
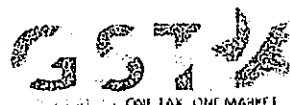


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निबन्धित पानती डाक द्वारा/By R.P.A.D
फ़ा.सं./F.No. GST/15-271/OA/2021

DIN-20231264WT0000111C6E

आदेश की तारीख/Date of Order: - 28.12.2023

जारी करने की तारीख/Date of Issue :- 28.12.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 57/JC/ LD /GST/2023-24

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015 को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रू. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form GST-APL-01 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केंद्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू.5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

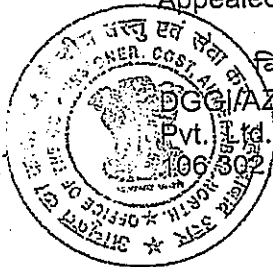
The appeal should be filed in form GST-APL-01 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 108 of CGST Rules, 2017. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order

Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. DGG/AZU/36-52/2021-22 dated 30.06.2021 issued to M/s Indira Security and Allied Services Pvt. Ltd., having GSTIN 24AAACI7092R1ZZ & Shri Shrikant Rambhuvan Tiwari (Director), Narayan Complex, Opp. Navmor Restaurant, Navrangpura, Ahmedabad-380009.





BRIEF FACTS OF THE CASE

1. M/s Indra Security And Allied Services Pvt Ltd (hereinafter referred to as "M/s Indra" for the sake of brevity) having their principal place of business at 106, 1st Floor, Narayan Complex, Opp. Havmor Restaurant, Navrangpura, Ahmedabad-380009 are engaged in the supply of "security/guarding services" and "supply of manpower (fire and safety services)" to various clients. The security/guarding services supplied by M/s Indra fall under Services Accounting Code 9985 and attract GST @ 18%. Similarly, the "supply of manpower (fire and safety services)" supplied by M/s Indra also fall under Chapter Heading 9985 and attracts 18% GST. M/s Indra are registered with the GST Department and they hold GSTIN: 24AAACI7092R1ZZ.

2. Whereas, an intelligence was developed by the officers of the Directorate General of Goods and Services Tax Intelligence, Ahmedabad Zonal Unit (hereinafter referred to as "DGGI" for the sake of brevity) indicated that M/s Indra had suppressed the actual turnover in respect of the services supplied by them and accordingly they had indulged into evasion of service tax during the pre-GST period. Acting on the said intelligence, a search was conducted at the office premises of M/s Indra situated at 302, Narayan Complex, Opp Havmor Restaurant, Navrangpura, Ahmedabad-380009 on 25/10/2018. Preliminary scrutiny of the records seized during the course of panchnama [RUD-01 of the Show Cause Notice issued to M/s. Indra] proceedings on 25/10/2018 revealed that M/s Indra had suppressed their actual turnover and had indulged into evasion of tax during the Pre-GST period. Further, it was observed that M/s Indra had not filed the statutory GSTR-1M returns for the period from July-2018 to September-2018 and they had also not filed the GSTR-3B returns for the month of August-2018 and September-2018. The present inquiry/investigation covers the period falling under the GST regime i.e. from July-2017 to September-2018.

3.1 M/s Indra had supplied "security/guarding services" and "manpower services (fire and safety services)" to various clients during the period from July-2017 to September- 2018. M/s Indra had charged and collected GST @18% on the value of the aforesaid taxable supplies effected by them, wherever applicable. Such transactions/tax invoices were duly recorded in the sales ledgers maintained by them at their office premise which was seized during the course of search on 25/10/2018. Investigation revealed that M/s Indra had knowingly failed to file the GSTR-3B returns for the months of August-2018 and September-2018 as mandated under Section 39 of the CGST Act, 2017 within the stipulated period. Post initiation of proceedings against M/s Indra on 25/10/2018, they filed the aforesaid GSTR-3B returns. Investigation further revealed that M/s Indra had filed all the statutory GSTR-3B returns and discharged GST liability belatedly but they had failed to pay applicable interest on such delayed payment of GST by them in accordance with Section 50(1) of the CGST Act, 2017.

Investigation revealed that the total taxable turnover of M/s Indra for the period from July-2017 to September-2018 in respect of outward supplies was Rs. 1,25,94,289/- upon which GST liability required to be discharged was Rs. 2,02,67,222/-. M/s Indra had already discharged the said GST liability, out of which GST liability of Rs. 26,03,963/- was paid post initiation of proceedings against them by way of filing of GSTR-3B returns for the months of August-

2018 and September-2018 which were not filed till initiation of investigation against them. Also, M/s Indra have informed that they had paid interest amounting to Rs. 9,03,211/-, post initiation of proceedings against them on 25/10/2018.

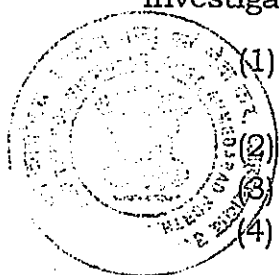
4.1 During the course of search on 25/10/2018, statement of Shri Shrikant Rambhuvan Tiwari, Managing Director of M/s Indra was recorded [RUD-02 of the Show Cause Notice issued to M/s. Indra] wherein interalia, he had admitted to the following:-

- (i) that M/s Indra is a private limited company and he is the Managing Director and the other Director is his sister-in-law namely Smt. Sushilaben Chandramani Prasad Tiwari;
- (ii) that M/s Indra is engaged in the business of providing security/detective agency services and fire and safety services and that apart from the above services they are not engaged in providing any other services;
- (iii) that M/s Indra had provided services to SEZ units namely M/s Adani Ports and Special Economic Zone Limited, M/s Adani Mundra SEZ Infrastructure and M/s Adani International Container Limited which are exempted;
- (iv) that M/s Indra are registered under GST and hold GSTIN 24AAACI7092R1ZZ;
- (v) that M/s Indra had discharged their GST liability and filed all the returns viz. GSTR-3B and GSTR-1M upto June,2018 and that they have not discharged their GST liability from July-2018 and that the approximate liability comes to Rs. 40,29,191/- comprising of CGST Rs. 17,42,751/-+ SGST Rs. 17,42,751 and IGST Rs. 5,43,681/-; and
- (vi) that he admits the short payment of GST on behalf of his company and being the Director of the company he takes responsibility for the non-payment/short-payment of GST.

5. Instant case pertains to the period from July-2017 to September-2018. The period of the present investigation was taken till the month of September-2018 for the reason that search at the premises of M/s Indra was conducted on 25/10/2018 by DGGI and as such by the said date M/s Indra were under legal obligation to disclose the information in respect of supply of services and to pay the GST liability till the month of September-2018 by way of filing of GSTR-3B returns. Accordingly, the present investigation covers the period from July-2017 to September-2018 and examines the genuineness of the compliances made by M/s Indra during this period. For the sake of convenience, the period has been bifurcated into two periods viz. from July-2017 to March-2018 (FY 2017-18) and from April-2018 to September-2018 (FY 2018-19).

6. M/s Indra had submitted the following documents during the course of investigation:

- (1) Sales Invoices for services provided during the period from July-2017 to September-2018.
- (2) Sales Ledger for the period from July-2017 to September-2018.
- (3) Form 26AS for FY 2018-19.
- (4) Copy of LUT's [RUD-03 of the Show Cause Notice issued to M/s. Indra].



7.1 Scrutiny of the documents seized during the course of search revealed that M/s Indra had supplied "security/guarding services" and "manpower recruitment /supply agency services (fire and safety services)" to various clients during the period from July-2017 to Septemeber-2018. The security/guarding services provided by M/s Indra during the aforesaid period falls under Chapter Heading 9985 attracting GST @ 18%. Similarly, the supply of manpower services (fire and safety services) by M/s Indra also falls under Chapter Heading 9985 attracting GST @ 18%. In the Annual Return (GSTR-9) filed by M/s Indra on 29/01/2020 for the FY 2017-18 (July-2017 to March-2018), they had classified their entire outward supply of services as falling under Chapter Heading 9985 and SAC 998529 (other security services n.e.c.) attracting GST @18% which appears to be correct. Further, scrutiny of the outward supplies made by M/s Indra revealed that, they had made taxable as well as exempted and zero rated outward supplies during the aforesaid period. While M/s Indra had claimed exemption in respect of outward supplies provided to "Educational Institutes", the zero-rated supplies were provided to "SEZ Units". Further, M/s Indra had charged and collected GST @ 18% on the tax-invoices issued by them during the aforesaid period, wherever applicable.

