



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. GST/15-227/OA/2020

आदेश की तारीख/Date of Order: - 27.01.2022

जारी करने की तारीख/Date of Issue :- 27.01.2022

DIN NO: 20220164WT000061666B

द्वारा पारित/Passed by:-

मुकेश राठौर/ MUKESH RATHORE
अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 51/ADC/MR/2021-22

जिस व्यक्ति(यों) (को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से) 60 साठ (दिन के अन्दर आयुक्त) अपील, (केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाडी, अहमदाबाद-380015) को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क) अपील (नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

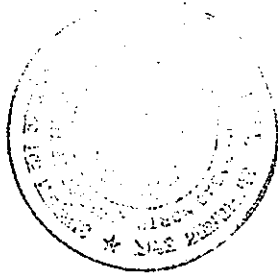
(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

- (1) Copy of accompanied Appeal.
- (2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice No. DGGI/AZU/36-22/2020-21 dated 31.08.2020 issued to M/s. Nami Steel Pvt. Ltd. situated at Survey No. 316 (P), 317 (P), 342 (P) & 343 (P), Opp. Chharodi Railway station, Nano Ford Road, Sanand, Distt- Ahmedabad, Gujarat-382170.



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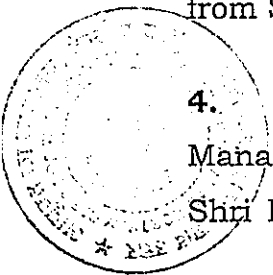
Brief Facts:

M/s Nami Steel Pvt. Ltd. Survey No. 316(P), 317(P), 342(P) & 343(P), opp. Chharodi Railway Station, Nano Ford Road, Sanand, Distt-Ahmedabad, Gujarat-382170 (hereinafter referred to as "M/s Nami") is a Private Limited company. They are engaged in the manufacturing of Stainless Steel Billets, Flats, Black Bars, Bright Bars, etc and registered with GST holding GSTIN 24AAECN0653R1Z5.

2. Information was received from DGGI, HQ, New Delhi indicated that M/s Nami Steel Pvt Ltd. is engaged in manufacturing activity as mentioned above and were collecting but not discharging their GST liability. Moreover, they have discharged their GST liability only for the period from July'2017 & August'2017 and filed GSTR-3B Return for the said two months. Therefore, M/s Nami Steel Pvt. Ltd. had neither filed their GSTR-1 for the period after Januray'2018 nor discharged their GST liability after August'2017 for the period from September, 2017 to April, 2018.

3. Based on intelligence regarding evasion of GST by M/s Nami Steel Pvt. Ltd. Survey No. 316(P), 317(P), 342(P) & 343(P),Opp. Chharodi Railway Station, Nano Ford Road, Sanand, Distt-Ahmedabad, an inspection was conducted by officers of DGGI, AZU, at the registered premises of M/s Nami Steel Private Limited, Ahmedabad on 11.06.2018. During the visit various records were examined and preliminary inquiry revealed that after migration to GST regime, M/s Nami Steel Pvt. Ltd. have properly filed their GSTR-1 Return for the period from July'2017 to January'2018. Further, they have only discharged their GST liability for the period from July'2017 & August'2017 and filed GSTR-3B Return for the said two months. Therefore, M/s Nami Steel Pvt. Ltd. had neither filed their GSTR-1 for the period after January 2018 nor discharged their GST liability after August 2017. Further, on scrutiny of documents provided by M/s Nami Steel Pvt. Ltd., their GST liability for the period from July'2017 to April'2018 works out to Rs. 16,42,90,751/-. M/s Nami Steel Pvt. Ltd. have already discharged their GST liability for the month of July 2017 & August'2017 amounting to Rs. 3,14,14,613/-. Therefore on preliminary scrutiny the unpaid GST liability of M/s Nami Steel Pvt. Ltd., for the period from September'2017 to April'2018 comes to Rs. 13,28,76,138/-.

