

भारत सरकार
वस्तु एवं सेवा कर आसूचना महानिदेशालय
रायपुर ज़ोनल इकाई
चतुर्थ तल, रिओ कॉम्प्लेक्स, फ्रूट मार्केट, लालपुर,
धमतरी रोड, रायपुर (छत्तीसगढ़) 492001



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DGGI F. No. IV(6)DGGI/MISC-ENQ/RZU/15/PT-III/2022-23 *1845* Dated: 30.12.2022

DIN – 202212DEE4000000DDCA
SHOW CAUSE NOTICE No.166/RZU/JD/GST/2022-23

To,

1. GSTN – 22AABCN9131F1ZU M/s Navdurga Fuel Private Limited, Saraipali, Gharghoda Road, Raigarh (C.G.)	The Noticee
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INTRODUCTION:

1. M/s Navdurga Fuel Private Limited [hereinafter referred as "the Noticee" in short], is a Private Limited Company and Shri Nimish Gadodia, Shri Prakash Behera and Shri Deepak Kumar Sharma are the directors of the Company. The Noticee obtained GST Registration No. GSTN 22AABCN9131F1ZU and is operational at the registered business address at Post Office – Saraipali, Gharghoda Road, Raigarh, Chhattisgarh for the purpose of supply of goods falling under HSN code Chapter 7204 (Waste and Scrap), 7207 (Semi-finished products of Iron and Steel), 7207 (TMT Bars) and 2619 (Slag) of the GST Tariff Act 2017. The Noticee is administered by the Central GST under the jurisdiction of CGST Division – Raigarh, Chhattisgarh.

1.1. M/s MITC Rolling Mills Pvt. Ltd., B-2/1, B-2/2, MIDC, Palkhed Road, Dindori, District – Nashik (hereinafter referred as 'MITC') having GSTIN 27AAACN1731C1ZI is a private limited company engaged in the manufacturing and supply of Iron and Steel products such as TMT Bars falling under Chapter Heading 72 of HSN. M/s Navdurga Fuel Private Limited, GSTIN 22AABCN9131F1ZU was one of the suppliers in the up chain of M/s MITC Rolling Mills Pvt. Ltd, Nashik.

EXECUTIVE SUMMARY

2. The Noticee was found to have shortage in their stocks which were clandestinely supplied viz. 95.060MT of TMT Bars without payment of GST amounting to Rs.7,85,642/-, which is liable to be recovered from the Noticee under **Section 74 (1) of the CGST Act, 2017 along with Interest and Penalty under Section 50 and Section 122(1)(i) of the CGST Act 2017 read with Rule 37 of the CGST Rules, 2017.**

2.1. The Noticee had withheld total amount of Rs.6,73,74,526/- in respect of the taxable supplies made by their suppliers and have availed ITC of Rs.96,59,874/- involved in such

taxable supplies. The GST amounting to **Rs.96,59,874/-** involved in the said supplies is recoverable from the Noticee in terms of second proviso to **Section 16(2) of the CGST Act, 2017** read with **Rule 37 of the CGST Rules, 2017** under **Section 74 (1) of the CGST Act, 2017** along with Interest under **Section 50** and **Penalty under Section 74 (1) of the CGST Act 2017** read with **Rule 37 of the CGST Rules, 2017**.

2.2. M/s MITC have availed and utilized fraudulent Input tax Credit (ITC) amounting to **Rs.2,05,04,682/- (IGST Rs.2,05,04,682/-)** on the strength of false tax invoices without supply of underlying goods claimed to have been procured from the Noticee, in contravention to Section 16(2)(b) and 16(2)(c) of the CGST Act, 2017. Therefore, it appears that **the act of passing on such fraudulent ITC without supply of underlying goods is an offence in terms of Section 122(1)(i) and 122(1)(ii) of the CGST Act, 2017**. Therefore, the Noticee appears liable for penal action under **Section 122(1)(i) and 122(1)(ii) of the CGST Act, 2017** read with **Section 74(1) of the Act, ibid** in terms of CBIC Circular No. 171/03/2022-GST dated 06.07.2022.

BRIEF FACTS OF THE CASE:

3. The Joint Commissioner (Prev.), CGST & CX, Nashik has forwarded a copy of the **Show Cause Notice No. V(CGST/Adj-JC/15-488/MITC/2020 dated 11.03.2021 (RUD-1)** issued to M/s MITC Rolling Mills Pvt. Ltd., B-2/1, B-2/2, MIDC, Palkhed Road, Dindori, District – Nashik (hereinafter referred as ‘MITC’), proposing thereunder a demand of Rs.27,22,43,306/- on account of wrong availment and utilization of input tax credit under Section 74(1) of the CGST Act, 2017 along with interest and Penalty under Section 50 and Section 74 of the CGST Act, 2017.

3.1. It is alleged in the said SCN that MITC had availed fraudulent ITC of GST on the strength of fake invoices relating to claimed purchase from various business entities situated in Chhattisgarh and Odisha including the Noticee, who have passed on fraudulent ITC credit of **Rs.2,05,04,682/-** without actual supply of goods to MITC. The reasons for such allegation against the Noticee in the said SCN dated 11.03.2021 is that: -

(.....quote,)

“Para 13.2.3 (Page 20) of the Show Cause Notice No. V(CGST/Adj-JC/15-488/MITC/2020 dated 11.03.2021 (- quote -)

13.2.3 Details of the date & time of the entry / exit through the Inter State Border Check Post are totally different.

Comparison of Vehicle details in case of alleged Fake Inward Taxable Supply Invoices issued to M/s MITC. Nashik compared with the movement of Vehicle through Inter State Border Check Post of Maharashtra (MBCONL Data) during the relevant period shows the Vehicle Movement available for few cases, however the date & time of the entry / exit through the Inter State Border Check Post is totally different. Thus, it is evident that there was no actual movement of Vehicle between the places mentioned in Invoices/E-way Bill during the period mentioned on such invoices or E-way bill and thus no actual transport of goods mentioned in

such invoices. For the sake of clarity details of some vehicles are mentioned in the following table:-

Table "C"

Sample data of EWBs cross verified with the Vehicle Movement Data of MBCPNL showing that the Vehicle has entered / exited into the State of Maharashtra through the Inter State Border Check Post but on a totally different date.

SNo	GSTIN & Taxpayers Name	Invoice No / Date & Time	VEH REG NO	DATE & TIME	IN / OUT	BCP NAME	DATE & TIME	IN / OUT	BCP NAME	DATE & TIME	IN / OUT	BCP NAME
7	22AABCN9131F1ZU/ 9392/ 17-03-2018		CG04JE0708	3/13/2018/ 1:51:38AM	In	Deori Shirpur	3/16/2018 (8:08:09 AM)	Out	Deori Shirpur	3/25/2018 (2:03:33 AM)	In	Deori Shirpur

Inv Date :-17-03-2018 – Raigarh Chhattisgarh to Dindori, Nashik → The Vehicle enters on 13-03-2018 at 1:51 AM into Maharashtra through Deori Shirpur BCP → exits Maharashtra through Deori Shirpur BCP on 16-03-2018 at 08:08 AM → enters Maharashtra through Deori Shirpur BCP on 25-03-2018 at 02:03 AM → exits Maharashtra through Deori Shirpur BCP on 28-03-2018 at 02:49 AM. The Vehicle entry and exits Dates and the Vehicle Movement path in and Out of Maharashtra clearly indicates that the vehicle has not travelled to Dindori, Nashik carrying the Raw goods mentioned on the Invoice Date 17-03-2018 as the Vehicle is out of Maharashtra from 16-03-2018 to 25-03-2018. The transaction thus, appears to be Fake/Paper transaction for passing on inadmissible / fraudulent ITC to M/s MITC, Dindori, Nashik.