7.2 Scrutiny of the GSTR-1M returns filed by M/s Indra for the period from July-2017 to September-2018 revealed that they had filed such returns within the due dates. Further scrutiny of the GSTR-1M returns filed by M/s Indra during the period from July-2017 to September-2018 revealed details in respect of (i) outward supplies effected by them; (ii) details of taxable and exempted/zero rated outward supplies; (iii) details of credit Notes issued by M/s Indra; and (iv) values of taxable supplies, exempted/zero rated supplies and total value of outward supplies. These are as detailed in Table-II, Table-III, Table-IV, Table-V and Table-VI given in the Show Cause Notice issued to M/s. Indra. These tables are reproduced for ease of reference:-

Table-II

Extract of GSTR-1M returns filed by M/s Indra during the period from July-2017 to September-2018							
All values in INR							
FY	Period	Value of outward supply					
		B2B	B2CS	B2CL	Exports	SEZ	Total
1	2	3	4	5	6	7	8=(3+4+5+6+7)
2017-18	Jul-2017 to Mar-2018	79580309	1417658	0	40667719	145354	121811040
2018-19	Apr-2018 to Sep-2018	30566867	752674	0	0	663673	31983214
Total		11,01,47,176	21,70,332	0	4,06,67,719	8,09,027	15,37,94,254

Table-III

Details of taxable and exempted outward supplies as per GSTR-1M returns filed by M/s Indra			
All values in INR			
Period	Value of taxable outward supplies	Value of exempted/zero rated outward supplies	Total value of outward supplies (taxable + exempted/zero rated)
1	2	3	4=(2+3)
Jul-2017 to Mar-2018	81173040	40638000	121811040
Apr-2018 to Sep-2018	31983214	0	31983214
Total	11,31,56,254	4,06,38,000	15,37,94,254



Table-IV

FY: 2017-18					
Name of recipient	No. of Credit Notes No.	Value of outward supply	CGST @ 9% payable	SGST payable @ 9%	Total GST
1	2	3	4	5	6=(4+5)
I. Credit Notes Issued Towards Taxable Supplies					
Adani Hazira Port Pvt Ltd	4	198227	17840	17840	35680
Adani Kandla Bulk terminal Pvt Ltd	5	219086	19718	19718	39436
Adani Petronet Port Pvt Ltd	7	67926	6113	6113	12226
Adani Port and Special Economic Zone Ltd	4	299860	26988	26988	53976
Amtech Electronic India Ltd	1	1780	160	160	320
Archem Industries	1	1339	121	121	242
Ashmor Eletricals Pvt Ltd	2	12348	1111	1111	2222
Baheti Metal & Ferro Allows Ltd	2	8656	779	779	1558
GSEC Air Cargo	2	5508	496	496	992
Global Lang Life Hospital	2	14746	1327	1327	2654
Grand Lotus Engineers	1	15500	1395	1395	2790
Komal Infra Venture Pvt Ltd	2	22128	1996	1996	3992
Nidhi Health Care Ltd	2	98817	8894	8894	17788
Sterling Add Life India Pvt Ltd	2	5260	473	473	946
Yashvi Print Pack Pvt Ltd	2	9194	827	827	1654
Total	39	980375	88238	88238	176476
II. Credit Notes Issued Towards Zero-Rated Supplies					
Adani Kandla Bulk terminal Pvt Ltd	1	20200	0	0	0
Adani Port and Special Economic Zone Ltd	26	910206	0	0	0
MPSEZ Utilities Pvt Ltd	3	5400	0	0	0
Mundra SEZ Textile and Apparel Park Pvt Ltd	3	3800	0	0	0
Total	33	939606	0	0	0
GRAND TOTAL (I+II)	72	1919981	88238	88238	176476

Table-V

I. FY: 2018-19						
Name of recipient	No. of Credit Notes No.	Value of outward supply	IGST @ 18%	CGST @ 9% payable	SGST payable @ 9%	Total GST
1	2	3	4	5	6	7=(4+5+6)
Adani Petronet Port Pvt Ltd	1	5520	0	497	497	994
Adani Power Rajasthan Limited	3	12324	2218	0	0	2218
Adani Hazira Port Pvt Ltd	2	6000	0	540	540	1080
GRAND TOTAL	6	23844	2218	1037	1037	4292

Table-VI

Details of taxable, zero-rated and exempted outward supplies as per GSTR-1M returns filed by M/s Indra (All values in INR)							
Period	Value of taxable outward supplies	Credit Notes issued (Taxable Supplies)	Net value of taxable outward supplies	Value of zero rated outward supplies	Credit Notes issued (Zero Rated Supplies)	Net value of zero rated outward supplies	Total value of outward supplies (taxable + zero rated)
1	2	3	4=(2-3)	5	6	7=(5-6)	8=(4+7)
Jul-2017 to Mar-2018	81173040	980375	80192665	40638000	939606	39698394	119891059
Apr-2018 to Sep-2018	31983214	23844	31959370	0	0	0	31959370
Total	11,31,56,254	10,04,219	11,21,52,035	4,06,38,000	9,39,606	3,96,98,394	15,18,50,429

7.3 Scrutiny of the GSTR-3B returns filed by M/s Indra revealed that all such returns had been filed belatedly. However, no interest as required under Section 50(1) of the CGST Act, 2017 had been paid by them on such delayed payment of GST liability. It was also evident that the GSTR-3B returns for the months of August-2018 and September-2018 had been filed post initiation of proceedings against them on 25/10/2018 wherein total GST liability outstanding of Rs. 26,03,963/- was paid by them. The details of filing of GSTR-3B returns by M/s Indra and payment of GST on outward supplies is shown in Table-VII of the Show Cause Notice. Further scrutiny of the GSTR-3B returns filed by M/s Indra for the period from July-2017 to September-2018 revealed the information in respect of taxable and exempted/zero rated outward supplies effected by them during the aforesaid period and GST and the same is tabulated in Table-VIII Show Cause Notice. Table-VII and Table-VIII as given in the Show Cause Notice are reproduced below for ease of reference:-

Table-VII

Table showing details of GSTR-3B returns filed and GST paid on outward supplies by M/s Indra (All values in INR)						
I. FY: 2017-18 (July to March)						
Month	Due date	Filed Date	IGST Paid	CGST Paid	SGST Paid	Total GST Paid
1	2	3	4	5	6	7=(4+5+6)
July-2017	25-08-17	05-10-17	0	0	0	0
August-2017	20-09-17	17-10-17	202743	770035	770035	1742813
September-2017	20-10-17	30-01-18	74693	934727	934727	1944147
October-2017	20-11-17	16-04-18	74538	770719	770719	1615976
November-2017	20-12-17	16-04-18	74962	704804	704804	1484570
December-2017	22-01-18	16-05-18	74076	659432	659432	1392940
January-2018	20-02-18	12-06-18	195643	931364	931364	2058371
February-2018	20-03-18	13-07-18	87638	692289	692289	1472216
March-2018	20-04-18	12-09-18	175037	1327593	1327593	2830223
Total			9,59,330	67,90,963	67,90,963	1,45,41,256
II. FY: 2018-19 (Apr-Sep)						
Month	Due date	Filed Date	IGST Paid	CGST Paid	SGST Paid	Total GST Paid
1	2	3	4	5	6	7=(4+5+6)
April-2018	22-05-18	14-09-18	0	2628	2628	5256
May-2018	20-06-18	19-09-18	28227	379196	379196	786619
June-2018	20-07-18	25-09-18	165709	381733	381733	929175
July-2018	24-08-18	24-10-18	165214	631230	631230	1427674
August-2018	20-09-18	26-10-18	188327	540196	540196	1268719
September-2018	25-10-18	27-10-18	187570	573837	573837	1335244
Total			7,35,047	25,08,820	25,08,820	57,52,687
GRAND TOTAL (I+II)			16,94,377	92,99,783	92,99,783	2,02,93,943

Table-VIII

Extract of GSTR-3B returns filed by M/s Indra during the period from July-2017 to September-2018

All values in INR										
Period	Outward Taxable Services (other than zero rated, nil rated and exempted)	Outward Taxable Services (Zero Rated)	Other Outward Taxable Services (Nil Rated, Exempted)	Inward Supplies (liable to reverse charge)	Non - GST Outward Supplies	Total	IGST	CGST	SGST	Total GST

1	2	3	4	5	6	7=(2+3+4+5+6)	8	9	10	11=(8+9+10)
July-17 to March-18	80348077	27176943	14374425	248354	0	122147799	959330	6810090	6810090	14579510
April-18 to Sep-18	31959370	157128	431447	0	0	32547945	735047	2508820	2508820	5752687
Total	112307447	27334071	14805872	248354	0	154695744	1694377	9318910	9318910	20332197