4. During investigation, a summons was issued to Shri Parixit Patel, Managing Director of M/s Nami to give statement. Subsequently statement of Shri Parixit Patel was recorded on 11.06.2018, wherein he has accepted the



outstanding GST liability of Rs. 13,28,76,138/- towards their regular GST liability for the period from September'2017 to April'2018.

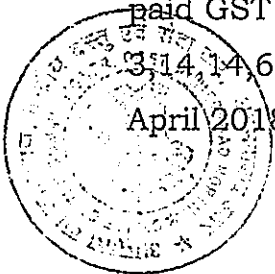
5. During investigation, M/s Nami has filed the GSTR-3B Returns on 11.06.2018 and have discharged their partial liability of Rs. 3,97,61,784/- for period from Sept, 2017 to Nov, 2017 out of which Rs. 3,68,17,345/- was paid through ITC and Rs. 29,44,439/- was paid in cash towards part payment of their remaining liability vide various challans.

6. A statement of Shri Parixit Patel, Managing Director of M/s Nami Steel Pvt Ltd, was recorded on 11.06.2018, wherein he, *inter-alia*, stated that:

- M/s Nami Steel Pvt. Ltd. is engaged in the manufacture of Stainless Steel Billets, Flats, Black Bar, Bright Bar etc. and is having its factory/ manufacturing facility at Survey No. 316(P), 317(P), 342 (P) & 343(P), Opp. Chharodi Railway Station, Nano Ford Road, Taluka. Sanand, Dist. Ahmedabad;
- M/s Nami Steel Pvt. Ltd. is a Private Limited Company came into existence in 2012. He along with his father Shri Amrutbhai I. Patel are the Directors of the Company;
- M/s Nami Steel Pvt. Ltd. is registered with GST department and have been allotted GST No. 24AAECN0653R1Z5. They fall under the jurisdiction of Range-2, Division-III, Ahmedabad North GST Commissionerate;
- They have filed GSTR-1 Return from July'2017 to January'2018 and filed GSTR-3B for the month of July'2017 & August'2017 only. They have not filed GSTR-1 Return after January'2018 and have not paid GST from September'2017 onwards;
- Their GST liability for the period from July'2017 to April'2018 is Rs. 16,42,90,751/-, out of which they have paid GST liability for the month of July'2017 & August'2017 amounting to Rs. 3,14,14,613/-;
- He agreed that M/s Nami Steel Pvt. Ltd. have their unpaid GST liability for the period from September'2017 to April'2018 to the tune of Rs. 13,28,76,138/-. He further stated that out of this Output GST liability, they have Input GST Credit of Rs. 12,38,43,795/-;
- He assured to discharge their GST liability as soon as possible. He stated that after initiation of inquiry by DGGI, AZU, they have paid GST totally amounting Rs. 3,97,61,783/-;

- He stated that the company is facing severe financial crunch due to which they were not able to discharge their GST liability on time, however he assured to pay-up all their GST dues as soon as possible;
- On being asked about availing huge quantum of Input Tax Credit both at the starting of GST regime as well as during the period from July 2017 to April 2018 by M/s Nami Steel Pvt. Ltd., he stated that their the value addition in their finished goods is on average 7-9% and most of their inputs are Cenvatable, therefore in general the tax liability to be discharged, by them, through cash is lower. He further stated that the Cenvat to Cash ratio has remained almost same during pre-GST regime as well as in GST regime. The difference is that in Central Excise regime the proportion of 'Cash' duty payment was more in Cenvat to Cash ratio for discharging their Central Excise duty liability. However their liability of VAT/ CST payment through 'Cash' was Nil during pre-GST era because the rate of VAT/ CST on our finished goods was lower than the VAT/ CST paid on inputs and therefore they always had accumulated Input Tax Credit of VAT/CST for discharging their output VAT/ CST liability;
- On being asked to explain the huge quantum of Input Tax Credit of Rs. 31,05,532/- as Input Tax Credit of CGST & Rs. 83,83,042/- as opening balance of Input Tax Credit of SGST, available to them, at the beginning of July 2017, he stated that the Opening Balance of Rs. 31,05,532/- as Input Tax Credit of CGST at the beginning of July 2017 was on account of regular Input Cenvat Credit on their inputs viz. Scrap, Ferro Alloys Furnace Oil, etc. Similarly, the Rs. 83,83,042/- as opening balance of Input Tax Credit of SGST at the beginning of July'2017 is on account of accumulated Tax Credit of VAT/ CST on their input materials. He further stated that the quantum of balance Input Tax Credit on account of VAT/CST is higher because pre-GST the raw material attracted VAT @ 5%, however most of the finished goods sold by them attracted VAT @ 1%.