8	22AABCN9131F1ZU/ NAVDURGA	9378/ 17-03-2018	CG04LC9781	3/15/2018/ 5:44:40AM	In	Deori Shirpur	3/17/2018 (8:27:03 AM)	Out	Deori Shirpur	3/21/2018 (5:44:23 AM)	In	Deori Shirpur	3/25/2018 (5:25:23 AM)	Out	Deori Shirpur
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Inv Date :-17-03-2018 – Raigarh to Dindori, Nashik → The Vehicle CG04LC9781 enters Maharashtra through Deori Shirpur BCP on 15-3-2018 at 05:44 A.M → exits Maharashtra through Deori Shirpur BCP on 17-03-2018 at 08:27 AM → enters Maharashtra through Deori Shirpur BCP on 21-03-2018 at 05:44 AM → exits Maharashtra through Deori Shirpur BCP on 25-03-2018 at 05:25 AM. The Vehicle entry and exits Dates and the Vehicle Movement path in and Out of Maharashtra clearly indicates that the vehicle has not travelled to Dindori, Nashik carrying the Raw goods mentioned on the Invoice Date 17-03-2018 as the Vehicle is out of Maharashtra from 17-03-2018 to 21-03-2018. The transaction thus, appears to be Fake/Paper transaction for passing on inadmissible / fraudulent ITC to M/s MITC, Dindori, Nashik.

Para 14 (Page 23) of the Show Cause Notice No. V(CGST/Adj-JC/15-488/MITC/2020 dated 11.03.2021 (- quote -)

14. Availment of ITC on the basis of invoices / Eway Bills showing Types / Class of vehicles other than those allowed to be engaged in the transportation of goods.

There are different categories of vehicle in India. These various categories of vehicles in India are broadly divided into Personal Use and Commercial Use Vehicle as per the License Class. The details of which are as under:-

Category of Use	License Class	Vehicle Type
Personal Use	MC 50CC (Motorcycle 50cc)	Motorcycles with an engine capacity of 50 cc or less
	MCWOG/FVG	Motorcycles with any engine capacity, but without gears, including mopeds and scooters
	LMV-NT	Light motor vehicles that are used for non-transport purpose
	MC EX50CC	Motorcycles with gear, Motorcycles with a capacity of 50CC or more, Light Motor Vehicles (LMVs) including cars
	MC With Gear or M/CYCL.WG	All motorcycles even with gears
	MGV	For medium goods vehicles

Commercial Use	LMV	Light motor vehicles including motorcars, jeeps, taxis, delivery vans.
	HMV	Heavy Motors Vehicles
	HGMV	Heavy Goods Motor Vehicles
	HPMV/HTV	Heavy passengers motors vehicles/Heavy transport vehicle
	Trailer	Person holding heavy vehicle driving licence can apply for heavy trailer licence.

Thus, only Vehicles of Commercial Use in the Category of MGV, LMV, HMV, HTV can be used for transport of goods. During the investigation on analysis of the documents it was revealed that some of the Vehicle Registration number mentioned therein were found to be of Two Wheelers / Motor Cycles, Motor Cars, Tractors etc and are not fit for transportation of goods. Thus, it appears that there is no actual movement of goods mentioned in these invoices and these are mere paper transactions to avail inadmissible ITC. For the sake of clarity details of some of such vehicles is mentioned in the following table:-

Table "D" Showing the details of the Vehicles Number of the Invoices alleged to have been used for availment of ITC fraudulently by M/s MITC, Nashik were found to be Motor Cars / Tractors / Two Wheeler Vahan Portal of Ministry of Road Transport and Highways, Government of India https://vahan.nic.in/nrservice/faces/user/searchstatus.xhtml .						
S.N o	EWB No / Date	Inv No / Date	GSTIN No & Tax Payer	Vehicle No	Qty in M.T	Vehicle Specificatio n
5	Not Available *	9327/ 16/03/2018	22AABCN9131F1Z U/ NAVDURGA FUEL PVT LTD	CG11AA045 4	20.1 2	CB Shine, Honda Motorcycle And Scooter India Pvt Ltd, 2 Wheeler
6	Not Available *	9340/ 16/03/2018	22AABCN9131F1Z U/ NAVDURGA FUEL PVT LTD	CG13D6278	19.9	Tractor Swaraj 834, Punjab Tractors Ltd

Para 17 (Page 39) of the Show Cause Notice No. V(CGST/Adj-JC/15-488/MITC/2020 dated 11.03.2021 (- quote -)

Further, this is corroborated by the fact that there are no corresponding entries of Vehicles in the Inter-State Border State Check Post of Maharashtra for the Vehicles mentioned on the Input Invoice carrying Raw Material such as MS Ingots / MS Billets / Sponge Iron / Pig Iron etc. from the such Tax Payers of Chhattisgarh & Odisha. This is further corroborated by the fact that some of the Vehicles shown to have allegedly transported about 28M.T of the

goods are I.M.V Cars, Motor Cycle etc. for the sake of clarity details of some such vehicles are mentioned in the following table:-

Table "J"

Fake transactions- showing no corresponding entries of Vehicles in database of M/s MBCNPL for the Vehicles mentioned on the input Invoice of the Raw Material such as MS Ingots / MS Billets / Sponge Iron / Pig Iron etc. from the Tax Payers of Chhattisgarh & Odisha, also no corresponding entry of the sum in the Inward Register.

GST IN	INV NO	Qty in M.T	VEHICL E REGIST ERATIO N NO	BOR DER CHE CK POS T NA ME	VEH ICL E ENT RY/ EXI T DAT E & TIM E	IN / O U T	LA N E N O	INW AR D RE GIS TER ENT RY NO	QT Y AS PE R IN VO IC E	QTY REC EIVE D	MODEL & MAKE OF THE VEHICL E
22AABCN 9131F1ZU NAV DURGA FUEL PRIVATE LIMITED	8023 /25-02-2018	20 .8 4	CG04HQ 9170								
22AABCN 9131F1ZU NAV DURGA FUEL PRIVATE LIMITED	8022 /25-02-2018	20 .8 2	CG04HZ 0721								
22AABCN 9131F1ZU NAV DURGA FUEL PRIVATE LIMITED	8021 /25-02-2018	20 .6 8	CG04E6 195								
22AABCN 9131F1ZU NAV DURGA FUEL PRIVATE LIMITED	8020 /25-02-2018	20 .1	CG04HU 1748								
22AABCN 9131F1ZU NAV DURGA FUEL PRIVATE LIMITED	8019 /25-02-2018	20 .5 9	CG04JC 2751								
22AABCN 9131F1ZU NAV DURGA	8018 /25-02-2018	21	OD14B7 068								

Not Available in MBCPNL data base

Not Available in MBCPNL data base

Not Available in inwards receipt register of MITC

Not Available in inwards receipt register of MITC

FUEL PRIVATE LIMITED							
22AABCN 9131F1ZU NAV DURGA FUEL PRIVATE LIMITED	8017 /25- 02- 2018	21 .0 2	JH02T25 53				
22AABCN 9131F1ZU NAV DURGA FUEL PRIVATE LIMITED	8016 /25- 02- 2018	21 .1	CG13D9 778				SWIFT DZIRE VDI BS IV

From the above tables, it appears that there were no corresponding entries of Vehicles mentioned above in the Inter-State Border State Check Post of Maharashtra for the Vehicles mentioned on the Input Invoice carrying Raw Material such as MS Ingots / MS Billets / Sponge Iron / Pig Iron etc. from the Noticee to MITC.

Para 29 (Page 61) of the Show Cause Notice No. V(CGST/Adj-JC/15-488/MITC/2020 dated 11.03.2021 (- quote -)

29. Computation of irregular and inadmissible Input Tax Credit (ITC) availed by M/s MITC in fraudulent manner which is liable for recovery - Duty Calculation

29.1 The investigation revealed that M/s MITC has availed inadmissible credit of Rs.30,06,79,732/- on the basis of receipt of fake invoices of taxable value of Rs.167,04,52,650/- and GST of Rs.30,06,79,732/- without actual receipt of goods contained therein from following entities.

