

30

nearly 98 % of invoices (5170 Nos) were issued by the 27 nos. of suppliers whose registrations were also been cancelled by suomoto (23 suppliers) by the respective State Administrative proper officers treating them as bogus firms indulging in issuance of fake invoices. 3 supplier's registration cancelled 'on application' by them and 1 supplier's registration was under suspension. The details of 27 supplier's registration status is as under.

S.N o.	GSTIN	Name of the Supplier	No. of invoices issued	E.D.R.	Date of Cancellation/s uspension	Remarks
1.	22MJNPS6510B1Z6	S S Traders	1	22.04.2022	06.09.2023	Suomoto cancellation
2.	29AONPM8106L1ZB	Harmain Traders	116	07.08.2022	09.08.2023	Suomoto cancellation
3.	33CVOPM3897G1Z0	Venus Traders	1	01.08.2019	01.01.2021	Suomoto cancellation
4.	33CVOPM3897G1Z0	F A Traders	3	08.01.2022	24.01.2022	Suomoto cancellation
5.	36APBPR5955H1ZJ	Star Enterprises	33	13.02.2022	14.02.2022	Suomoto cancellation
6.	36AXWPI2512K1Z4	Sri Krishna Enterprises	1	29.07.2019	05.02.2024	Suspended
7.	37AHXPI4239B1Z6	M Z Marketing	1	24.05.2022	25.05.2022	Suomoto cancellation
8.	37ALLPI5116R1ZI	Al Hadced Iron and Metal Junction	8	13.06.2020	31.03.2022	On application of tax payer
9.	37ALNPI8243F1ZV	Solar Enterprises	10	22.10.2020	30.09.2021	Suomoto cancellation
10.	37ATGPA7942Q1Z3	PeddaMasthan Enterprises	2	20.12.2018	30.06.2023	Suomoto cancellation
11.	37AUVPA0939K1Z7	M R Metals	10	01.07.2017	01.06.2023	Suomoto cancellation
12.	37BHVPG3456M1ZL	Tripura Traders	1	25.05.2019	31.12.2021	Suomoto cancellation
13.	37BNHPR1107A1ZG	Madeena Steels	6	01.07.2017	01.06.2023	Suomoto cancellation
14.	37BNWPH9347F1ZB	Safa Traders	959	23.07.2022	30.04.2023	Suomoto cancellation
15.	37BWFPIC1259K1ZH	G A Traders	2	18.04.2019	01.07.2022	On application of tax payer
16.	37DGSPK4578J1ZH	Kaleem Traders	109	12.02.2022	28.02.2022	Suomoto cancellation
17.	37DPSPA3829F1ZP	Hindustan Traders	9	23.01.2023	25.01.2023	Suomoto cancellation
18.	37DYVPA7959G1ZN	Akram Enterprises	12	21.08.2021	01.03.2022	Suomoto cancellation
19.	37EKKPR1979H1ZE	V N R Enterprises	16	24.08.2021	11.11.2022	On application of tax payer
20.	37HBFPM3991B1ZG	M F Enterprises	385	04.06.2022	30.06.2022	Suomoto cancellation
21.	37HGBPM8191N1ZJ	K. M. Traders	35	04.06.2022	30.06.2022	Suomoto cancellation
22.	37PGVPS9994F1ZP	K S Enterprises	242	23.02.2023	24.02.2023	Suomoto cancellation
23.	37AQOPA8262C1ZV	Ameen Power Solutions	935	07.06.2022	31.05.2023	Suomoto cancellation
24.	37FBYPK5856C1ZZ	Safran Traders	400	19.11.2022	31.12.2022	Suomoto cancellation
25.	37BOWPT2865K1ZT	Taj Traders	816	02.11.2022	06.09.2023	Suomoto cancellation
26.	37BWPPV2674D1ZY	Venkat Traders	507	30.10.2022	07.09.2023	Suomoto cancellation
27.	37CZVPR2751K1ZG	Bhairava Traders	550	19.01.2023	20.01.2023	Suomoto cancellation
		Total	5170			

On verification of E- way bill data with reference to the movement of goods for the above tax periods, it is noticed that the vehicles were originated from different places across the country and none of the vehicles were destined to Chittoor. Hence it is construed that the goods mentioned in the invoices vis -- a --vis way bills were never received by the taxable person and hence they are not eligible to claim ITC as per Section 16(2)(b) of the APGST Act, 2017. At the time of visit of the principle place of business also, it was noticed that no business activities were running in the said address.