7.4 M/s Indra had filed the Annual GST Return (GSTR-9) [RUD-05 of the Show Cause Notice] for the FY 2017-18 on 29/01/2020 and as such the same was also examined by DGGI. From the above-referred GSTR-9 Return, the information is available in respect of outward taxable and exempted/zero-rated supplies and GST payable by M/s Indra for the period Jul-17 to Mar-18 (Table-IX) which is given in Table-IX of the Show Cause Notice. The said table is reproduced below for ease of reference:-

Table-IX

Extract of Annual Return (GSTR-9) filed by M/s Indra for the FY 2017-18							
(All values in INR)							
Supplies made to un-registered persons (B2C)	Supplies made to registered persons (B2B)	Zero rated supply (Export) on payment of tax (except supplies to SEZs)	Supply to SEZs on payment of tax	Supplies declared through Amendments (+) (net of debit notes)	Total value of taxable outward supplies	Credit Notes Issued in respect of taxable outward supplies	Net value of outward taxable supplies
1	2	3	4	5	5=1+2+3+4	6	7=(5-6)
14,17,658	7,97,74,675	29,719	1,45,354	1,14,484	8,14,81,890	10,01,861	8,04,80,029

Zero rated supply (Export) without payment of tax	Exempted	Total value of zero-rated/exempted outward supplies	Credit Notes Issued in respect of zero-rated/exempted outward supplies	Net value of outward zero-rated/exempted supplies	Net value of outward supplies effected (taxable plus zero rated plus exempted)
8	9	10	11	12=(10-11)	13=7+12
4,06,38,000	9,16,491	4,15,54,491	9,19,406	4,06,35,085	12,11,15,114

7.5 Detailed scrutiny of the sales ledgers and invoices submitted by M/s Indra for the period from July-2017 to September-2018, revealed values of outward taxable supplies, exempted/zero rated supplies and GST payable and the same is given in Table-X and XI of the Show Cause Notice. These tables are reproduced below for ease of reference:-

Table-X

Values of outward supplies as per sales ledgers/invoices submitted by M/s Indra on 24/12/2019 for the period from July-2017 to Sep-2018								
(All values in INR)								
Period	TAXABLE SUPPLIES			ZERO RATED SUPPLIES			EXEMPTED	Total value of outward supplies (Taxable+Zero-
	Value of outward taxable	Credit Notes Issued	Net Value of outward taxable	Value of zero rated supplies	Credit Notes Issued	Net value of zero-rated supplies	Value of exempted supplies	

	supplies	(Taxable)	supplies		(Zero-rated)			Rated+Exempted)
1	2	3	4=(2-3)	5	6	7=(5-6)	8	9=(4+7+8)
July-17 to Mar-18	81481892	980375	80501517	40638000	939606	39698394	916491	121116402
Apr-18 to Sep-18	31818421	23844	31794577	0	0	0	900075	32694652
Total	11,33,00,313	10,04,219	11,22,96,094	4,06,38,000	9,39,606	3,96,98,394	18,16,566	15,38,11,054

Table-XI

GST Payable as per sales ledgers/invoices submitted by M/s Indra on 24/12/2019 for the period from July-2017 to Sep-2018 (All values in INR)												
Period	GST PAYABLE AS PER SALES LEDGER				GST INVOLVED IN CREDIT NOTES				NET GST PAYABLE			
	IGST	CGST	SGST	Total GST	IGST	CGST	SGST	Total	IGST Payable	CGST Payable	SGST Payable	Total GST Payable
1	2	3	4	5=2+3+4	6	7	8	9=6+7+8	10=2-6	11=3-7	12=4-8	13=10+11+12
July-17 to Mar-18	829472	6918762	6918762	14666996	0	88238	88238	176476	829472	6830524	6830524	14490520
Apr-18 to Sep-18	756484	2485417	2485417	5727318	2218	1037	1037	4292	754266	2484380	2484380	5723026
Total	3314889	9404179	7675246	20394314	2218	89275	89275	180768	1583738	9314904	9314904	20213546

7.6.1. Scrutiny of the sales ledgers of M/s Indra seized during the course of search proceedings on 25/10/2018 revealed that they inter alia contain invoice wise information in respect of the outward supplies made by M/s Indra. The said information includes details of the recipients to whom services have been supplied by M/s Indra, basic value of such outward supply, details of zero-rated outward supplies made to SEZ Units and exempted outward supplies made to Educational Institutes, GST (IGST/SGST/CGST) payable, reimbursement of conveyance expenses, telephonic expenses, income from rent and maintenance etc. which was given in Table-XII of the Show Cause Notice. The said table is reproduced below for ease of reference:-

Table-XII

Details available from Sales ledger of M/s Indra seized during search on 25/10/2018 Period: Jul-17 to Sep-18 (All values in INR)								
Month	Value of Taxable Supplies	Value of Zero Rated Supplies	Value of Exempted Supplies	IGST Payable @18%	CGST Payable @9%	SGST Payable @9%	Total Basic Value of Supplies	Total GST Payable
1	2	3	4	5	6	7	8=(2+3+4)	9=(5+6+7)
Jul-17 to March-18	81468588	40638000	916491	829472	6917565	6917565	123023079	14664602
Apr-18 to Sep-18	32053609	0	664887	756484	2506584	2506584	32718496	5769652
Total	113522197	40638000	1581378	1585956	9424149	9424149	155741575	20434254

7.6.2. Out of the exempted supplies of Rs.15,81,378/-, exemption claimed by M/s Indra in respect of outward supplies made to Ex. Engg. Ahmedabad Central Div Central P.W.D. amounted to Rs. 76,311/- which did not appear to be inadmissible, as the same is not covered under any exemption notification issued under the CGST Act, 2017. It was evident from the sales ledger that except for the above supply, M/s Indra had regularly reported outward supplies made to the said recipient as a taxable outward supply. Thus, the



exemption claimed on the outward supply amounting to Rs. 76,311/- is inadmissible.

The following appear as the actual values of outward taxable supplies, zero rated supplies, exempted supplies and total outward supplies as per the sales ledgers of M/s Indra seized on 25/10/2018 for the period from July-2017 to September-2018 (as per Table-XV of the Show Cause Notice, which is reproduced below):-

Table-XV

Actual values of outward taxable supplies, exempted supplies and total outward supplies by M/s Indra during the period from Jul-17 to Sep-18 as per sales ledger seized on 25/10/2018.							
(All values in INR)							
Period	TAXABLE OUTWARD SUPPLIES				ZERO RATED SUPPLIES		
	Value of outward taxable supplies	Value of outward supply to M/s Ex. Engineer, Ahmedabad Central PWD wrongly claimed as exempted	Credit notes issued in respect of taxable outward supplies	Actual value of outward taxable supplies	Value of outward zero rated supplies	Credit notes issued in respect of zero rated supplies	Actual value of zero rated supplies
1	2	3	4	5=(2+3)-4	6	7	8=(6-7)
Jul-17 to Mar-18	81468588	---	980375	80488213	40638000	939606	39698394
Apr-18 to Sep-18	32053609	76311	23844	32106076	0	0	0
Total	113522197	76311	1004219	112594289	40638000	939606	39698394

EXEMPTED SUPPLIES	TOTAL OUTWARD SUPPLIES
Value of exempted outward supplies made to educational institutions	
9	10=(5+8+9)
916491	121103098
588576	32694652
1505067	153797750

Thus, from Table-XV of the Show Cause Notice reproduced above, it appeared that the actual values of outward taxable, zero-rated and exempted supplies of M/s Indra for the period from July-2017 to September-2018 were Rs. 11,25,94,289/-, Rs. 3,96,98,394/- and Rs. 15,05,067/- respectively. A detailed extract of the working of the sales ledger seized under Panchnama dated 25/10/2018 was annexed to the Show Cause cum Demand Notice issued to M/s. Indraas Annexure-D.