7. On scrutiny of the GST returns it was found out that M/s Nami have filed GSTR-1 Return from July 2017 to January 2018 and filed GSTR-3B for the month of July 2017 & August 2017 only. Their GST liability for the period from July 2017 to April 2018 is Rs. 16,42,90,751/-, out of which they have paid GST liability for the month of July 2017 & August 2017 amounting to Rs. 3,14,14,613/-; However, they have not paid GST from September 2017 to April 2018 for which total liability is Rs. 13,28,76,138/-;



8. After intimating the inquiry to the taxpayer, M/s Nami had paid the duty for the months of September, 2017, October, 2017 and November, 2017, which calculated at Rs. 3,97,61,784/-, details of which are given in Table-A below.

TABLE -A

(Amt. in Rs.)

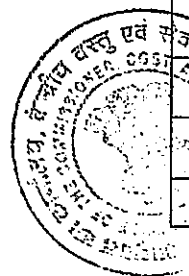
Sr. No.	Month' Year	CGST amount paid	SGST amount paid	IGST amount paid	Mode of payment
1	September' 2017	60,54,652/-			Paid through ITC
2			77,02,023/-		Paid through ITC
3				25,39,368/-	77,02,023/-
4		16,64,623/-			Paid through challan
5			17,252/-		Paid through challan
	TOTAL	77,19,275/-	77,19,275/-	25,39,368/-	1,79,77,918/-
6	October' 2017	27,19,735/-			Paid through ITC
7			39,41,615/-		Paid through ITC
8				15,02,565/-	Paid through ITC
9		12,25,919/-			Paid through challan
10			4,039/-		Paid through challan
	TOTAL	39,45,654/-	39,45,654/-	15,02,565/-	93,93,873/-
11	November' 2017	51,83,363/-			Paid through ITC
12			51,83,363/-		Paid through ITC
13				19,90,661/-	Paid through ITC
14		16,303/-			Paid through challan
15			16,303/-		Paid through challan
	TOTAL	51,99,666/-	51,99,666/-	19,90,661/-	1,23,89,993/-
	GRAND TOTAL	1,68,64,595/-	1,68,64,595/-	60,32,594/-	3,97,61,784/-

9. Later, on various dates through challan and through ITC, M/s Nami had paid remaining outstanding liability for period from Dec, 2017 to Apr, 2018, which calculated at Rs. 9,31,89,306/-, details of which are given in Table B below:

TABLE -B

(Amt. in Rs.)

Details of payment of GST made by M/s Nami Steel Private Limited							
Month' Year	Date of Filing of GSTR-3B Return	Taxable Value	Total GST payable	Paid through CASH	Paid through ITC	Total GST paid	Paid Under Reverse charge
Dec'17	16-07-18	111263953	19975615	2039529	17916126	19955655	19960
Jan'18	16-07-18	96094193	17220590	1944715	15246505	17191220	29370
Feb'18	16-07-18	93665168	16831786	0	16821034	16821034	10752
Mar'18	15-09-18	132835132	23818711	3521690	20261781	23783471	35240
April'18	10-10-18	85935097	15446372	3187690	12250236	15437926	8446
				10693624	82495682	93189306	103768



10. Scope of supply as defined under Section 7 of the CGST Act, 2017 :

"7. (1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

In view the above provisions it appeared that the goods supplied by M/s Nami to their clients were supply of taxable goods.