S.No.	GSTIN	Name of Tax payer	Taxable Value	IGST	CGST	SGST	Total
1
16	22AABCN9131F1ZU	NAV DURGA FUEL PRIVATE LIMITED	113924910	20504682	0	0	20504682
33
	Grand Total		1670452650	293997520	3341106	3341106	300679732

29.2 Such irregular and inadmissible Input tax Credit (ITC) availed by M/s MITC in fraudulent manner has been computed on the basis of identifying all the registered entities

who have issued invoices for interstate supply to M/s MITC and on which M/s MITC has availed ITC but no corresponding entries of vehicle numbers mentioned on these invoices/ e-way bill are available in the data of MSBCPNL, thus indicating that there is no physical movement of goods from these entities under these invoices." (...unquote...)

3.2. Thus, on the basis of investigations initiated at Nasik in the SCN No. V(CGST/Adj-JC/15-488/MITC/2020 dated 11.03.2021 it appear that the MITC had not received any goods from the Noticee as per evidences gathered in the investigation and MITC have fraudulently availed and utilized ITC of GST amounting to **Rs.2,05,04,682/-** on the strength of invoices issued by the Noticee to MITC wherein the goods said to be dispatched have never reached MITC on the following two grounds:-

- a) The movement of vehicles as per vehicle details of entry IN / OUT in the state of Maharashtra through the inter State Border Check Posts are not available in respect of supplies undertaken by the Noticee to MITC through the respective vehicles.
- b) Some of the Invoices bearing vehicle numbers were either non-existent or were incapable of carrying heavy loads thereby evidencing the dispatch and delivery could not be made through these vehicles.

3.3. On the basis of such allegation in the Show Cause Notice No. V(CGST/Adj-JC/15-488/MITC/2020 dated 11.03.2021 issued to M/s MITC, Nashik, investigation against the Noticee was initiated under inspection mode on 22.09.2021 at the registered premises of the Noticee, viz. M/s Navdurga Fuel Pvt. Ltd., Post Office – Saraipali, Gharghoda Road, Raigarh (CG).

3.4. During the inspection, the records relating to sales invoices, consignment notes, sales ledger, freight ledger, bank statement, TDS certificate, etc., were subjected to scrutiny. Upon scrutiny and examination of the documents viz. sales invoices, consignment notes, sales ledger, freight ledger, bank statement, TDS certificate, etc., it was revealed that:-

- a) The SCN has brought forward that the Noticee have issued invoices of MS Billets involving GST of **Rs.2,05,04,682/-** Wherein the goods have never reached the Consignee i.e. MITC.
- b) The Noticee have received all the payments including GST in respect of transactions with MITC through its Canara Bank A/c 30376286759.
- c) All the tax invoices issued to MITC are found to be annexed with the corresponding transport builty / consignment notes issued by M/s Jai Mata Di Roadways, Raigarh, M/s Astha Road Carrier, Raigarh and M/s MP Haryana Roadways, Raigarh arranged the vehicles for transportation of goods, as the supplies were on ex-factory basis.
- d) On reconciliation of the month-wise outward supplies declared by the Noticee in their GSTR-3B Returns vis-à-vis GST payable as per books of accounts for the relevant period, it is found that the Noticee had paid GST in respect of the purported supplies made by them to MITC.
- e) In some cases, the Noticee have paid advance to the only one of the transporters viz. M/s Astha Road Carrier, Raigarh and submitted the copy of payment of advance to the transporter but have not paid any freight to other transporter regarding transportation of goods to M/s MITC.

- f) The copies of sales invoices issued by the Noticee to MITC is endorsed as **Annexure-A** to this Show Cause Notice.
- g) The copies of Sales Register of the Noticee for the period December 2017 to March 2018 is endorsed as **Annexure-B** to this Show Cause Notice.
- h) In the following instances, the particulars of vehicles employed for transportation of goods as shown in the sale invoices, when cross verified with the information available on website- 'vahan.nic.in', were found to be either fitness expired or the vehicle details not found in the portal. The detailed chart is labeled as **Annexure - C** to this Show Cause Notice, as detailed in table below:

Annexure – C							
Details of vehicles available in vahan.nic.in in respect of supply of goods by M/s Navdurga Fuel Pvt. Ltd., Raigarh to M/s MITC Rolling Mills Pvt Ltd., Nashik							
Date	Bill No.	Veh. No.	Veh Details	Quantity in MT	Value	IGST	Gross Total
16.03.2018	9327	CG11AA0454	CB Shine Honda Motorcycle	20.120	402400	72432	474832
16.03.2018	9340	CG13D6278	Tractor Swaraj 834	19,900	398000	71640	469640
TOTAL				40.020	800400	144072	944472

- i) The detailed status of all the above vehicles downloaded from the Vahan.nic.in is relied-upon as **Annexure – D** in the Show Cause Notice. It appears that the goods shown to have been dispatched by the Noticee cannot be dispatched through these vehicles and thereby, it appears that they have wrongly passed on ITC to M/s MITC Rolling Mills Pvt. Ltd., Nashik.

3.5. In this regard, Statement dated 22.09.2021 (**RUD-2**) and 23.09.2021 (**RUD-3**) of Shri Sandeep Agrawal, Authorised Signatory of the Noticee was recorded under Section 70 of the CGST Act, 2017 wherein he interalia deposed that:-

- (a) He is the Authorised Signatory of M/s Navdurga Fuel Private Limited, Raigarh. He looks after the day-to-day affairs of the firm since 2006 as per the directions of Shri Nimish Gadodia, Director of the Company.
- (b) All the sale and purchase operations are executed at the plant only under his guidance. Depending on the requirements and the prevalent rate in the market, he takes the order of the goods over phone. Upon mutual confirmation and agreement on rate and payment conditions from the supplier or buyer, the sauda is confirmed and inform the responsible person for preparing for dispatch of goods in case of sales. Accordingly, the invoices are prepared on the basis of the weightment of goods loaded. Thereafter, the invoices are sent to the concerned person for updation of Accounts maintained in tally software and the goods are dispatched.
- (c) While dispatch of goods from factory premises, the vehicles are arranged as per the agreement either by them or the supplier then they are weighed in the inhouse weighbridge located within the premises of the factory. Then the corresponding invoices along with the weightment slip are handed over to the driver. He then attaches the transporter builtly along with the invoices and hands it over to the supplier on deliver. In some cases, the payments in advance have been made by

them to the transporter in which a copy of bill of lading is also kept. They also generate e-way bills wherever applicable.