On conjoint verification of GSTR 2A with NIC E-way bill data, it is construed that the suppliers were issued fake invoices without underlying supply of goods or services and pass on the fake ITC to the tax payer and in turn the tax payer availed and utilized the said fake ITC for his outward supplies.

Hence it is evident that the ITC claimed by the tax payer for an amount of Rs.28881613-00 under IGST Act, Rs.211869289-00 under CGST Act and Rs.211869289-00 under SGST Act (Total Rs.452620191-00) passed by the suppliers to the tax payer itself is a fraudulent and non-existent ITC. The tax payer is also failed to submit the relevant information in support of claim of ITC i.e. Original tax invoices, Proof of movement of goods, Lorry receipts, Payments made to their suppliers, etc., till to date. Hence in the absence of valid tax invoices, payment details and evidence of movement of goods, proof of payment to the suppliers and also no business activities have been running in the principle place of business as revealed at the time of inspection, it is construed that the taxable person has claimed input tax credit on receipt of fake invoices from their suppliers without actual receipt of goods and services and the ITC so claimed is ineligible in terms of Section 16(2)(b) of the Act and is liable for penal action under section 122(1)(vii) of the Act. The relevant sections are re-produced hereunder.

Section 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 of 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 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
 - (c)
 - (d)

6.2. Verification of eligibility and entitlement of ITC claimed

The verification of genuinity on the claim of ITC by this registered taxable person with reference to GSTN data, E-way bill reports login and facts of the case reveals the following facts:

1. Noticed 851 inward supply invoices only covered by e-way bills out of total inward supply invoices of 5254 numbers where the value of each consignment / transaction was more than Rs.50000 whereby mandatory to issue e-way bills for transportation of relevant goods from the consignor place to consignee place.
2. The covered e-way bills were also noticed from verification of GSTN data and the concerned registered taxable person did not produce any details in this regard, as part of departmental effort.
3. In accordance to the provision of Section 68 read with Rule 138 of SGST & CGST Act and Rules, 2017 read with Section 20 of IGST Act, every consignment valued more than Rs.50000-00 shall be accompanied by an e-waybill where the consignment consigned by a registered person either for another registered person or un-registered person, who causes the movement of goods. As such though it is mandatory, it is found absence of e-waybill for 4403 transactions.
4. It is also not produced any documentary proof in support of the claim of ITC as prescribed u/sec.16 (2) (a) of SGST & CGST Acts read with section 20 of IGST Act.
5. Majority of the suppliers found to be made said impugned supplies to this taxable person are found to be bogus and non-existing but facilitated wrong claim of ITC by way of issuance of fake invoices and based on which this taxable person claimed ITC wrongfully. Further in the course of verification, 24 registrations were cancelled suo-moto for not doing business as well as non-existing at the declared place. Registrations of 3 registered persons were cancelled on their own upon knowing the action from the department side on noticing of bogus registration.
6. The details of vehicles through which the goods relevant to alleged fake invoices were not disclosed at least to presume that the goods were transported engaging those vehicles which are in existence.

7. The verification on moving of vehicles disclosed in the available waybills on transportation of goods related to inward supply with reference to e-waybill reports and existing toll plazas, it is not found passing of any of the existing toll plazas available in the en-routes as applicable thereof. This unequivocally proves that this registered person claimed ITC without receipt of goods in violation of the provisions of section 16 (2) (b) of SGST & CGST Acts read with section 20 of IGST Act, 2017.