8.1 A comparative analysis of the turnover figures of M/s Indra for the period from FY 2017-18 to 2018-19 (up to Sep-18) reported across various financial documents/other statutory records is shown in Table-XVI of the Show Cause Notice, which is reproduced below for ease of reference:-

Table-XVI

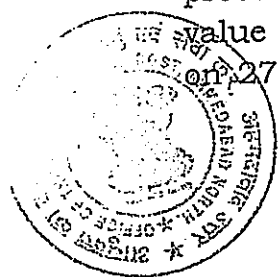
Table showing comparative details of turnover figures reported across various financial records of M/s Indra							
(All values in INR)							
Period	AS PER GSTR-1M (Table-VI)			AS PER GSTR-3B (Table-VIII)			
	Value of	Value of	Total value of	Value of	Value of	Value of nil-	Total value

	taxable outward supplies	exempted/ zero rated outward supplies	outward supplies (taxable plus exempted/ zero rated)	taxable outward supplies	zero-rated outward supplies	rated/ exempted outward supplies	of outward supplies (taxable plus exempted)
1	2	3	4=(2+3)	5	6	7	8=5+6+7
Jul-17 to Mar-18	80192665	39698394	119891059	80348077	27176943	14374425	117459417
Apr-18 to Sep-18	31959370	0	31959370	31959370	157128	431447	34995393
Total	11,21,52,035	3,96,98,394	15,18,50,429	11,23,07,447	2,73,34,071	1,48,05,872	15,44,47,390

Period	AS PER ANNUAL RETURN (GSTR-9) (Table-IX)				AS PER SALES LEDGER SUBMITTED ON 27/12/2019 (Table-X)			
	Value of taxable outward supplies	Value of zero rated outward supplies	Value of exempted outward supplies	Total Value of outward supplies	Net Value of outward taxable supplies	Value of zero rated outward supplies	Value of exempted outward supplies	Total value of outward supplies (taxable plus exempted)
9	10	11	12	13=10+11+12	14	15	16	17=14+15+16
Jul-17 to Mar-18	80480029	39718594	916491	121115114	80501517	39698394	916491	121116402
Apr-18 to Sep-18	NA	NA	NA	NA	31794577	0	900075	32694652
Total	8,04,80,029	3,97,18,594	9,16,491	12,11,15,114	11,22,96,094	3,96,98,394	18,16,566	15,38,11,054

Period	As per sales ledgers seized during course of search on 25/10/2018 (Table-XV)			
	Value of taxable outward supplies	Value of zero rated outward supplies	Value of exempted outward supplies	Total value of outward supplies
18	19	20	21	
Jul-17 to Mar-18	80488213	39698394	916491	121103098
Apr-18 to Sep-18	32106076	0	588576	32694652
Total	11,25,94,289	3,96,98,394	15,05,067	15,37,97,750

8.2 It is clearly evident on perusal of above Table-XVI that there existed discrepancies in the values of turnover reported by M/s Indra across various financial documents/other statutory records for the period from July-2017 to September-2018. Accordingly, in the instant investigation, the values of turnover reflected in the sales ledgers seized during the course of search at the premises of M/s Indra (Table-XV of the Show Cause Notice) under panchnama proceedings dated 25/10/2018 were relied upon by DGGI for quantification of the value of supply and GST liability of M/s Indra. The reason for such reliance being stated by DGGI was that the fact that the taxable values in respect of outward supplies reported therein are the highest among all available figures. Further, it was also observed that the value of taxable outward supplies reported in the sales ledgers seized on 25/10/2018 during the course of search proceedings on 25/10/2018 was on the higher side when compared with the value of taxable supplies reported in the sales ledgers submitted by M/s. Indra on 27/12/2019. While the value of taxable outward supplies reported in the



sales ledger seized on 25/10/2018 is Rs. 11,25,94,289/-, the value of taxable outward supplies reported in the sales ledger submitted during investigation on 27/12/2019 is Rs. 11,22,96,094/-. Thus, there exists a difference of Rs. 2,98,195/- between the values of outward supplies reported in the above referred ledgers (Rs. 11,25,94,289 minus Rs. 11,22,96,094). Accordingly, the sales ledgers submitted during the course of investigation by M/s Indra were not being relied upon by DGGI.

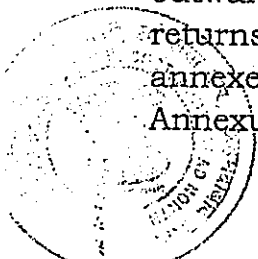
9.1 From Table-XVI of the Show Cause Notice, it is forthcoming that M/s Indra had not reported/short-reported a certain portion of the outward supplies effected by them during the period from July-2017 to September-2018 in the GSTR-1M returns filed by them for the even period. The quantum of outward supplies short-reported/not-reported by M/s Indra during the said period is shown in Table-XVII of the Show Cause Notice, which is reproduced below for ease of reference:-

Table-XVII

Quantification of value of outward supplies not-reported/short-reported by M/s Indra								
Period: July-2017 to September-2018								
Period	Disclosures in respect of outward supplies made in GSTR-1M (Refer Table-VI)				Disclosures reported in sales ledgers seized on 25/10/2018 (Refer Table-XV)			
	Net value of outward taxable supplies	Net value of outward zero rated supplies	Value of exempted outward supplies	Total Value of Outward Supplies (Taxable plus Zero-Rated plus Exempted)	Net value of outward taxable supplies	Net value of outward zero rated supplies	Value of exempted outward supplies	Total Value of Outward Supplies (Taxable plus Zero-Rated plus Exempted)
1	2	3	4	5=(2+3+4)	6	7	8	9=(6+7+8)
Jul-17 to Mar-18	8,01,92,665	3,96,98,394	0	11,98,91,059	8,04,88,213	3,96,98,394	9,16,491	12,11,03,098
Apr-18 to Sep-18	3,19,59,370	0	0	3,19,59,370	3,21,06,076	0	5,88,576	3,26,94,652
Total	11,21,52,035	3,96,98,394	0	15,18,50,429	11,25,94,289	3,96,98,394	15,05,067	15,37,97,750

Value of outward supplies short-reported/not-reported			
Net value of outward taxable supplies short/not-reported	Net value of outward zero rated supplies short-reported/not-reported	Value of exempted outward supplies short/not reported	Total Value of Outward Supplies (Taxable plus Zero-Rated plus Exempted) short/not reported
10= (6-2)	11=(7-3)	12= (8-4)	5=(2+3+4)
2,95,548	0	15,05,067	18,00,615
1,46,706	0	0	1,46,706
4,42,254	0	15,05,067	19,47,321

From Table-XVII above, it is evident that during the period from July-17 to September-2018, M/s Indra had short/not-reported outward supplies amounting to Rs. 19,47,321/- comprising mainly of exempted turnover of Rs. 15,05,067/- provided to educational institutions and a small taxable turnover of Rs. 4,42,254/-. A detailed worksheet showing the quantification of the outward supplies short-reported/ non-reported by M/s Indra in the GSTR-1M returns filed by them for the period from July-2017 to September-2018 was annexed to the Show Cause cum Demand Notice issued to M/s. Indra as Annexure-E.



10.1 The quantification of GST liability payable by M/s Indra for the period from July-2017 to September-2018 (as per the turnover figures worked out in Table-XV being relied upon in this investigation) is shown in Table-XVIII of the Show Cause Notice issue to M/s. Indra, which is reproduce below for ease of reference:-

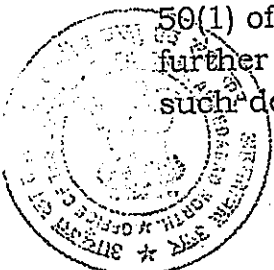
Table-XVIII

Table showing quantification of GST liability of M/s Indra								
Period: Jul-17 to Sep-18								
Period	Outward taxable supplies as per seized sales ledgers				GST Payable on outward taxable supplies recorded in sales ledger seized on 25/10/2018 (Col.1)			
	Value of outward taxable supplies recorded in sales ledger seized on 25/10/2018	Value of supply wrongly claimed as exempted	Value of credit notes issued for taxable supplies	Total taxable outward supply	IGST	CGST	SGST	Total GST
	1	2	3	4=(1+2)-3	6	7	8	9=6+7+8
Jul-17 to Mar-18	81468588	-----	980375	80488213	829472	6917565	6917565	14664602
Apr-18 to Sep-18	32053609	76311	23844	32106076	756484	2506584	2506584	5769652
Total	11,35,22,197	76,311	10,04,219	11,25,94,289	15,85,956	94,24,149	94,24,149	2,04,34,254

GST Payable on supply wrongly claimed as exempted in sales ledger seized on 25/10/2018 (Col.2)				GST Involved in Credit Notes Issued (Col.3)				Actual GST liability of M/s Indra (Col.4)			
IGST	CGST	SGST	Total GST	IGST	CGST	SGST	Total GST	IGST Payable	CGST Payable	SGST Payable	Total GST Payable
10	11	12	13=10+11+12	13	14	15	16=13+14+15	17=(6+10)-13	18=(7+11)-14	19=(8+12)-15	20=17+18+19
0	0	0	0	0	88238	88238	176476	829472	6829327	6829327	14488126
0	6868	6868	13736	2218	1037	1037	4292	754266	2512415	2512415	5779096
0	6,868	6,868	13,736	2,218	89,275	89,275	1,80,768	15,83,738	93,41,742	93,41,742	2,02,67,222

Thus, from Table-XVIII above, it is evident that for the period from July-2017 to September-2018, the total GST liability of M/s Indra was Rs. 2,02,67,222/- (IGST: Rs. 15,83,738/- + CGST: Rs. 93,41,742/- + SGST: Rs. 93,41,742/-). Detailed worksheets showing GST liability of M/s Indra for the period from July-17 to March-2018 and April-2018 to September-2018 were annexed to the Show Cause cum Demand Notice issued to M/s. Indra as Annexure-F.

