogent reasons to indicate that the appellant had carried out fraudulent transaction and have taken wrong inadmissible input tax credit. The appellant has taken reasonable steps to ensure that the inputs in respect of which he has taken the input tax credit are goods on which the appropriate tax, as indicated in the documents accompanying the goods, has been paid. Admittedly, in the present case, the appellant was a bona fide purchaser of the goods for a price which included the tax element and payment was made by cheque. The appellant had received the inputs which were entered in the statutory records maintained by the appellant. The goods were demonstrated to have travelled to the premises of the appellant under the cover of proper invoice and the ledger account as well as the statutory records establish the receipt of the goods. In such a situation, it would be impractical to require the appellant to go behind the records maintained by the supplier. The appellant, in the present case, was found to have duly acted with all reasonable diligence in its dealings with the supplier.

53) The view which the Tribunal has taken is consistent with the judgment of the Jharkhand High Court in Commissioner of C. Ex., East Singhbhum v. Tata Motors Ltd. - 2013 (294) E.L.T. 394 (Jhar.), where it was held as follows :- ***"... Once a buyer of inputs receives invoices of excisable items, unless factually it is established to the contrary, it will be presumed that when payments have been made in respect of those inputs on the basis of invoices, the buyer is entitled to assume that the excise duty has been/will be paid by the supplier on the excisable inputs. The buyer will be therefore entitled to claim Modvat credit on the said assumption. It would be most unreasonable and unrealistic to expect the buyer of such inputs to go and verify the accounts of the supplier or to find out from the department of Central Excise whether actually duty has been paid on the inputs by the supplier. No business can be carried out like this, and the law does not expect the impossible."***

54) Ultimately, the appellant has taken reasonable steps to ensure that the inputs in respect of which he has taken input tax credit were goods on which appropriate tax was paid and input has been duly received in their premises. Once it is demonstrated that reasonable steps had been taken, which is a question of fact in each case, it would be contrary to the Rules to cast an impossible or impractical burden on the assessee. Also held in the matter of M/s S.K. FOILS LTD. Versus COMMISSIONER OF CENTRAL EXCISE, ROHTAK-2015 (315) E.L.T. 258 (Tri. - Del.) that,- *"Cenvat - Duty paying documents - Fake transactions - Revenue alleged first stage dealer at not existent - Raw materials stand received by assessee which were used by him in the manufacture of their final product on which appropriate duty of Central Excise was paid and monthly return were filed - Since appellants have received the goods, the burden placed upon them under Rule 7(2) of Cenvat Credit Rules, 2004 stands discharged - A manufacturer cannot be expected to undertake investigations like Revenue officers and to find out the truth behind the scene - As long as he is receiving the goods from a known dealer under the cover of invoices and making payments by cheques, he is deemed to have discharged the onus placed upon him under the said rule - No investigation stand conducted by Revenue from second stage dealer, who has actually supplied the inputs to appellants - Credit not to be denied. [paras 8, 9, 10]".*

55) Therefore, the impugned order denying input tax credit is liable to be dropped in view of the above paragraphs.

56) The appellant in the present case want to elaborate here that major supply of the finished goods i.e. Tiles of the appellant during the relevant period has been made to Govt. Department/Public Sector Units/Multinational Companies Builders during the period 2017-2018 amounting to taxable value of Rs. ---------- which is 58% of the total supply of goods during the period 2017-2018 i.e. Rs. --------. Out of total value of purchase of inputs amounting to Rs. -------/-, input of amounting to value of Rs. ----------/- (i.e. 42% of total purchase of inputs) is from M/s ---------. The

appellant failed to understand that if total purchase of inputs from M/--------- is taken as 'fake' by the revenue, then how appellant made supply of finished goods i.e. tile during the period 2017-2018 to the Govt. Department and other reputed builders.

CALCULATION OF ILLIGAL DEMAND IS INCORRECT

57) From the contents of the show cause notice, it is revealed that calculation of illegal demand is incorrect which is explained in forthcoming paragraphs. During the period 2017-2018, the appellant has availed input tax credit including the amount on the basis of invoices raised by M/s ---------- towards supply of goods Cement. The details is as under;-

Sr. No.	Particulars	CGST (Rs.)	SGST (Rs.)
1.	Amount of ITC availed on invoices raised by M/s ----------	---/-	-----/-
2.	Add: Amount of differential tax payable as per reconciliation	------/-	-------/-
3.	Total	----/-	----/-
4.	Actual demand raised by SGST Department	------/-	----------/-
5.	**Diff. (Excess illegal demand raised)**	**----------/-**	**----------**