- (d) The firm is engaged in manufacture of various steel items such as Sponge Iron, MS Billets and TMT Bars. As per their books of accounts, they have shown to have sold Sponge Iron, Pooled Iron and PCM to MITC during the period 2017-18 and 2018-19. All the transactions corresponding to MITC are recorded in the books of accounts.
- (e) On being confronted with the allegation in the SCN No. V(CGST/Adj-JC/15-488/MITC/2020 dated 11.03.2021 issued to MITC, that they have issued tax invoices without supply of underlying goods, he claimed that no brokers were involved in the said transactions and all the payments were done directly. The consignor i.e. MITC arranged transportation of goods and they have sold the goods on ex-factory basis and the supplies from the aforesaid supplier was on "to pay" basis where the recipient of the goods were liable to pay the freight charges. However, in some cases, advance freight were paid by them as per the request of the recipient of the goods.
- (f) The payment in respect of the transaction with MITC were made through their Canara Bank A/c of MITC to SBI Current Account No. 10511188748 at SBI Raigarh Branch.
- (g) He was shown the data provided by Inter State Border Check Post of Maharashtra (MBCPNL), wherein, the entry and exit of vehicles deployed for transportation of goods from the Noticee to MITC had been charted. The said comparison data clearly indicates that the vehicles has not travelled to Dindori carrying the impugned goods from the Noticee. On being confronted with the evidences, he was not able to give any satisfactory reply in the matter and stated that since the vehicles are arranged by MITC, they decide the route for movement of vehicle. He further stated that since the vehicles are arranged by the purchasers and after dispatch from the factory premises, the route taken by the vehicle would be covered on the instruction of the purchasers.
- (h) On being confronted with the allegation in the SCN No. V(CGST/Adj-JC/15-488/MITC/2020 dated 11.03.2021 issued to MITC, that MITC has not received the goods of value of Rs.11,39,24,910/- involving GST of Rs.2,05,04,682/- from the Noticee, he stated that the goods have been dispatched by the Noticee on payment of GST. They have paid advances towards freight to the transporters and all the details were booked in their accounts and GST have been discharged on sale as well as transportation wherever applicable. However, he did not comment on MITC not being able to prove the receipt of the same.
- (i) On being confronted with the evidences of having availed ineligible ITC of Rs.96,59,874/- despite withholding outstanding payments of the suppliers by the Noticee for more than 180 days, he accepted the liability and agreed to pay the same along with interest and penalty at the earliest.
- (j) During inspection in their office, some weightment slips dated 21.03.2021 w.r.t. vehicle Nos. CG13UJ2296, CG10C5150, UP70GT7228, MP21H4255,

CG04MG9085 were found lying in the office related to supply of TMT Bars and no corresponding sales invoices were issued nor any entry has been made in the sales ledger against the supply of the said goods. On being confronted with the same, he could not give any satisfactory reply and stated that the corresponding sale invoices had been misplaced. On being pointed out, he admitted the supply of 95.060MT of TMT Bars without issue of invoices and instantly agreed to pay the GST of **Rs.7,85,642/-** along with interest and penalty involved in the said supply.

3.6. In this regard, Statement dated 26.05.2022 (**RUD-4**) of Shri Shrinibas Gantayat, M/s Ashta Road Carrier, Raigarh was recorded under Section 70 of the CGST Act, 2017 wherein he interalia deposed that: -

- (a) M/s Ashta Road Carrier, Raigarh is a transporter engaged in transportation of goods between Chhattisgarh and Odisha. They have a branch office at Chatamuda New Transport Chowk, Raigarh.
- (b) They used to arrange transportation of goods from various factories in Raigarh and many times from M/s Navdurga Fuel Private Limited, Raigarh.
- (c) He was shown the ledger showing sale of goods and transportation of goods from M/s Navdurga Fuel Private Limited, Raigarh to M/s MITC Rolling Mills, Dindori, Nashik through M/s Ashta Road Carrier, Raigarh. He stated that, as per his knowledge, all the goods were delivered up to M/s MITC Rolling Mills Pvt. Ltd., Nashik.
- (d) As per the instructions received from the parties and dealers who purchase goods from M/s Navdurga Fuel Private Limited, Raigarh, they used to place vehicles in the factory for loading and transportation of goods was done to the destination of such parties and dealers.
- (e) On perusal of the copies of bulties issued by M/s Ashta Road Carrier, Raigarh attached with the invoices issued by M/s Navdurga Fuel Private Limited, Raigarh, he stated that all the bulties belong to M/s Ashta Road Carrier, Raigarh.

3.7. In this regard, Statement dated 26.05.2022 (**RUD-5**) of Shri Shubag Pandey, M/s Jai Mata Di Roadways, Raigarh was recorded under Section 70 of the CGST Act, 2017 wherein he interalia deposed that: -

- (a) M/s Jai Mata Di Roadways, Raigarh is a transporter engaged in transportation of goods between Odisha, Chhattisgarh and Maharashtra. They had a branch office near M/s Jindal Steel & Power Limited, Opp. Indian Oil Petrol Pump, Patrapali, Raigarh.
- (b) They used to arrange transportation of goods from various factories in Raigarh and many times from M/s Navdurga Fuel Private Limited, Raigarh.
- (c) He was shown the ledger showing sale of goods and transportation of goods from M/s Navdurga Fuel Private Limited, Raigarh to M/s MITC Rolling Mills, Dindori, Nashik through M/s Jai Mata Di Roadways. He stated that, as per his knowledge, all the goods were delivered up to M/s MITC Rolling Mills Pvt. Ltd., Nashik.

- (d) As per the instructions received from the parties and dealers who purchase goods from M/s Navdurga Fuel Private Limited, Raigarh, they used to place vehicles in the factory for loading and transportation of goods was done to the destination of such parties and dealers.
- (e) On perusal of the copies of builts issued by M/s Jai Mata Di Roadways, Raigarh attached with the invoices issued by M/s Navdurga Fuel Private Limited, Raigarh, he stated that all the builts belong to M/s Jai Mata Di Roadways, Raigarh.
- (f) They used to prepare builts and give the mobile number of the respective drivers for further communication and after receipt of goods, they used to get the freight payment from M/s MITC Rolling Mills Private Limited, Nashik. All the directions regarding route preferred for transportation are received from M/s MITC Rolling Mills Private Limited, Nashik to the drivers of the respective vehicles for transportation of goods from M/s Navdurga Fuel Private Limited, Raigarh to M/s MITC Rolling Mills Private Limited, Nashik.

3.8. In this regard, Statement dated 22.12.2022 (**RUD-6**) of Shri Manoj Kumar Gupta, M/s MP Haryana Roadways, Raigarh was recorded under Section 70 of the CGST Act, 2017 wherein he interalia deposed that: -

- (a) M/s MP Haryana Roadways, Raigarh is a transporter engaged in transportation of goods between Odisha, Chhattisgarh, and Maharashtra. They used to arrange transportation of goods from various factories in Raigarh and many times from M/s Navdurga Fuel Private Limited, Raigarh.
- (b) He was shown the ledger showing sale of goods and transportation of goods from M/s Navdurga Fuel Private Limited, Raigarh to M/s MITC Rolling Mills, Dindori, Nashik through M/s MP Haryana Roadways, Raigarh. He stated that, as per his knowledge, all the goods were delivered up to M/s MITC Rolling Mills Pvt. Ltd., Nashik.
- (c) As per the instructions received from the parties and dealers who purchase goods from M/s Navdurga Fuel Private Limited, Raigarh, they used to place vehicles in the factory for loading and transportation of goods was done to the destination of such parties and dealers.
- (d) On perusal of the copies of builts issued by M/s MP Haryana Roadways, Raigarh attached with the invoices issued by M/s Navdurga Fuel Private Limited, Raigarh, he stated that all the builts belong to M/s MP Haryana Roadways, Raigarh.
- (e) They used to prepare builts and give the mobile number of the respective drivers for further communication and after receipt of goods, they used to get the freight payment from M/s MITC Rolling Mills Private Limited, Nashik. All the directions regarding route preferred for transportation are received from M/s MITC Rolling Mills Private Limited, Nashik to the drivers of the respective vehicles for transportation of goods from M/s Navdurga Fuel Private Limited, Raigarh to M/s MITC Rolling Mills Private Limited, Nashik.