10.2 As against the above GST liability of Rs. 2,02,67,222/-, M/s Indra had made net payment of GST liability amounting to Rs. 2,02,93,943/- (IGST: Rs. 16,94,377, CGST: Rs. 92,99,783 and SGST: Rs. 92,99,783) in the GSTR-3B returns filed by them for the period from July-2017 to September-2018 as shown in Table-VII above. Since the GST payment is on the higher side, no short-payment/non-payment of GST liability on part of M/s Indra for the period from July-2017 to September-2018 was observed. However, M/s Indra had filed all the GSTR-3B returns for the period from July-2017 to September-2018 belatedly as shown in Table-VII of the Show Cause Notice and reproduced above and further they had not paid any interest as applicable under Section 50(1) of the CGST Act, 2017 read with Section 50(1) of the GGST Act, 2017 and further read with Section 20 of the IGST Act, 2017. Accordingly, interest on such delayed payment of GST was required to be recovered from them under



the above referred provisions. M/s Indra vide their submission dated 16-06-2021 had informed that according to their calculation the liability of interest on delayed payment of GST comes to Rs. 9,03,211/-. In continuation to the above, they had further submitted vide their letter dated 16/06/2021 that they had made payment of applicable interest on the GST liability for the period from 1st July-2017 to 30th September-2018 and submitted Form GST-DRC-03 dated 10/06/2021 to such effect. The total interest paid in such DRC-03 comes to Rs. 9,03,211/-. Accordingly, the same is required to be appropriated against the interest payable upon the GST liability of M/s Indra for the period from July-2017 to September-2018.

11. Investigation conducted by DGGI revealed that although M/s Indra had under-reported/not-reported a small portion of their turnover (mainly comprising of exempted services) in the GSTR-1M returns filed by them for the period from July-2017 to September-2018, no short-payment/non-payment of GST had occurred for the aforesaid period on part of M/s Indra. However, as discussed above applicable interest for delayed payment of GST is required to be recovered from them under Section 50 of the CGST Act, 2017 along with penalty as applicable under Section 73(11) of the Act *ibid*.

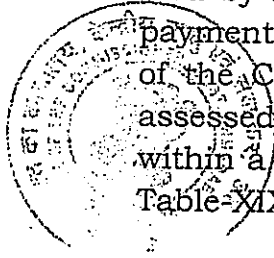
12. As per Table-XVIII and Annexure-F of the Show Cause Notice, the net GST liability of M/s Indra for the period from July-2017 to September-2018 on the outward supplies effected by them was Rs. 2,02,67,222/- (IGST: Rs. 15,83,738/- + CGST: Rs. 93,41,742/- + SGST: Rs. 93,41,742/-). Further, the aforesaid quantification of GST liability of Rs.2,02,67,222/- has also been annexed to this Show Cause cum Demand Notice as Annexure-F. M/s. Indra had also paid interest of Rs.9,03,211/- for delayed payment of GST for the tax period from July 2017 to September 2018 as per Section 50 of the CGST Act, 2017. Post initiation of proceedings against M/s Indra on 25/10/2018, they had filed GSTR-3B returns for the months of August-2018 and September-2018. The GST liability for these two months was Rs. 26,03,963/-.

13.1 M/s Indra vide their submission letter dated 16/06/2021 had submitted the following:-

"With reference to the above mentioned subject, we are hereby convey that we had paid the applicable interest on the GST for the period from 1st July, 2017 to 30th September-2018.

As now all dues have been paid for the period from 1st July, 2017 to 30th September-2018, now we request you to kindly close our investigation and issue us the closure letter"

13.2 The investigation by DGGI revealed that M/s Indra had filed all the GSTR-3B returns for the period from July-2017 to September-2018 belatedly for which they appear to have paid applicable interest. Further, except for the months of August-2017 and September-2018, all the GSTR-3B returns were filed by M/s Indra post expiry of the period of 30 days from the due date of payment of GST liability. It appeared this scenario is covered by Section 73(11) of the CGST Act, 2017 which prescribes penalty where the amount of self-assessed tax or any amount collected as tax has not been paid by the tax payer within a period of 30 days from the date of payment of such tax as detailed in Table-XIX of the Show Cause Notice. Further, from perusal of Section 73 of the



CGST Act, 2017 it was forthcoming that the provisions as enshrined in Section 73(6) of the Act, ibid allowing a waiver of Show Cause Notice to the tax-payer in the event of payment of tax along with interest are over-riden by the provisions enshrined in Section 73(11) of the Act, ibid. In view of the above, it appeared that M/s Indra were liable to pay the applicable penalty as prescribed under Section 73(9) of the CGST Act, 2017 read with Section 73(11) of the Act ibid for payment of tax dues post expiry of the prescribed period of 30 (thirty) days from the due date of payment of GST for the tax periods of July-2017, September-2017 to March-2018 and April-2018 to September-2018.

14. It appeared that M/s. Indra have contravened the following provisions of the CGST Act, 2017, the Gujarat GST Act, 2017 and the IGST Act,2017:-

- (i) Section 9 of the CGST Act, 2017 read with Section 9 of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act,2017 in as much as they failed to pay the appropriate GST on supply of taxable services made by them to their customers/clients;
- (ii) Section 37 of the CGST Act, 2017 read with Rule 59 of the CGST Rules, 2017 and Section 37 of the Gujarat GST Act, 2017 read with Rule 59 of the Gujarat GST Rules, 2017 and Section 20 of the IGST Act in as much as they failed to file correct value of taxable supplies amounting to **Rs. 4,42,254/-** and exempted supplies amounting to **Rs. 15,05,067/-** in the GSTR-1 returns for the period from June-2018 to September-2018;
- (iii) Section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Act, 2017 and Section 39 of the Gujarat GST Act, 2017 read with Rule 61 of the Gujarat GST Rules, 2017 and further read with Section 20 of the IGST Act in as much as they failed to file GSTR-3B returns for the months of August-2018 and September 2018,;
- (iv) Section 49(8) of the CGST Act, 2017 read with Section 49(8) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act,2017 in as much as they failed to discharge their tax liability within the prescribed due dates; and
- (v) Section 59 of the CGST Act, 2017 read with Section 59 of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act, 2017 in as much as they failed to self assess their tax liability correctly in as much as they had failed to pay the tax liability amounting to **Rs. 26,03,963/-** for the months of August-2018 and September-2018.

15. Further, all above acts of contravention on part of M/s Indra constitute an offence of the nature as described under the provisions of Sections 122(1)(iii) and 122(2)(a) of the CGST Act, 2017 read with Sections 122(1)(iii) and 122(2)(a) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act, rendering themselves liable to penalty under the above provisions along with penalty under Section 73(9) and Section 73(11) of the CGST Act, 2017 read with Section 73(9) and Section 73(11) of the of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017 for failure to file the statutory GST Returns duly discharging the tax liability, failure to pay applicable tax, failure to self assess the tax liability, collecting but not paying GST within the stipulated time period and for non-compliance of various provisions of the Acts referred supra.

16. M/s Indra were communicated the details of tax, interest and penalty as stipulated under Section 73(11) of the CGST Act, 2017. M/s Indra vide their letter dated 02/06/2021 informed that they shall pay the outstanding GST liability along with interest and penalty as applicable within one month. In view



of the reply received from the taxpayer, the time line as requested for payment of tax dues was allowed by DGGI. However, M/s Indra failed to make the aforesaid payment of tax dues and accordingly the present Show Cause Notice dated 30.06.2021 was issued.

17. Shri Shrikant Rambhuvan Tiwari, Director of M/s Indra was at the helm of affairs of his above referred company when such acts of non-payment of GST liability and the contraventions as discussed supra had taken place. Further, in his statement recorded on 25/10/2018, he had assumed responsibility for the non-payment/short-payment of GST. It is also evident that payment of GST liability by M/s Indra for the period from July-2017 to September-2018 was time and again delayed and is clearly indicative of negligence on part of Shri Shrikant Rambhuvan Tiwari to pay statutory dues on time. Thus, it appeared that Shri Shrikant Rambhuvan Tiwari had indulged himself into an offence of the nature as prescribed under Section 137 of the CGST Act, 2017 read with Section 137 of the Gujarat GST Act, 2017 and further read with the IGST Act 2017.