58) Hence, the illegal demand is erroneous and impugned order so passed is liable to be quashed on these grounds. It has been held in the matter of M/s UNITY INDUSTRIES Versus COMMISSIONER OF CENTRAL EXCISE, VADODARA-II reported in 2006 (193) E.L.T. 314 (Tri. - Mumbai) that,- *"Demand - Calculation of amount - Mistake in adding different figures indicates misapplication of mind - Demand, otherwise also based on assumptions/presumptions, set aside - Section 11A of Central Excise Act, 1944. [para 9(d)]".*

59) The prominent legal pronouncements relied upon by the department as under;-

a) **2008 (10) S.T.R. 405 (Tri. - Kolkata)-TIL LTD. Versus COMMISSIONER OF SERVICE TAX, KOLKATA;- "***Show cause notice - Defective show cause notice - Basis of calculation of demand not given in SCN to appellants nor longer period of limitation invoked specifically - Proceedings flowing from such a defective show cause notice neither legal nor proper - Impugned order set aside on ground of limitation - Section 73 of Finance Act, 1994. [para 4]".*

b) **2010 (17) S.T.R. 530 (Tri. - Del.)-V.S. DISTRIBUTORS Versus COMMISSIONER OF CENTRAL EXCISE, JAIPUR:-** *"Show cause notice - Defective SCN and order - Demand under Clearing and Forwarding Agent service - Invoices not examined by authorities to ascertain nature of service - Not known how SCN issued and orders passed without identifying documents relied upon - Documents not identifiable cannot be read in quasi-judicial proceeding - Identified cogent material to be brought for rebuttal as per natural justice - Proceedings suffering from legal infirmity - Appeal allowed - Sections 73 and 85 of Finance Act, 1994. [para 3]".*

INTEREST NOT PAYABLE AND PENALTY NOT IMPOSABLE

60) In the present case, interest has also confirmed under section 50 and penalty has been imposed under section 74(1) of the CGST/SGST Act 2017.

95) The demand of interest in the present case is unsustainable in view of unsustainability of the demand of input tax credit as explained in above mentioned paragraphs. Moreover, interest is chargeable only in cases where wrong availment of ITC or short payment of Tax. Whereas in the present case, ITC has been availed in compliance of section 16 of the CGST Act 2017 and the SGST department could not prove the allegation of *'ITC availed without movement of goods* with the support of any corroboratory evidences, demand of input tax credit cannot be sustained. Therefore, question of payment of interest does not arise. Other than above, there is no short payment of GST and entire tax liability has been discharged by the appellant. Under the circumstances, imposition for levy of interest deserves to be quashed.

96) In the present case, there is sufficient reasonable cause for non-imposition of penalty under section 74 since revenue could not prove the allegation of *'ITC availed without movement of goods* except third party statements. Therefore, there has been no suppression with intent to evade tax at part of the appellant and penalty is not imposable on grounds of absence of suppression with intent to evade tax and payment of tax payable already stand paid. Therefore, penalty under section 74 is also not imposable.

97) Without prejudice to the above, it is submitted that for the reasons given in the foregoing paragraphs, the demand in the present case is not sustainable in law. Once the demand is found to be non-sustainable, the question of levy of interest and penalty does not arise. In the case of Collector of Central Excise v. H.M.M. Limited, 1995 (76) ELT 497 (SC), Hon'ble Supreme Court held that the question of penalty would arise only if the Department is able to sustain the demand. Similarly, in the case of Commissioner of Central Excise, Aurangabad v. Balakrishna Industries, 2006 (201) ELT 325 (SC), Hon'ble Supreme Court held that penalty is not imposable when differential duty is not payable.

98) The appellant reserves the right to add, to withdraw, to correct, to change, to delete, to modify any submissions at the time of Personal Hearing in the Principal of Natural Justice.

99) The 'order' is contrary to law and facts of the case and it has been passed in haste and the order is devoid of judicious and rational approach to the demand of input tax credit alongwith interest and penalty total amounting to Rs. ---------/-. The order passed is contrary to the Principles of Natural Justice and fair play.

PRAYER

100) In the view of foregoing, it is respectfully prayed that appeal may please be allowed and Hon'ble Appellate Authority is also prayed to:-

(a) to set aside the 'order' appealed against for demand of input tax credit alongwith interest and penalty total amounting to Rs. ---------/- and allow the appeal in full;

(b) to provide opportunity of the cross examination of the person referred in the above paragraphs enabling the appellant to file their defence submissions at the time of personal hearing;

(c) to provide the copies of relied upon documents and to return the non-relied upon documents enabling appellant to file their defence submissions at the time of personal hearing;

(d) to grant opportunity of personal hearing before the matter is decided;