3.9. From the facts and circumstances of the case as discussed above, it is apparent that the Noticee has failed to clearly prove the receipt of goods by MITC i.e. the recipient mentioned in the invoices issued by them to MITC due to the following reasons: -

- 1) The investigating team of CGST, Nashik has already proved that the vehicles used for transportation in respect of the goods supplied by the Noticee has not travelled from Chhattisgarh to Dindori carrying the impugned goods.
- 2) It is evident through the issuance of Show Cause Notice No. V(CGST/Adj-JC/15-488/MITC/2020 dated 11.03.2021 that the goods mentioned in the invoices issued by the suppliers of MITC have not reached MITC and hence, MITC were charged for availing fraudulent ITC in contravention of Section 16(2)(b) of the CGST Act, 2017.
- 3) Also, in respect of 02 Invoices issued by the Noticee to MITC, the vehicle numbers mentioned in such invoices were either non-existent or were incapable of carrying heavy loads as per the vahan.nic.in portal, thereby evidencing that dispatch and delivery could not be made through these vehicles.
- 4) Shri Sandeep Agrawal, Authorised Signatory of the Noticee was confronted with the allegation in the SCN No. V(CGST/Adj-JC/15-488/MITC/2020 dated 11.03.2021 issued to MITC, that the goods dispatched by the Noticee have never reached MITC. In reply, he, in his Statement dated 22.09.2021 and 23.09.2021 claimed that all the transactions with MITC were genuine transactions and they have supplied the goods ex-factory as per the terms and conditions of MITC and they have received all the payments from MITC, which can be verified from bank statements. The contention of Shri Sandeep Agrawal is not acceptable because, they failed to produce any substantial documentary evidences or written agreement to prove the receipt of goods by MITC with regards to goods dispatched by them.
- 5) Shri Sandeep Agrawal, Authorised Signatory of the Noticee was confronted with the allegation in the SCN No. V(CGST/Adj-JC/15-488/MITC/2020 dated 11.03.2021 issued to MITC, that the data provided by Inter State Border Check Post of Maharashtra (MBCPNL), indicate that the vehicles used for transportation has not travelled from Chhattisgarh to Dindori carrying the impugned goods. In reply, he, in his Statement dated 22.09.2021 and 23.09.2021 stated that since the vehicles are arranged by MITC and the delivery of goods was ex-factory, so MITC decide the route for movement of vehicle. The contention of Shri Sandeep Agrawal is not acceptable because there was no agreement between the Noticee and MITC to establish that the goods are to be delivered ex-factory. Further, even if there was an agreement between the Noticee and MITC, the fact of non-movement of goods through Inter State Border Check Post of Maharashtra (MBCPNL) itself establish that the purported supplies made by the Noticee to MITC have not reached MITC.
- 6) On being confronted with the evidences of invalid vehicles or vehicles incapable of carrying heavy loads, Shri Sandeep Agrawal, Authorized Signatory of the Noticee stated that the vehicle numbers mentioned in such invoices might be clerical error made by their staff, but the goods have been supplied by them to MITC and has paid GST on such supplies. However, this appears to be an afterthought and there are no grounds in support of this contention because in the due course of investigation, the Noticee have never submitted the correct details of the vehicles in support of the claim that it was a clerical mistake.
- 7) Shri Sandeep Agrawal, Authorized Signatory of the Noticee has stated that the goods supplied by the Noticee to MITC was on ex-factory basis and the cost and risk of

transportation has been made by the purchaser of the goods i.e. MITC and the goods were dispatched by them in the vehicles mentioned in the invoices issued to M/s MITC. He therefore was unable to prove the receipt of the goods by M/s MITC or its intent based on the invoices issued by them to M/s MITC which leads to the belief that there was no movement of goods from the premises of the Noticee to MITC.

- 8) Even the transporters whose consignment notes/ bulty and the vehicles which were said to have been used for transportation of goods from Raigarh to Nashik in the purported tax invoices were unable to satisfy the condition of definitively delivering the goods to M/s MITC. They were unable to prove that whether the purported goods have actually been delivered to MITC. On the contrary, non-existent vehicles or vehicles incapable of bearing heavy loads mentioned in the invoices issued by the Noticee to M/s MITC and the Bultys only further confirms the allegation in the SCN issued to MITC that the goods dispatched have never reached MITC.

3.10. Due to the above reasons, it appears that the Noticee have issued false tax invoices to M/s MITC wherein the goods mentioned have never reached MITC involving GST of Rs.2,05,04,682/-, on the strength of which MITC had availed and utilized such ITC credits in their books of accounts for their further supplies and therefore it appears that the act of passing on such fraudulent ITC without supply of underlying goods is an offence in terms of Section 122(1)(i) and 122(1)(ii) of the CGST Act, 2017. Therefore, the Noticee appears liable for penal action under **Section 122(1)(i) and 122(1)(ii) of the CGST Act, 2017** read with Section 74(1) of the Act, ibid in terms of CBIC Circular No. 171/03/2022-GST dated 06.07.2022.

4. It was further observed that as on the date of search on 22.09.2021, the Noticee had withheld total Rs.6,73,74,526/- in respect of the taxable supplies made by their suppliers and the Noticee have availed ITC of Rs.96,59,874/- involved in such taxable supplies.

4.1. Whereas, in terms of second proviso to Section 16(2) of the CGST Act, 2017 read with Rule 37 of the CGST Rules, 2017, the value of taxable supply along with the tax payable thereon has to be paid to their suppliers within 180 days of issuance of invoice of such supply which is tabulated below:

Name of the Party	Amount Withheld (Rs.)	GST Involved (Rs.)
Alps Mining Services	75,19,845	3,75,992
A S Trading	7,26,880	1,30,838
Hari Steels	18,74,560	3,37,421
Pankaj Trading Corporation	2,99,448	53,901
Rashi Steel & Power Ltd	1,14,61,238	5,73,062
Sairam Ingot Pvt Ltd	4,54,92,555	81,88,660
Total	6,73,74,526	96,59,874

4.2. It therefore appears that the Noticee had availed inadmissible ITC of GST amounting to **Rs.96,59,874/-** involved in the aforesaid supplies. On being pointed out, Shri Sandeep Agrawal, Authorized Signatory of the Noticee in his Statement dated 22.09.2021 admitted their fault and agreed to pay the GST of Rs.96,59,874/- involved in the said supplies along with interest and penalty. Later, the Noticee paid Rs.96,59,874/- through DRC-03 dated 27.09.2021 (**RUD-7**) as detailed below and assured to pay the interest and penalty.

Sl. No.	DRC-03 Entry No.	Date	Type of Tax	Amount in Rs.
1	DC2209210045889	27.09.2021	IGST	85,79,982/-
2	DC2209210045889	27.09.2021	CGST	5,39,946/-
3	DC2209210045889	27.09.2021	CGST	5,39,946/-
	Total			96,59,874/-

5. During the inspection in the factory premises of M/s Navdurga Fuel Pvt. Ltd., the Officers found some weighment slips in possession of Shri Sandeep Agrawal, Authorised Signatory of the Noticee, the details of which are as under:-

Description	Vehicle No.	Qty. (MT)
Weighment slip No.91 dt:21.09.2021	CG13UJ2296	09.030
Weighment slip No.146 dt:21.09.2021	CG10C5150	09.990
Weighment slip No.171 dt:21.09.2021	UP70GT7228	29.770
Weighment slip No.133 dt:21.09.2021	MP21H4255	36.010
Weighment slip No.136 dt:21.09.2021	CG04MG9085	10.260
TOTAL		95.060

5.1. On scrutiny of the weighment slips, it was observed that the above-mentioned weighment slips were prepared for the outward supply of TMT Bars. The above-mentioned weighment slips were compared with the books of accounts submitted by the Noticee and it was observed that no invoices were found to have been issued by the Noticee on the above mentioned vehicles on that particular date i.e. 21.09.2021. On being pointed out, Shri Sandeep Agrawal, Authorised Signatory of the Noticee agreed that the TMT Bars were supplied through the above mentioned vehicles and the corresponding invoices might have misplaced by the staff. The total GST involved in such supply of 95.060MT of TMT Bars having taxable value of Rs.43,64,680/- has been worked out to Rs.7,85,642/- on the basis of the invoice No. 2697 dated 21.09.2021 (**RUD-8**) issued by the Noticee, as detailed below:-

