

DRAFT REPLY OF DRC-01

Dated :

To,

The,

.....Ward,

..... GST,

.....

Dear Sir,

IN THE MATTER OF GSTIN- 07

Reg : REPLY OF DRC- 01.

That the tax payer wants to submit as under :-

1. That the DRC-01 issued was not containing any digital signature of the proper officer. Therefore, the above notice is not sustainable in the eyes of Law and such SCN to be considered as invalid.

• That in the matter of **Marg ERP Ltd vs. CGST arising out of W.P.C. 872/2023, (DEL-HC) :(2023) 62 TLC(GST) 022, the Hon'ble Delhi High Court** has held that **"an unsigned notice/order cannot be considered as an order and hence cannot be sustained."**

2. That the DIN (Document Identification Number) entered by your good-self is incorrect and was not verified and authenticated at GST Portal. Therefore, in absence of correct DIN, the above Show Cause Notice(SCN) is null and void.

3. That in the above said notice, the date of Personal Hearing is too early and how it can be done before the submission of reply of the taxpayer which shows that the absence of application of mind by the proper officer while issuing the SCN to the tax payer.

4. That various discrepancies were noticed by your good-self are :-

4.1 Unpaid Tax Liability for Mismatch Between GSTR-1 & GSTR-3B.

That being the first year of implementation of new GST Law, the tax payer and his staff was not well educated and well verse with the new system of GST. Therefore, certain additional entries were fed in the system wrongly due to clerical mistake and hence, mismatch arises.

Therefore, you are requested to please do not consider the following entries in GSTR-1 :-

Date	Bill No.	GSTIN	Invoice Value

4.2 Excess ITC Claimed in Form 3B as compared to GSTR-2A

That the no excess ITC was availed by the tax payer in his returns. The taxpayer had claimed ITC only for which he is in possession of goods, invoice, proof of bank payments and actual movement of goods was made and all transactions are absolutely genuine excluding ineligible ITC. However, all the

sellers exist at their business premises and can confirm the transaction also. Therefore, you are requested to please consider the following transactions and allow the ITC to the taxpayer as all the conditions of Section 16 of the CGST/DGST Act, 2017 were duly complied. The same view was also held by the Hon'ble Supreme Court in the matter of **Ecom Gill Coffee Trading Pvt Ltd, (SC) :(2023) 63 TLC(GST) 017**, CIVIL APPEAL NO. 230 OF 2023 Dated - 13-03-2023.

• That in the matter of **Diya Agencies vs State Tax Officer arising out of W.P.(C). 29769 of 2023, (KER-HC) :(2023) 69 TLC(GST) 026** the Hon'ble Kerela High Court held that **"ITC cannot be denied to the recipient solely on the ground that transactions are not reflected in GSTR-2A."** However, GSTR-2A is mere a facilitator and cannot be presumed to be accurate and complete.

The list of such transactions due to which the mismatch arising is as follows and all the necessary documents are enclosed for your ready reference :-

Date	Bill No.	GSTIN	Invoice Value	Eway Bill No.

4.3 ITC Claimed from Non Existent dealers

That the purchases from the following dealers were made which exist at the time of transaction and actual movement of goods was taken place. Tax payer is in possession of valid invoice, e-way bill, proof of payment of taxes along with payment of goods from bank to the supplier. All the returns of the supplier were also filed as per your GST Portal and are in records of the GST Portal. Therefore, compliance of Section 16 of the CGST/DGST Act, 2017 was completely done by the tax payer.

Further, it is the duty of the supplier to pay the taxes collected as per the mechanism drawn by Central Government of India otherwise it will tantamount to double taxation.

However, it is not possible to verify by the tax payer that whether the supplier had paid the tax or not or the supplier would have adjusted from his ITC because it is the duty of the administrator (i.e. Government) and not the bonafide purchaser and as per GST portal, the tax payer can verify only that the supplier had filed his GSTR-3B or not, which was duly filed in this case. It is also pertinent to note that your good-self has not bring any material contrary to Law and therefore, no adverse inference may be called for.

Date	Bill No.	GSTIN	Invoice Value	Eway Bill No.

Copy of the above said invoices, e-way bill along with payment of proof is enclosed for your ready reference.

• That in the matter of **Gargo Traders vs Joint Commissioner of Commercial Taxes** arising out of W.P.C. 1009 of 2022, **(CAL-HC) :(2023) 66 TLC(GST) 007** the Hon'ble Calcutta High Court held that **"a recipient of goods/services cannot be denied ITC if supplier becomes non-existent or their registration was cancelled retrospectively."**

• The same view was also upheld by the Hon'ble High Court of Calcutta in the matter of **LGW Industries Ltd vs Union of India. W.P.C 23512 of 2019, (CAL-HC) : (2021) 48 TLC (GST) 055.**

5. That the Bombay High Court in **CIT Vs. T. Maneklal Mfg. Co. Ltd. (1978) 115 ITR 725** has observed that the Income-tax Act being an all India statute, uniformity in the construction of its statutory provisions is eminently desirable and the considered opinion of any other High Court should be followed unless there are overriding reasons for taking a divergent view. Therefore, GST is also an All India Statute and Principle of uniformity should be followed.

Therefore, looking into the facts and circumstances of the case, the tax payer is ready to fully co-operate with you and request you to quash the notice and delete the proposed demand in full.

Thanks,

Yours faithfully

For