18. Accordingly, Show Cause Notice No. DGGI/AZU/36-52/2021-22 dated 30.06.2021 was issued to M/s. Indra, asking them to show cause as to why:-

(i) the GST amount of **Rs. 2,02,67,222/- (IGST-Rs.15,83,738+CGST - Rs.93,41,742/- and SGST - Rs.93,41,742/-)** for the period **July, 2017 to September, 2018 not-paid/late paid** by M/s. Indra which includes an amount of **Rs. 26,03,963/- (IGST-Rs.3,75,897+CGST - Rs.10,80,392/- and SGST - Rs.10,80,392/-)** [Rupees Twenty Six Lakhs Three Thousand and Nine Hundred and Sixty-Three Only) **not-paid** by M/s. Indra for the tax periods of August-2018 and September-2018 on account of supply of taxable services of "security/guarding" and "fire-safety services" should not be demanded and recovered from them under Section 73(1) of the CGST Act, 2017 read with Section 73 (1) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act;

(ii) the GST amount of **Rs. 2,02,67,222/- (IGST-Rs.15,83,738+CGST - Rs.93,41,742/- and SGST - Rs.93,41,742/-)** for the period **July, 2017 to September, 2018 already paid** by M/s. Indra which includes **Rs. 26,03,963/- (IGST- Rs.3,75,897+CGST - Rs.10,80,392/- and SGST - Rs.10,80,392/-)** paid post initiation of proceedings against them for the tax periods of August-2018 and September-2018 should not be appropriated against the GST liability as shown at Para 18(i) above;

(iii) interest at applicable rates should not be demanded and recovered from them under Section 50(1) of the CGST Act, 2017 read with Section 50(1) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act at applicable rates on the **entire GST liability of Rs. 2,02,67,222/- as quantified in Annexure-F** to the SCN for delayed payment of GST for the period from July-2017 to September-2018;

(iv) interest paid by M/s Indra post initiation of proceedings against them amounting to **Rs. 9,03,211/-** communicated by them as interest paid for delayed payment of GST for the tax period from July-2017 to September-2018 should not be appropriated against the interest liability as referred to in Para 18(iii).

14. They submitted that the calculation of the interest paid by them was as per figures derived by the investigations. The same were paid without any protest though the same was in excess. No process of the refund could be undertaken since the matter was under adjudication. As per their calculation, the interest towards delayed tax payment works out to be as under:-

YEAR	IGST	CGST	SGST	Grand Total
FY 2017-18	34,551.22	2,04,874.99	2,04,874.99	
FY 2018-19	14,165.71	45,222.34	45,222.34	
Total	48,716.93	250097.33	250097.33	548911.59

They requested that that necessary direction may be given to the range officer to ascertain the actual interest amount and excess paid interest may be allowed to be refunded to them.

PERSONAL HEARING

18. In the instant case, Personal Hearing was given to M/s. Indra and Shri Shrikant Rambhuvan Tiwari, Director of M/s. Indra on 26.12.2023. Shri M. K. Kothari, authorized representative of M/s. Indra and Shri Shrikant Rambhuvan Tiwari, Director of M/s. Indra, appeared and re-iterated written submission dated 23.12.2023 submitted during personal hearing and requested to decide the matter on merits.

DISCUSSION AND FINDINGS

19. In the instant case, I have carefully gone through the Show Cause Notice issued to the M/s. Indra and Shri Shrikant Rambhuvan Tiwari, Director of M/s. Indra, reply to SCN submitted by the them. On recapitulating, I find that the issue involved in the present show cause notice is related to (i) non-payment/late-payment of tax due to late filing of GSTR-3B returns; (ii) interest due to late filing of GSTR-3B returns; (iii) imposition of penalty under Section 73(11), Section 122(1) and Section 122(2)(a) of the CGST Act, 2017; and (iv) imposition of penalty on Shri Shrikant Rambhuvan Tiwari, Director of M/s. Indra under Section 137 of the CGST Act, 2017.

20. On perusal of the above Show Cause Notice and reply submitted by M/s. Indra and Shri Shrikant Rambhuvan Tiwari, I find that after investigation against M/s. Indra, DGGI had quantified M/s. Indra's tax liability of Rs.2,02,67,222/- for the period from July 2017 to September 2018, however, DGGI also found that M/s. Indra had already discharged the said GST liability, out of which GST liability of Rs. 26,03,963/- was paid post initiation of proceedings against them by DGGI by way of filing of GSTR-3B returns for the months of August-2018 and September-2018. M/s. Indra also paid interest amounting to Rs. 9,03,211/- post initiation of proceedings against them on 25/10/2018. Accordingly, I find that as per the Show Cause Notice issued to M/s. Indra, GST of Rs.2,02,67,222/-payable by M/s. Indra has already been paid by them by way of filing GSTR-3B returns and they had also paid interest

of Rs.9,03,211/-. Accordingly, there is no dispute regarding M/s. Indra's GST liability and the same has been accepted and discharged by M/s. Indra. Accordingly, I do not delve into the issue of quantum of GST liability and payment thereof as there is no dispute regarding this.

21. Now, I would like to discuss the applicability of interest. From the Show Cause Notice issued to M/s. Indra and their reply, I find that M/s. Indra have paid the entire GST liability of Rs.2,02,67,222/-, out of which GST liability of Rs. 26,03,963/- was paid post initiation of proceedings against them. I also find that M/s. Indra had late filed all the GSTR-3B returns for the period from July 2017 to September 2018 and the same has also not been disputed by M/s. Indra. The provisions of Section 50(1) of the CGST Act, 2017, prescribe interest on late payment of tax. For ease of reference the relevant provisions is reproduced as under:-

"Section 50. Interest on delayed payment of tax.-

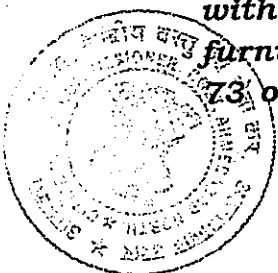
(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, 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.

22. In view of above, it is evident that interest liability would squarely arise on M/s. Indra for late payment of GST due to late filing of GSTR-3B Returns. Further, I find that a new Rule 88B of Central Goods and Service Tax Rules, 2017, regarding manner of calculating interest on delayed payment of tax has been inserted retrospectively w.e.f. 01.07.2017 vide CBIC Notification No. 14/2022-Central Tax, dated 05.07.2022 for easy of reference the same is reproduced as under:-

"Rule 88B. Manner of calculating interest on delayed payment of tax.-

(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax



payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.

(2) In all other cases, where interest is payable in accordance with sub-section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.

Explanation.-For the purposes of this sub-rule, -

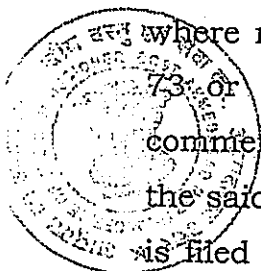
(1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

(2) the date of utilisation of such input tax credit shall be taken to be, -

(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases."

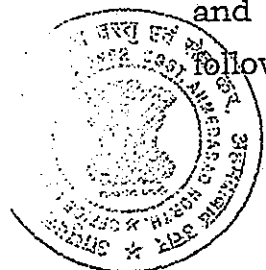
23. As per the provisions of the sub-section (1) of Section 50 of the CGST Act, 2017 read with sub-rule (3) of Rule 88B of the CGST Rules, 2017, it is evident that interest is liable to be paid by M/s. Indra due to late payment of tax owing to late filing of GSTR-3B Returns. I also find that sub-section (1) of Section 50 of the CGST Act, 2017 read with sub-rule (3) of Rule 88B of the CGST Rules, 2017 prescribes different methodology for payment of interest where return is filed before commencement of any proceedings under section 73 or section 74 in respect of the said period and where return is filed commencement of any proceedings under section 73 or section 74 in respect of the said period. Accordingly, I find that where GSTR-3B return for a tax period is filed before commencement of any proceedings under section 73 or section 74, interest is to be calculated only on the portion of tax which is paid by



debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date and where GSTR-3B return for a tax period is filed after commencement of any proceedings under section 73 or section 74, interest is to be calculated only on the entire tax liability for that period. In view of the specific provision regarding calculation of interest liability, interest is liable to be paid by M/s. Indra in accordance with above provisions. Therefore, for the period from July 2017 to July 2018, GSTR-3B returns for which period were filed before commencement of proceedings by DGGI, M/s. Indra are liable to pay interest on portion of tax which is paid by debiting the electronic cash ledger and for the period of delay in filing returns beyond the due date and for the period from August 2018 to September 2018, M/s. Indra are liable to pay interest on gross tax liability, i.e. entire tax amount. In this regard, I rely upon the judgement of Hon'ble Jharkhand High Court in case of M/s. Mahadev Construction reported at 2020 (36) G.S.T.L. 343 (Jhar.), wherein it was held that:-

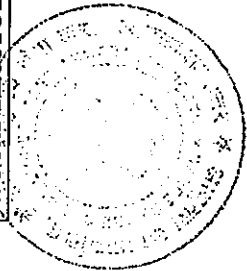
"Liability of interest is automatic, the same is required to be adjudicated in event of an assessee disputes in computation or vary leviability of interest, by initiation of adjudication proceeding under section 73 or section 74 of the CGST Act."