11. Levy and Collection as defined under Section 9 (1) of the CGST Act, 2017:

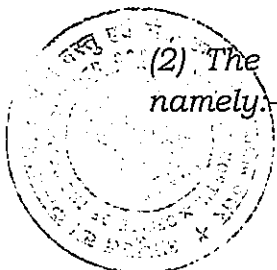
"9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person."

By virtue of the above provisions M/s Nami was under obligation to pay the Goods and Services Tax at applicable rate on supply of said goods to their clients.

10. The time to pay the tax on supply of taxable goods is stipulated in Section 12 of the CGST Act, 2017. The relevant portion of the same is reproduced below:

12. (1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of goods shall be the earlier of the following dates, namely,—



(a) the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply:

Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

The above provision stipulates that the payment of Goods and Services Tax payable on supply of the goods should be either the date of issue of invoice or the date of receipt of payment whichever is earlier. Accordingly, M/s Nami was under obligation to make payment of GST at the time as stipulated in section 12 of the CGST Act, 2017.

11. Section 15 of the CGST Act, 2017 stipulates that the value of the supply of goods and/or services shall be the transaction value which is the price actually paid or payable for the said supply of goods and/or services where the recipient and provider of supply are not related and the price is the sole consideration for the supply. The relevant portion of section 15 is as under:

15. (1) *The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

(2) *The value of supply shall include—*

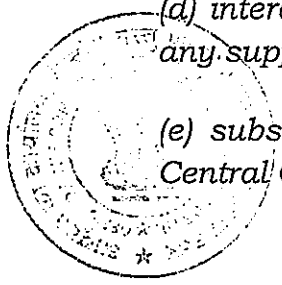
(a) *any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*

(b) *any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*

(c) *incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*

(d) *interest or late fee or penalty for delayed payment of any consideration for any supply; and*

(e) *subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.*



As M/s Nami have failed to declare their actual taxable income in their GSTR-1M, it appeared that M/s Nami has resorted to suppression of the actual transaction value of the goods and/or services provided by them to their customers/clients in contravention of the provisions of section 15 of the CGST Act, 2017.

12. Section 35 of CGST Act, 2017 reads as:

35. (1) 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—

- (a) production or manufacture of goods;*
- (b) inward and outward supply of goods or services or both;*
- (c) stock of goods;*
- (d) input tax credit availed;*
- (e) output tax payable and paid; and*
- (f) such other particulars as may be prescribed:*

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business:

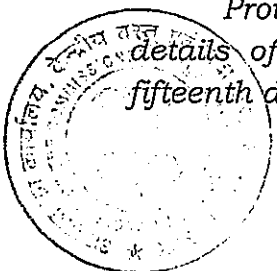
Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

In terms of section 35 of the CGST Act, 2017, M/s Nami was under obligation to maintain true and correct account of outward supply of goods and/or services made by them to all their clients/customers. However, they knowingly failed to keep true and correct account of supplies of goods and/or services made by them in their regular books of accounts.

13. Section 37 of the CGST Act, 2017 reads as:

“37. (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, 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 be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:



Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided also that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

14. Rule 59 of the CGST Rules, 2017 stipulates that the goods and/or services provider should file monthly return GSTR-1 giving details of outward supplies. Rule 59 of CGST Rules, 2017 reads as:

59. Form and manner of furnishing details of outward supplies.-

(1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017, required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in FORM GSTR-1 electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

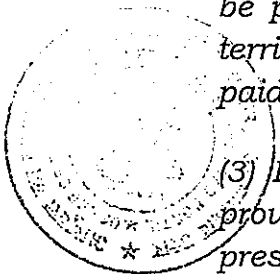
In terms of section 37 of the CGST Act, 2017, read with Rule 59 of the CGST Rules, 2017, M/s Nami was required to file the GSTR-1 returns for the period after January, 2018 on time, however, they knowingly failed to file the GSTR-1 returns for the said period.