In the light of the above facts and circumstances of the case, it is clear that this taxable person claimed ITC wrongfully and as such not produced any records though he obliged to do so. This amounts to an action u/sec.122 (1) (vii) of SGST & CGST Acts read with section 20 of IGST Act and accordingly liable for penalty equivalent to the amount of wrongfully claimed.

Section 122(1)(vii)

Where a taxable person who takes or utilizes input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder,

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

Further the CBIC vide Circular No.171/03/2022-GST, dt.06.07.2022 had clarified on various issues relating to the applicability of demand and penalty provisions under the GST Act, 2017 in respect of transactions involving fake invoices and the 3rd scenario is squarely applicable to the present tax payer (i.e. Arhan) and he shall be liable for penal action under Section 122(1)(vii) for taking and utilizing input tax credit without actual receipt of goods and or services for the tax period from September, 2020 to October, 2021 and from April, 2022 to June, 2023 as under.

S. No.	Tax period	Amount of ITC wrongly claimed			Amount of Penalty liable to pay under Section 122(1)(vii)			Total Penalty
		IGST	CGST	SGST	IGST	CGST	SGST	
1.	Sep, 2020 to March, 2021	0	578806	578806	0	578806	578806	1157612
2.	April, 2021 to October, 2021	0	1030506	1030506	0	1030506	1030506	2061012
3.	April, 2022 to March, 2023	21816474	143396115	143396115	21816474	143396115	143396115	308608704
4.	April, 2022 to June, 2023	7065139	66863862	66863862	7065139	66863862	66863862	140792863
Total					28881613	211869289	211869289	452620191

7. Determination of irregular reporting of Output tax and applicable penalty liable to pay

The examination of transactions related to outward taxable supply reported to the Department without reference to GSTN data and e-waybill reports reveals that this registered person knowingly declared wrong output tax and thereby discharged the said payment with adjustment of irregularly claimed ITC as shown below.

1. The concerned registered person did not produce relevant outward taxable supply invoices as warranted U/sec.34 (1) of SGST & CGST Acts read with section 20 of IGST Act, 2017 with respect to the taxable turnovers reported through GSTR-1 and GSTR-3B monthly returns inspite of providing ample opportunity to produce the same in the course of inspection.
2. Failure to submit any of the prescribed records either at the time of inspection or subsequently despite of several notices in accordance to the obligations vested upon him under the provisions of section 35 read with Rule 56 of SGST & CGST Act and Rules read with section 20 of IGST Act.
3. Non furnishing of any evidence other than e-waybill details secured from GSTN data in support of transportation of goods covenant to delivery to the concerned alleged recipients.
4. It is observed reporting of alleged supplies to many of the non-existing and bogus registered persons from verification of registration details of concerned recipients.
5. There is no evidence on receipt of consideration which is prime ingredient to consider the said kind of transactions as supply as defined U/sec.7 of SGST & CGST Acts, 2017 read with section 20 of IGST Act or otherwise if there is any payment through bank it is a part of design orchestrated to color it as genuine transaction hand in glove with each other.
6. The examination on moving of vehicles related to outward supply disclosed in the available e-waybills on transportation of goods with reference to e-waybill reports and existing toll plazas, it is not found passing of any of the existing toll plazas available in the en-routes as applicable thereof. This unequivocally proves that this registered person reported taxable outward transaction wrongfully with a design to facilitate claim of ITC by the recipients irregularly without supply of goods.

The above facts and circumstances obviously transpires that this taxable person reported outward taxable supplies and made tax payments related thereof irregularly without doing the transactions really and thus, it amounts to an action u/sec.122 (1) (ii) of SGST & CGST Acts read with section 20 of IGST Act and thereby liable to pay penalty.