24. In view of the above, I hold that Interest due to late filing of GSTR-3B returns, is correctly applicable as per provisions of Section 50(1) of the CGST Act, 2017 read with sub rule (1) of Rule 88B of the CGST Rule, 2017, as amended. Accordingly, for the period from July 2017 to July 2018, GSTR-3B returns for which period were filed before commencement of proceedings by DGGI, M/s. Indra are liable to pay interest on portion of tax which is paid by debiting the electronic cash ledger and for the period of delay in filing returns beyond the due date and for the period from August 2018 to September 2018, M/s. Indra are liable to pay interest on gross tax liability, i.e. entire tax amount. Shri M. K. Kothari, Authorized Representative of M/s. Indra provided copies of DRC-03 filed by them for payment of interest for the FY 2017-18 and 2018-19 vide e-mail dated 28.12.2023. As per the details provided, M/s. Indra paid interest of Rs. 7,15,736/- (IGST Rs.48,642, CGST Rs.3,33,547 and SGST Rs.3,33,547 Electronic Cash Ledger Debit Entry No. DC2406210079105) for FY 2017-18 and Rs. 1,27,950/- (IGST Rs. 15,240, CGST Rs. 56,355 and SGST Rs. 56,355 - Electronic Cash Ledger Debit Entry No. DC2406210079168) vide DRC-03 ARN No. AD240621006494F and AD240621006504M respectively. Interest payable by M/s. Indra for the period from July 2017 to March 2018 and for the period from April 2018 to September 2018 is calculated in the following pages.



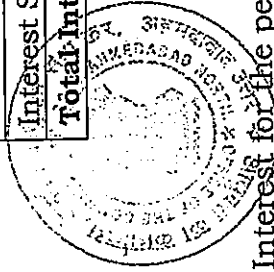
Interest Payable by M/s. Indra for the period from July 2017 to March 2018

Particulars	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Total
IGST paid in Cash (Forward Charge+Reverse Charge)	0	202743	74693	74538	74962	74076	195643	87638	175037	959330
CGST paid in Cash (Forward Charge+Reverse Charge)	0	770035	932726	769096	690025	555449	873129	646248	1321107	6557815
.SGST paid in Cash (Forward Charge+Reverse Charge)	0	770035	932726	769096	690025	555449	873129	646248	1321107	6557815
Due Date of filing GSTR-3B	25-08-17	20-09-17	20-10-17	20-11-17	20-12-17	22-01-18	20-02-18	20-03-18	20-04-18	
Date of filing	05-10-17	17-10-17	30-01-18	16-04-18	16-04-18	16-05-18	12-06-18	13-07-18	12-09-18	
Delay in days	41	27	102	147	117	114	112	115	145	
Interest IGST	0	2700	3757	5403	4325	4164	10806	4970	12516	48642
Interest CGST	0	10253	46917	55754	39813	31227	48225	36650	94468	363309
Interest SGST	0	10253	46917	55754	39813	31227	48225	36650	94468	363309
Total Interest.	0	23206	97592	116912	83952	66618	107257	78271	201453	775260



Interest Payable by M/s. Indra for the period from April 2018 to September 2018

Particulars	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Total
IGST paid in Cash (Forward Charge+Reverse Charge)	0	28227	165709	165214	NA		359150
CGST paid in Cash (Forward Charge+Reverse Charge)	0	347368	360959	621083	NA		1329410
SGST paid in Cash (Forward Charge+Reverse Charge)	0	347368	360959	621083	NA		1329410
IGST Tax Payable (Cash+ITC on Forward and Reverse Charge)		NA			188326	187570	375896
CGST Tax Payable (Cash+ITC on Forward and Reverse Charge)		NA			540196	573837	1114033
SGST Tax Payable (Cash+ITC on Forward and Reverse Charge)		NA			540196	573837	1114033
Due Date	22-05-18	20-06-18	20-07-18	24-08-18	20-09-18	25-10-18	
Date of filing	14-09-18	19-09-18	25-09-18	24-10-18	26-10-18	27-10-18	
Delay in days	115	91	67	61	36	2	
Interest IGST	0	376	8335	11977	10866	10545	42099
Interest CGST	0	4625	18157	45024	31169	32261	131235
Interest SGST	0	4625	18157	45024	31169	32261	131235
Total Interest	0	9626	44649	102025	73203	75066	304570

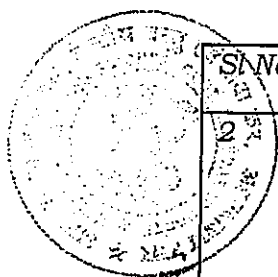


Interest for the period from April 2018 to July 2018 is payable on tax paid in cash only and interest for the period from August 2018 to September 2018 is payable on gross tax liability in accordance with provisions of Section 50(1) of the CGST Act, 2017 read with Rule 88B of the CGST Rules, 2017.

25. Now, Coming to next limb regarding imposition of penalty under the provisions of Section 73(11) of the CGST Act, 2017 read with Section 73(11) of the Gujarat GST Act, 2017. Before going ahead, it would be pertinent to look into the provisions of Section 73(11) of CGST Act, 2017 first, the same is reproduced as under:-

“(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.”

26. The above sub-section provides for penalty where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax. The said sub-section overrides provisions of (6) or sub-section (8) of Section 73 and stipulates that penalty is payable by a taxpayer where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax. Accordingly, penalty has been proposed to impose penalty under provisions of Section 73(11) of the CGST Act, 2017. In this regard, M/s. Indra have stated that SCN was not required to be issued as filing of required returns with payment of tax, applicable interest under Section 50 of the Act together with late fee as mandated under the law were paid before the issue of the notice. They contended that as per provisions of sub-section 8 of Section 73 of the CGST Act, 2017, once the applicable tax along with interest is paid within 30 days of issuance of the SCN no penalty shall be payable and all proceedings in respect of said notice deemed to be concluded. They also referred to The SI No. 2 of Circular No. 76/50/2018-GST dated 31.12.2018 issued by CBIC in this regard. The SI No. 2 of the said Circular is reproduced below for ease of reference:-



Sl No	Issue	Clarification
2	Whether penalty in accordance with section 73	1. As per the provisions of section 73(11) of the CGST Act, penalty is payable in case self-assessed tax or any amount collected as tax has not been paid within a period of thirty days

<p>(11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?</p>	<p>from the due date of payment of such tax.</p> <p>2. It may be noted that a show cause notice (SCN for short) is required to be issued to a person 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 under the provisions of section 73(1) of the CGST Act. The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked.</p> <p><u>3. The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law.</u></p>
---	--

27. The above circular, CBIC has clarified that penalty under the provisions of section 73(11) of the CGST Act, 2017 is not payable in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. Accordingly, to decide imposition of penalty under the above provisions, it is first to be ascertained as to whether M/s. Indra have paid applicable interest on tax payable by them.

From the above calculation, it is observed that M/s. Indra were liable to pay interest of Rs. 7,75,260/- for the period from July 2017 to March 2018 as

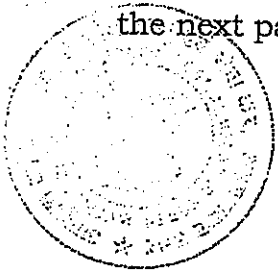


against interest of Rs. 7,15,736/- paid by them and they were liable to pay interest of Rs. 3,04,570/- for the period from April 2018 to September 2018 as against interest of Rs. 1,27,950/- paid by them. Accordingly, they have paid total interest of Rs. 8,43,686/- as per the DRC-03 provided by them against the total interest liability of Rs.10,79,830/-.

29. Accordingly, I find that M/s. Indra did not pay applicable interest payable by them for the aforesaid period and accordingly the Show Cause Notice has been correctly issued to them. They stated that they had paid the interest as per figures derived by the investigations, however, they did not provide any documentary evidence in this regard.