Item	Qty supplied without issue of invoice	Referred Invoice No.	Reference Rate	Taxable Value (Rs.)	GST involved @18% (Rs.)
TMT Bar	95.060 MT	2697 dated 21.09.2021	Rs.45,915/- Per MT	43,64,680/-	7,85,642/-

5.2. Thus, it appears that the Noticee have supplied 95.060MT of TMT Bars without issuance of invoice and without payment of GST amounting to **Rs.7,85,642/-** involved therein. On being pointed out, Shri Sandeep Agrawal, Authorised Signatory of the Noticee in his Statement dated 22.09.2021 admitted the shortage of 95.060MT of TMT Bars and paid the GST of **Rs.7,85,642/-** along with penalty through DRC-03 dated 27.09.2021 (**RUD-9**) as detailed in table below:-

Sl. No.	DRC-03 Debit Entry No.	Date	Type	Amount
1	DC2209210045942	27.09.2021	CGST	3,92,821/-
2	DC2209210045942	27.09.2021	SGST	3,92,821/-
3	DC2209210045942	27.09.2021	Penalty	1,17,846/-

STATUTORY PROVISIONS

6. SECTION 20 of IGST Act, 2017 – Application of provisions of Central Goods and Services Tax Act. — Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to, —

- (i) scope of supply;
- (ii) composite supply and mixed supply;
- (iii) time and value of supply;
- (iv) input tax credit;
- (v) registration;
- (vi) tax invoice, credit and debit notes;
- (vii) accounts and records;
- (viii) returns, other than late fee;
- (ix) payment of tax;
- (x) tax deduction at source;
- (xi) collection of tax at source;
- (xii) assessment;
- (xiii) refunds;
- (xiv) audit;
- (xv) inspection, search, seizure and arrest;
- (xvi) demands and recovery;
- (xvii) liability to pay in certain cases;
- (xviii) advance ruling;
- (xix) appeals and revision;
- (xx) presumption as to documents;
- (xxi) offences and penalties;
- (xxii) job work;
- (xxiii) electronic commerce;
- (xxiv) transitional provisions; and
- (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

Provided that in the case of tax deducted at source, the deductor shall deduct tax at the rate of two per cent. from the payment made or credited to the supplier:

Provided further that in the case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the commendations of the Council, of the net value of taxable supplies:

Provided also that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory

Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.

[Provided also that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be fifty crore rupees and one hundred crore rupees respectively.]

6.1. SECTION 16(2) of CGST Act, 2017 - Eligibility and conditions for taking input tax credit

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

- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*
- (b) he has received the goods or services or both.*

Explanation — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

- (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;*
 - (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.*
- (c) subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and*
- (d) he has furnished the return under section 39: Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:*

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed.⁸

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

6.2. Section 31(1) of the CGST Act 2017 prescribes that:

- (1) A registered person supplying taxable goods shall, before or at the time of,—*

- (a) removal of goods for supply to the recipient, where the supply involves movement of goods; or
- (b) delivery of goods or making available thereof to the recipient, in any other case,

issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

6.3. Rule 46 of CGST Rules 2017 prescribes that –

Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars, namely, -

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters- hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- (e) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is unregistered and where the value of the taxable supply is fifty thousand rupees or more;
- (f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is unregistered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;
- (g) Harmonised System of Nomenclature code for goods or services;
- (h) description of goods or services;
- (i) quantity in case of goods and unit or Unique Quantity Code thereof;
- (j) total value of supply of goods or services or both;
- (k) taxable value of the supply of goods or services or both taking into account discount or abatement, if any;
- (l) rate of tax (Central tax, State tax, integrated tax, Union territory tax or cess);
- (m) amount of tax charged in respect of taxable goods or services (Central tax, State tax, Integrated tax, Union territory tax or cess);
- (n) place of supply along with the name of the State, in the case of a supply in the course of inter-State trade or commerce;
- (o) address of delivery where the same is different from the place of supply;
- (p) whether the tax is payable on reverse charge basis; and
- (q) signature or digital signature of the supplier or his authorised representative :

6.4. Rule 48(1) of CGST Rules 2017 prescribes the manner of issuing invoice, thus-

- (1) *The invoice shall be prepared in triplicate, in the case of supply of goods, in the following manner, namely, -*
 - (a) *the original copy being marked as ORIGINAL FOR RECIPIENT;*
 - (b) *the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and*
 - (c) *the triplicate copy being marked as TRIPPLICATE FOR SUPPLIER.*
- (2) *The invoice shall be prepared in duplicate, in the case of the supply of services, in the following manner, namely, -*
 - (a) *the original copy being marked as ORIGINAL FOR RECIPIENT; and*
 - (b) *the duplicate copy being marked as DUPLICATE FOR SUPPLIER.*
- (3) *The serial number of invoices issued during a tax period shall be furnished electronically through the common portal in FORM GSTR-1.*

6.5. Section 33 of the CGST Act 2017 clearly specifies that –

Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

6.6. SECTION 35(1) OF CGST ACT 2017 – ACCOUNTS & RECORDS – states that –

Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of the followings –

- (a) *Production or manufacture of goods*
- (b) *Inward or outward supply of goods or/and services*
- (c) *Stock of goods*
- (d) *Input tax credit availed*
- (e) *Output tax payable and paid*
- (f) *Such other particulars as may be prescribed*

6.7. Rule 56(1) of CGST Rules 2017 states that –

Every registered person shall keep and maintain a true and correct account of the following particulars:-

- (a) *The goods or services imported or exported.*
- (b) *Supplies attracting payment of tax on reverse charge.*
- (c) *The relevant documents including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers, and refund vouchers.*

6.8. Rule 57 of CGST Rules 2017: Generation and Maintenance of Electronic Records

- 1) *Proper electronic back-up of records shall be maintained and preserved in such manner that, in the event of destruction of such records due to accidents or natural causes, the information can be restored within a reasonable period of time.*

- 2) The registered person maintaining electronic records shall produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy or in any electronically readable format.
- 3) Where the accounts and records are stored electronically by any registered person, he shall, on demand, provide the details of such files, passwords of such files and explanation for codes used, where necessary, for access and any other information which is required for such access along with a sample copy in print form of the information stored in such files.

6.9. Section 37(1) of the CGST Act, 2017 – Furnishing details of outward supplies –

(1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of Section 10 or Section 51 or Section 52, shall furnish, electronically subject to such conditions and restrictions and in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies:

6.10. Section 74(1) of CGST Act, 2017 – Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts. – 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 utilized by reason of fraud, or any willful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under Section 50 and a penalty equivalent to the tax specified in the notice.

6.11. SECTION 122 of CGST Act, 2017 – OFFENCES AND PENALTIES – states that: -

- (1) Where a taxable person who—
 - (i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
 - (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 thereunder;
 - (iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
 - (iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
 - (v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be

- deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;*
- (vi) *fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;*
- (vii) *takes or utilises 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;*
- (2) **Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-**
- (a) *for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent of the tax due from such person, whichever is higher.*
- (b) *for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.*

6.12. SECTION 50 OF CGST ACT 2017: 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. Interest on delayed payment of tax.*
- (2) *The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.*
- (3) *A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.*

CONTRAVENTIONS:

7. In the light of above, by their various act of omission(s) and commission(s), it appears that the Noticee has contravened the provisions of CGST Act, 2017 read with CGST Rules, 2017 as under:-

- a) **Section 31 & Section 33 of CGST Act 2017 read with Rule 46 & Rule 48 of the CGST Rules 2017** inasmuch as the Noticee failed to issue Tax invoice and not mentioning

the tax amount on such invoices signifying clandestine supplies leading to evasion of **Rs.7,85,642/- [CGST Rs.3,92,821/- + SGST Rs.3,92,821/-]** of Goods & Service Tax.