Section 122 (1)(ii)

Where a taxable person who issues any invoice or bill without supply of goods or services or both in violation of the provisions of the Act or the rules made there under,

*he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is **higher**.*

Further the CBIC vide Circular No.171/03/2022-GST, dt.06.07.2022 had clarified on various issues relating to the applicability of demand and penalty provisions under the GST Act, 2017 in respect of transactions involving fake invoices and the 3rd scenario is squarely applicable to the present tax payer (i.e. Arhanan) and he shall be liable for penal action under Section 122(1)(ii) for issuing invoices without actual supply of goods and or services for the tax period from September, 2020 to October, 2021 and from April, 2022 to June, 2023 as under.

S. No.	Tax period	Amount of output tax wrongly reported claimed			Amount of penalty liable to pay			Total Penalty
		IGST	CGST	SGST	IGST	CGST	SGST	
1.	Sep, 2020 to March, 2021	1075041	4526	4526	1075041	4526	4526	1084093
2.	April, 2021 to October, 2021	780834	640024	640024	780834	640024	640024	2060882
3.	April, 2022 to March, 2023	155221483	78105753	78105753	155221483	78105753	78105753	311432989
4.	April, 2023 to June, 2023	103777391	18999985	18999985	103777391	18999985	18999985	141777361
Total					260854749	97750288	97750288	456355325

34

8. Authorization from SIMC, Vijayawada and issuance of Form GST DRC-01

In the reference 8th cited, a letter addressed to the SIMC, Vijayawada for authorization to initiate action u/s 122 of the APGST, 2017 read with Rule 142 of APGST Rules, 2017 and in the reference 9th cited, the SIMC, Vijayawada in its 60th meeting has accorded approval to proceed further under Section 122 of the Act.

9. Applicability of Section 122 of the Act read with Rule 142

Section 122. Penalty for certain offences

- (1) Where a taxable person who –
- (i)
 - (ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made there under
 - (iii)
 - (iv)
 - (v)
 - (vi)
 - (vii) takes or utilizes input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made there under.

Rule 142

Notice and order for demand of amounts payable under the Act

- (1) The Proper Officer shall serve, along with the
- (a) Notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in Form GST DRC-01

Since the tax payer involved in “takes or utilizes input tax credit without actual receipt of goods or services or both” and also “ issues any invoice or bill without supply of goods or services or both” the provisions of Section 122 read with rule 142 is applicable.

Therefore, M/s Arhaan Ferrous and Non Ferrous Solutions Private Limited., D.No.03, High Road, Santhapeta, Chittoor is hereby required to show cause to Assistant Commissioner (ST), Tirupati-III Circle (hereinafter referred to as “Adjudicating Authority”) **within 30 (Thirty) days** from the date of receipt of this Notice as to why,

- i) An amount of **Rs.45,26,20,191-00 (Rupees Forty five crores twenty six lakhs twenty thousands one hundred and ninety one only)** being penalty should not be demanded and recovered from M/s Arhaan Ferrous and Non Ferrous Solutions Private Limited., in terms of Section 122(1)(vii) of GST Act, 2017 for availing Input Tax Credit without actual receipt of goods or services or both during the period from Sep, 2020 to June, 2023 (except from Nov, 2021 to March, 2022) as discussed supra.
- ii) An amount of **Rs.45,63,55,325-00 (Rupees Forty five crores sixty three lakhs fifty five thousand three hundred and twenty five only)** being penalty should not be demanded and recovered from M/s Arhaan Ferrous and Non Ferrous Solutions Private Limited., in terms of Section 122(1)(ii) of GST Act, 2017 for issuing invoices or bills without actual supply of goods or services or both during the period from Sep, 2020 to June, 2023 (except from Nov, 2021 to March, 2022) as discussed supra.

35

The tax payer was issued show cause vide ref 11th cited and the said show cause notice was duly served on the tax payer to his residential address as mentioned in the GST portal and the Assistant Commissioner (ST), Tirupathi III circle in pursuant to instructions issued by Chief Commissioner of state tax in proceedings no Rev 03-12039(31)/98/2023-GST-SEC-CCT Dt 11-08-2023 has transferred the inspection file along with all the enclosures as mentioned in the references above and requested for further adjudication.