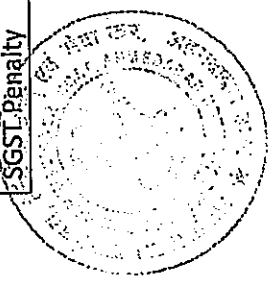
30. I find that as M/s. Indra did not pay applicable interest prior to issuance of the Show Cause Notice or within 30 days of issuance of the Show Cause Notice, the proceedings cannot be concluded in accordance with the provisions of Section 73(6) or Section 73(8) of the CGST Act, 2017. Accordingly, I do not find any merit in M/s. Indra's contention that the Show Cause Notice was not required to be issued.

31. Penalty under Section 73(11) of the CGST Act, 2017 is leviable where self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax. Due date of filing GSTR-3B return is due date of payment of tax and delay in filing of GSTR-3B return results into late payment of tax. From the Table-XIX of the Show Cause Notice issued to M/s. Indra (Page 26 of the SCN), it is evident that except for the months of August 2017 and September 2018, all the GSTR-3B returns were filed by M/s. Indra after expiry of the period of 30 days from due date of payment of GST liability, i.e. due date of filing GSTR-3B Returns. Accordingly, M/s. Indra have made themselves liable for penalty under provisions of Section 77(11) of the CGST Act, 2017. Accordingly, M/s. Indra are liable to pay penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher. Amount of penalty payable by M/s. Indra is calculated on the next page.



Penalty payable by M/s. Indra under provisions of Section 73(11) of CGST Act, 2017 read with Section 73(11) of the Gujarat GST Act, 2017 and IGST Act, 2017

Total Tax payable	Jul-17		Aug-17		Sep-17		Oct-17		Nov-17		Dec-17		Jan-18		Feb-18		Mar-18		Apr-18		May-18		Jun-18		Jul-18		Aug-18		Sep-18		Total
IGST	0	202743	74693	74538	74962	74076	195643	87638	175037	0	28227	165709	165214	188326	187570	1694376															
CGST	0	770035	946367	778206	704804	659432	931363	692289	1327593	2628	379196	381733	631230	540196	573837	9318909															
SGST	0	770035	946367	778206	704804	659432	931363	692289	1327593	2628	379196	381733	631230	540196	573837	9318909															
Due Date	25-08-17	20-09-17	20-10-17	20-11-17	20-12-17	22-01-18	20-02-18	20-03-18	20-04-18	22-05-18	20-06-18	20-07-18	24-08-18	20-09-18	25-10-18	647719															
Date of filing	05-10-17	17-10-17	30-01-18	16-04-18	16-04-18	16-05-18	12-06-18	13-07-18	12-09-18	14-09-18	19-09-18	25-09-18	24-10-18	26-10-18	27-10-18	649011															
Delay	41	27	102	147	117	114	112	115	145	115	91	67	61	36	2																
Whether penalty leviable	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No																
IGST Penalty	0	0	7470	7454	7497	7408	19565	8764	17504	0	2823	16571	16522	18833	0	130411															
CGST Penalty	0	0	94637	77821	70481	65944	93137	69229	132760	263	37920	38174	63123	54020	0	797509															
SGST Penalty	0	0	94637	77821	70481	65944	93137	69229	132760	263	37920	38174	63123	54020	0	797509															



32. Accordingly, penalty of Rs. 17,25,429/- (IGST Rs.1,30,411/-, CGT Rs.7,97,509/- and SGST Rs. 7,97,509/-) is payable by M/s. Indra as per the aforesaid provisions of Section 73(11) of CGST Act, 2017 read with Section 73(11) of the Gujarat GST Act, 2017 and IGST Act, 2017.

33. In the Show Cause Notice, it has also been proposed to impose penalty under Section 122(1)(iii) and Section 122(2)(a) of the CGST Act, 2017. However, as per provisions of sub-section 13 of Section 75 of the CGST Act, 2017, where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act. Accordingly, I refrain from imposing penalties under Section 122(1)(iii) and Section 122(2)(a) of the CGST Act, 2017.

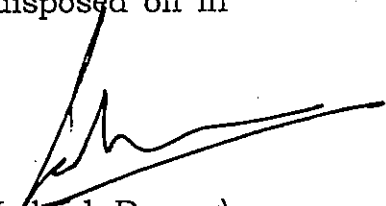
34. The Show Cause Notice also proposes to impose penalty under Section 137 of the CGST Act, 2017 on Shri Shrikant Rambhuvan Tiwari, Director of M/s Indra. I find that in the instant case is pertaining to late payment of applicable tax as M/s. Indra had late filed GSTR-3B returns which resulted into late payment of tax. The gravity of offence committed by M/s. Indra, late payment of tax, does not warrant levying penalty on Shri Shrikant Rambhuvan Tiwari, Director of M/s Indra as for such offence M/s. Indra are liable to pay applicable interest and I also intend to impose penalty under Section 73(11) of the CGST Act, 2017 for the offence committed by M/s. Indra. I do not find any grave allegation against Shri Shrikant Rambhuvan Tiwari, Director of M/s Indra which warrant imposition of penalty under Section 137 of the CGST Act, 2017. Accordingly, I refrain from imposing penalty under Section 137 of the CGST Act, 2017 on Shri Shrikant Rambhuvan Tiwari, Director of M/s Indra.

35. In view of the above discussion and findings, I pass the order as under:-

- (i) I confirm the demand of GST amounting of Rs. 2,02,67,222/- (IGST-Rs.15,83,738+CGST – Rs.93,41,742/- and SGST – Rs.93,41,742/-) and order to recover the same from M/s. Indra under Section 73(9) of the CGST Act, 2017 read with Section 73 (9) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act;
- (ii) As the GST amount of Rs. 2,02,67,222/- (IGST Rs.15,83,738+CGST – Rs.93,41,742/- and SGST – Rs.93,41,742/-) for the period July, 2017 to September, 2018 has already been paid by M/s. Indra which includes Rs. 26,03,963/- (IGST- Rs.3,75,897+CGST – Rs.10,80,392/- and SGST – Rs.10,80,392), I order to appropriate the same against the confirmed demand at (i) above;
- (iii) I order the recover applicable interest on (i) above by holding the liability of interest on confirmed demand under Section 50(1) of the Central Goods and Services Tax Act, 2017 read with Rule 88B of the CGST Rules, 2017, Section 50(1) of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017;

- (iv) I order to appropriate interest of Rs. 8,43,686/- paid by M/s Indra post initiation of proceedings against the interest liability as referred to in (iii) above;
- (v) I impose penalty of Rs. 17,25,429/- (IGST Rs.1,30,411/-, CGT Rs.7,97,509/- and SGST Rs. 7,97,509/-) under Section 73(11) of the CGST Act, 2017 read with Section 73(11) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act, 2017 for payment of GST liability beyond 30 days of the statutory prescribed due dates of filing of GSTR-3B returns for the tax periods July-2017 and September-2017 to August-2018;
- (vi) I do not impose penalty under Section 122 (1)(iii) of the CGST Act, 2017 read with Section 122(1)(iii) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act, 2017;
- (vii) I do not impose penalty under Section 122(2)(a) of the CGST Act, 2017 read with Section 122(2)(a) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act, 2017;
- (viii) I do not impose penalty under Section 137 of the CGTS Act, 2017 on Shri Shri Shrikant Rambhuvan Tiwari, Director of M/s Indra.

26. Accordingly, the Show Cause Notice No. DGGI/AZU/36-52/2021-22 dated 30.06.2021 (having DIN 202107DWW3000919569) is disposed off in above terms.


(Lokesh Damor)
Joint Commissioner,
Central Excise & CGST,
Ahmedabad North.

Date: 28.12.2023

BY SPEED POST/ BY HAND
F.No. GST/15-271/OA/2021,

To
1. M/s. Indra Security And Allied Services Pvt Ltd,
GSTIN: 24AAACI7092R1ZZ
106, 302, Narayan Complex,
Opp. Havmor Restaurant,
Navrangpura, Ahmedabad - 380009.

2. Shri Shrikant Rambhuvan Tiwari,
Director,
M/s. Indra Security And Allied Services Pvt Ltd,
302, Narayan Complex,
Opp. Havmor Restaurant,
Navrangpura, Ahmedabad - 380009.

Copy to:-



1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The Joint Director, DGGI, 6th & 7th Floor, The address building, Nr.Sola Flyover, Science City Road, Sola , Ahmedabad -380 060
3. The DC/AC, CGST & Central Excise, Division-VII, Ahmedabad North.
4. The Superintendent, Range-I, Division-VII, CGST & Central Excise, Ahmedabad North.
5. State Tax Officer, Ghatak 8, Range 2, Division 1, with a request to create Form GST DRC-07 electronically in terms of DSR Advisory no.01/2018 dated 26.10.2018 of the ADG, Systems & Data Management, Bengaluru.
- ✓ 6. The Superintendent (System), CGST & Central Excise, Ahmedabad North for uploading the order on website.
7. Guard File.