- b) **Section 35** of CGST Act 2017 read with **Rule 56 & 57** of the CGST Rules 2017 inasmuch as that the Noticee did not maintain complete and correct accounts with an intent to evade payment of GST.
- c) **Section 49** of CGST Act 2017 read with **Rule 85** of the CGST Rules 2017 inasmuch as that the Noticee failed to pay the tax amounting to **Rs.7,85,642/- [CGST Rs.3,92,821/- + SGST Rs.3,92,821/-]** on supplies made by them without issuing invoices.
- d) **Section 37(1)** of CGST Act, 2017 inasmuch as the Noticee failed to furnish the correct details of outward supplies of goods effected during the tax period.
- e) **Section 122 (1)(i)** of the CGST Act, 2017, inasmuch as the Noticee has issued incorrect and false invoice with regard to the supplies shown to have been made to MITC involving GST of **Rs.2,05,04,682/-** and also clandestine supply of finished goods without payment of GST of **Rs.7,85,642/-**;
- f) **Section 122 (1)(ii)** of the CGST Act, 2017, inasmuch as the Noticee has issued invoices without supply of goods involving GST of **Rs.2,05,04,682/-** in violation of the provisions of this Act or Rules made thereunder.
- g) **Section 122(1)(vi)** of the CGST Act, 2017, inasmuch as the Noticee failed to collect GST amounting to **Rs.7,85,642/-** in accordance with Section 52(1) of the CGST Act, 2017.
- h) **Section 122(1)(x)** of the CGST Act, 2017, inasmuch as the Noticee falsified and substituted the financial records, thereby suppressing a substantial part of their entire supply transactions and furnished false GSTR 3B Returns with an intention to evade payment of tax due under the CGST Act, 2017.
- i) **Rule 37** of the CGST Rules, 2017, inasmuch as that the Noticee failed to pay the amount during filing of their GSTR-3B Returns for the tax duration following the duration of 180 days from the date of issuance of the invoice.
- j) **Second proviso to Section 16(2)** of the CGST Act, 2017, inasmuch as that the Noticee failed to reverse the amount of ITC of **Rs. 96,59,874/-** availed by them, as they have not paid the amount of **Rs.6,73,74,526/-** towards supply of goods made by their suppliers along with tax payable within the period of 180 days from the date of issue of the invoice.
- k) **Section 155: Burden of proof** – Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.” As per the above provisions, it is the responsibility of the Noticee to prove that he was eligible to avail ITC on the supplies made by them.

8. From the above facts of the case extracted during investigation, it is apparent that –
- a) The Noticee have issued false tax invoices to M/s MITC wherein the goods mentioned have never reached MITC involving GST of Rs.2,05,04,682/-, on the strength of which MITC had availed and utilized such ITC credits in their books of accounts for their further supplies and therefore it appears that the act of passing on such fraudulent ITC without supply of underlying goods is an offence in terms of Section 122(1)(i) and 122(1)(ii) of the CGST Act, 2017. Therefore, the Noticee appears liable for penal action under **Section 122(1)(i) and 122(1)(ii) of the CGST Act, 2017** read with Section 74(1) of the Act, ibid in terms of CBIC Circular No. 171/03/2022-GST dated 06.07.2022.
 - b) The Noticee have clandestinely supplied 95.060MT of TMT Bars without payment of GST amounting to **Rs.7,85,642/-**, which is liable to be recovered from the Noticee under **Section 74 (1) of the CGST Act, 2017 along with Interest and Penalty under Section 50 and Section 122(1)(i) of the CGST Act 2017 read with Rule 37 of the CGST Rules, 2017**. On being pointed out, Shri Sandeep Agrawal, Authorised Signatory of the Noticee in his Statement dated 22.09.2021 admitted the shortage of 95.060MT of TMT Bars and instantly paid the GST of **Rs.7,85,642/-** along with penalty.
 - c) The Noticee had withheld total amount of Rs.6,73,74,526/- in respect of the taxable supplies made by their suppliers and have availed ITC of Rs.96,59,874/- involved in such taxable supplies. The GST amounting to **Rs.96,59,874/-** involved in the said supplies is recoverable from the Noticee in terms of second proviso to **Section 16(2) of the CGST Act, 2017 read with Rule 37 of the CGST Rules, 2017** under **Section 74 (1) of the CGST Act, 2017 along with Interest under Section 50 and Penalty under Section 74 (1) of the CGST Act 2017 read with Rule 37 of the CGST Rules, 2017**. On being pointed out, Shri Sandeep Agrawal, Authorised Signatory of the Noticee in his Statement dated 22.09.2021 admitted their fault and agreed to pay the GST of **Rs.96,59,874/-** involved in the said supplies along with interest and penalty. The Noticee paid **Rs.96,59,874/-** through DRC-03 dated 27.09.2021 and assured to pay the interest and penalty.

Invocation of Extended Period under Penal Provisions

9. Section 74 of the CGST Act, 2017 provides for invoking the extended period for issue of a show cause notice to a taxable person where tax has not been paid or where input tax credit was wrongly availed by reason of fraud or any willful misstatement or suppression of facts to evade tax. Explanation 2 under Section 74 explains the meaning of the word suppression as under -

Explanation 2.—For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

9.1. In the scheme of self-assessment, the GST Department comes to know about the goods supplied and payment made by the Tax Payer only during the scrutiny of the statutory

returns filed by the Tax Payer. Thus, the regime of self-assessment of tax casts a burden on the taxpayer to declare the assessable value, Tax payable / paid thereon, correctly, and timely to the Department. In absence or such information, the Department has no means to verify the assessment carried out by the taxpayer.

9.2. In view of the facts as discussed hereinabove and the material evidences available on records, it appears that the Noticee had indulged themselves in supplying goods clandestinely without payment of GST and also indulged in availing and utilizing inadmissible ITC as discussed above. In the present case, the Noticee has contravened various provisions of law as mentioned in the foregoing paras with the intent to evade payment of Tax and concealed the said information from the Department. The Noticee was well aware that their acts of clandestine sale of goods in cash and entering into fraudulent transactions that had been documented, were illegal and had thus defrauded the exchequer knowingly and willfully with intent to evade payment of GST. Had the DGGI, RZU not taken proactive measures by conducting the present investigation, such evasion of GST by Noticee would have gone undetected. In view of the above, the extended period as specified in sub-Section (10) of Section 74 of the CGST Act, 2017 appears to be invokable in the instant case to demand & recover the GST amount evaded by reason of fraud or any willful misstatement or suppression of facts as discussed in the foregoing paras.

10. For the administration and collection of State Goods and Services tax in respect of Chhattisgarh State, an Act was in operation in respect of Jurisdiction of Chhattisgarh state. This Act is titled as "**The Chhattisgarh Goods and Services Act, 2017**" (for short here in after referred to as "**the CGGST Act, 2017**") and it contains the provisions exactly similar to the CGST Act, 2017 as referred above. Since, it is only repetition; the provisions of the CGGST Act, 2017 are not reproduced in this notice.

DEMAND

11. Now, therefore, M/s Navdurga Fuel Private Limited (the Noticee), Post Office – Saraipali, Gharghoda Road, Raigarh, Chhattisgarh having GSTIN 22AABCN9131F1ZU (The Noticee) is hereby called upon to show cause to the Additional / Joint Commissioner of CGST, GST Bhawan, Tikrapara, Raipur, (hereinafter referred to as 'Adjudicating Authority') within 30 (thirty) days from the date of receipt of this notice as to why:

- a) GST amounting to **Rs.7,85,642/- [CGST Rs.3,92,821/- + SGST Rs.3,92,821/-]** should not be demanded and recovered from the Noticee under the provisions of **Section 74(1)** of the CGST Act, 2017 and Section 74(1) of the Chhattisgarh SGST Act, 2017 and an amount of **Rs.7,85,642/-** paid through DRC-03 dated 27.09.2021 should not be appropriated from the total demand.
- b) Penalty should not be imposed on the Noticee under Section 122(1)(i), 122(1)(vi) and 122(1)(x) of the CGST Act 2017 and the corresponding Section 122 of the Chhattisgarh SGST Act, 2017 read with Section 74(1) of the CGST Act 2017 and the corresponding Section 74 of the Chhattisgarh SGST Act, 2017 for the offence committed in supply of goods without issue of tax invoice and without payment of GST amounting to

Rs.7,85,642/- and an amount of **Rs.1,17,846/-** paid through DRC-03 dated 27.09.2021 should not be appropriated from the total Penalty imposed against the said demand of GST.