Therefore in view of the above after allowing the 30 days of notice time as provided by the provisions of the GST Act and as no objections are submitted by the tax payer the penalty proposed in the show cause notice is confirmed and passed the orders as follows.

Tax period	ACT	Penalty U/s 122 (1) (vii) (ITC Utilized)	Penalty U/s 122 (1) (ii) (ITC passed on)	Total penalty levied
		in rupees	in rupees	in rupees
September 2020 to March 21	IGST	1075041	1075041	2150082
	CGST	4526	4526	9052
	SGST	4526	4526	9052
April 2021 to October 2021	IGST	780834	780834	1561668
	CGST	640024	640024	1280048
	SGST	640024	640024	1280048
				0
April 2022 to March 2023	IGST	155221483	155221483	310442966
	CGST	78105753	78105753	156211506
	SGST	78105753	78105753	156211506
April 2023 to June 2023	IGST	103777391	103777391	207554782
	CGST	18999985	18999985	37999970
	SGST	18999985	18999985	37999970
Total		456355325	456355325	912710650

Hence, The tax payer M/s M/s Arhaan Ferrous and Non Ferrous Solutions Private Limited., (Managing director Shaik Rizwan)) is directed to pay an amount of **Rs.91,27,10,650/-** ((Rs. **45,63,55,325/-** being penalty under section 122(1)(ii) and Rs **45,63,55,325/-** under section 122(1)(Vii)) within 30 days from the date of receipt of this orders, failing which recovery proceedings shall be initiated to recover the arrears as per the provisions of Section 78 of the APGST Act, & the CGST Act, 2017.

Note:- An appeal against this order lies to the Appellate Additional Commissioner (ST),Tirupathi within three months from the date of receipt of the order.

ARIGELA VENKATA SREENIVASA RAO Digitally signed by ARIGELA VENKATA SREENIVASA RAO Date: 2023.11.19 12:01:43 +05'30'

Assistant Commissioner (ST),
Chittoor I Circle, Chittoor.

To
M/s Arhaan Ferrous and Non Ferrous Solutions Private Limited.,
D.No. 03, High Road, Chittoor -517001.

Copy to e Mail id afanfspvtltd@gmail.com

FORM GST DRC - 07

[See rule 100(1), 100(2), 100(3) & 142(5)]

Summary of the order

Reference No: ZD371124016784F

Date: 19/11/2024

To,

GSTIN/ID: 37AATCA9148B1ZD

Name: ARHAAN FERROUS AND NON FERROUS SOLUTIONS PRIVATE LIMITED

Address: DOOR NO-03, Prakasam High Road, Chittoor, Chittoor, Andhra Pradesh, 517001

1. Details of order -

- (a) Order no: DIN3719112425297
- (b) Order date: 19/11/2024
- (c) Financial year: 2020-2021
- (d) Tax period: Sep 2020 - Mar 2021

2. Issues involved - Fraudulent availment of ITC and facilitation of fraudulent ITC with no actual transport of goods and Suppression of Purchases and the consequent tax evasion

3. Description of goods / services -

Sr. No.	HSN	Description
1.	7204	FERROUS WASTE AND SCRAP; REMELTING SCRAP INGOTS OF IRON OR STEEL

4. Section of GST Act under which demand is created: 74

5. Details of demand

(Amount in Rs.)

Sr. No.	Tax rate(%)	Turnover	Place of supply	Act	Tax/Cess	Interest	Penalty	Fee	Others	Total
1.	0	0.00	Tamil Nadu	IGST	0.00	0.00	2,150.08 2.00	0.00	0.00	2,150.08 2.00
2.	0	0.00	Andhra Pradesh	CGST	0.00	0.00	9,052.00	0.00	0.00	9,052.00
3.	0	0.00	Andhra Pradesh	SGST	0.00	0.00	9,052.00	0.00	0.00	9,052.00

Signature:

Name: ARIGELA VENKATA
SREENIVASARAO