- c) GST amounting to **Rs.96,59,874/- (IGST Rs.85,79,982/- + CGST Rs.5,39,946/- + SGST Rs.5,39,946/-)** should not be demanded and recovered from the Noticee under the provisions of Section 74(1) of the CGST Act, 2017 for non-reversal of Input tax credit apportioned to payment not made to the suppliers even after 180 days of issuance of tax invoices in contravention of second proviso to Section 16(2) of the CGST Act, 2017 and Section 50 of the Chhattisgarh SGST Act, 2017 read with Rule 37 of the CGST Rules, 2017 and an amount of **Rs.96,59,874/-** paid through DRC-03 dated 27.09.2021 should not be appropriated from the total demand.
- d) Interest should not be demanded and recovered from the Noticee under **Section 50** of the CGST Act, 2017 and Section 50 of the Chhattisgarh SGST Act, 2017 on the amount of GST demanded as mentioned in Sr. No. (c) above.
- e) Penalty should not be imposed on the Noticee under Section 74(1) of the CGST Act 2017 and the corresponding Section 74(1) of the Chhattisgarh SGST Act, 2017 for contravention of second proviso to Section 16(2) of the CGST Act, 2017 and Section 50 of the Chhattisgarh SGST Act, 2017 read with Rule 37 of the CGST Rules, 2017 on the amount of ITC of **Rs.96,59,874/-** not reversed by the Noticee.
- f) Penalty should not be imposed on the Noticee under Section 122(1)(i) and Section 122(1)(ii) of the CGST Act 2017 and the corresponding Section 122 of the Chhattisgarh SGST Act, 2017 for the offence committed in passing on fraudulent ITC amounting to **Rs.2,05,04,682/-** to M/s MITC Rolling Mills Pvt. Ltd., Nashik for failing to distinctly prove the supply of underlying goods dispatched by the Noticee to M/s MITC Rolling Mills Pvt. Ltd., Nashik.

12. The Noticee is required to produce at the time of showing cause all the evidences upon which they intend to rely in support of their defence.

13. The Noticee should also indicate in their written explanation as to whether they wish to be heard in person before the case is posted for hearing. If no mention to this effect is made, it will be presumed that they do not desire personal hearing.

14. If no cause is shown against the actions proposed to be taken within 30 (Thirty) days of receipt of this notice or if they do not appear before the Adjudicating Authority when the case is posted for hearing in their defence, the case will be decided **ex parte** on the basis of facts and evidences available on record.

15. This notice is issued without prejudice to any other action, may be taken against the Noticee or any other persons concerned with the acts of commissions and omissions, whether mentioned in this Notice or not, under the CGST Act, 2017, GST Act, 2017 read with Section 20 of the IGST Act, 2017 and the Rules made there under or any other law for the time of being in force, in Republic of India.

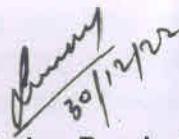
16. The Department reserves the right to conduct further enquiry and issue the demand, if any, within the period of limitation as provided under Section 74 of the CGST Act, 2017 and under the proviso thereto.

17. The proceeding undertaken in the instant show cause Notice has the protection as provided in the Section 174 of the CGST Act, 2017.

18. The list of documents relied upon in the case is listed as Annexure X and are supplied in digitized format in a one-time writable compact disk.

**ANNEXURE – X TO SCN NO. 166/RZU/JD/GST/2022-23 DATED 30.12.2022
ISSUED TO M/s NAVDURGA FUEL PRIVATE LIMITED, RAIGARH**

S. No.	Description of Relied upon documents	RUD
1	Show Cause Notice No. V(CGST/Adj-JC/15-488/MITC/2020 dated 11.03.2021 issued to M/s MITC Rolling Mills Pvt. Ltd., B-2/1, B-2/2, MIDC, Palkhed Road, Dindori, District – Nashik	1
2	Statement dated 22.09.2021 of Shri Sandeep Agrawal, Authorised Signatory of the Noticee.	2
3	Statement dated 23.09.2021 of Shri Sandeep Agrawal, Authorised Signatory of the Noticee.	3
4	Statement dated 26.05.2022 of the Transporter viz. M/s Ashta Road Carrier, Raigarh	4
5	Statement dated 26.05.2022 of the Transporter viz. M/s Jai Mata Di Roadways, Raigarh	5
6	Statement dated 22.12.2022 of the Transporter viz. M/s MP Haryana Roadways, Raigarh.	6
7	DRC-03 dated 27.09.2021 for Rs.96,59,874/-	7
8	Invoice No. 2697 dated 21.09.2021 used as reference for calculation of GST on the shortage of 95.060MT of TMT Bars	8
9	DRC-03 dated 27.09.2021 for Rs.7,85,642/-	9
10	Copies of the sales Invoices along with Annexures issued by the Noticee to M/s MITC	Anx.A
11	Sales Register of the Noticee for the Period December 2017 to March 2018	Anx.B
12	Details of 25 vehicles which were either non-existent or were incapable of carrying heavy loads as per the vahan.nic.in portal.	Anx.C
13	The detailed status of the vehicles downloaded from the Vahan.nic.in	Anx.D


(Sudhakar Pandey)
Joint Director

Directorate General of GST Intelligence
Raipur Zonal Unit

FORM GST DRC - 01
[See rule 100 (2) & 142(1)(a)]

DIN – 202212DEE4000000DDCA

Reference No: IV(6)DGGI/MISC-ENQ/RZU/15/PT-III/2021-22 Raipur; Date: 30.12.2022

To,

GSTIN/Temp. ID -	22AABCN9131F1ZU
Name -	M/s Navdurga Fuel Private Limited
Address -	Saraipali, Gharghoda Road, Raigarh, Chhattisgarh
Tax Period	12/2017 to 09/2021
Financial Year	2017-18 to 2021-22
Act - Section / sub-section under which SCN is being issued –	Notice under Section 74 of the Central Goods and Services Tax Act, 2017 read with the corresponding provisions of the State Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017.
SCN Reference No.	166/RZU/JD/GST/2022
Date	30.12.2022

Summary of Show Cause Notice

(a) Brief facts of the case: -	As detailed in enclosed Show Cause Notice dated 30.12.2022
(b) Grounds: -	As detailed in enclosed Show Cause Notice dated 30.12.2022
(c) Tax and other dues:	

Sr. No.	Tax rate	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Others	Total
			From	To							
1	2	3	4	5	6	7	8	9	10	11	12
1	18%		12/2017	09/2021	CGST Act, 2017	22 & 27	Rs.1,04,45,516/-	As applicable	Rs.2,05,04,682/- + Penalty as applicable	-	Rs.3,09,50,198/-
Total							Rs.1,04,45,516/-				Rs.3,09,50,198/-

Enclosure – SCN No.166/RZU/JD/GST/2022

Signature
Name -
Designation
Jurisdiction
Address

Sudhakar Pandey
30/12/22
Joint Director
Chhattisgarh
DGGI, Raipur Zonal Unit

Note -

- Only applicable fields may be filled up.
- Column nos. 2, 3, 4 and 5 of the above Table i.e. tax rate, turnover and tax period are not mandatory.
- Place of Supply (POS) details shall be required only if the demand is created under the IGST Act.