17. Section 39 of the CGST Act, 2017 lays down that every registered person should file a return giving details of the outward supply made by them, inward supply received by them including the ITC available with them. Section 39 of the CGST Act, 2017 reads as under:

“39. (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.

(2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.

(3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.



(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

(6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein:

Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.”

18. Rule 61 of the CGST, Rules, 2017, as amended reads as:

“61. Form and manner of submission of monthly return.-(1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 or an Input Service

Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return specified under sub-section (1) of section 39 in FORM GSTR-3 electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.”

From conjoint reading of Section 39 of CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017, it appeared that M/s Nami should have filed GSTR-3/GSTR-3B returns, however they have knowingly failed to file the stipulated GSTR-3B returns.

19. Payment of tax as detailed under Section 49 of the CGST Act, 2017 :

“49. (1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

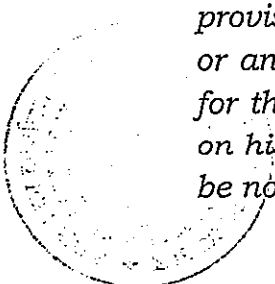
(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

M/s Nami having knowingly failed to pay the tax in gross contravention of Section 49 of the CGST Act, 2017.

20. Interest on delayed payment as detailed under Section 50 of the CGST Act, 2017 :

“50. (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.



(2) *The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.*

(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."*

Further, Hon'ble Jharkhand High Court in the case of M/s Mahadeo Construction have stated that-

"Liability of interest is automatic, but the same is required to be adjudicated in the event an assessee disputes the computation or very leviability of interest, by initiation of adjudication proceedings under Section 73 or 74 of the CGST Act. In our opinion, till such adjudication is completed by the Proper Officer, the amount of interest cannot be termed as an amount payable under the Act or the Rules,"

21. As M/s Nami have failed to discharge their GST liability in due time, they have made themselves liable to pay interest on the same under Section 50 of the CGST Act, 2017.

Self-Assessment as defined under Section 59 of the CGST Act, 2017:

"59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39."

22. M/s Nami, knowingly suppressed the actual value of the goods and/or services supplied by them to their clients/customers, and thereby have knowingly failed to correctly self assess the tax payable with an intent to evade payment of proper tax.

Suppression of facts or mis-statement as defined under Section 74 of the CGST Act, 2017 :

"74. (1) 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 wilful-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 utilised 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.

(2) to (6).....

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five percent of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty percent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.”

23. Penalty for certain offences as detailed under Section 122 of the CGST Act, 2017:

“122. (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)

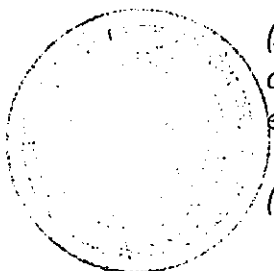
(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(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) to (ix)

(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

(xi) to (xiv)



(xv) suppresses his turnover leading to evasion of tax under this Act;

(xvi) fails to keep, maintain or retain books of account and other documents in accordance with 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.

(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)

(b) for reason of fraud or any willful 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.

(3) Any person who—

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made there under or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty-five thousand rupees.”

24. In view of discussions in the foregoing paragraphs, the evidences brought on record, statement of Shri Parixit Patel, Managing Director of M/s Nami, it appeared that:

- M/s Nami Steel Pvt. Ltd. is engaged in the manufacture of Stainless Steel Billets, Flats, Black Bar, Bright Bar etc. and is having its factory/ manufacturing facility at Survey No. 316(P), 317(P), 342 (P) & 343(P), Opp. Chharodi Railway Station, Nano Ford Road, Taluka. Sanand, Dist. Ahmedabad;
- M/s Nami Steel Pvt. Ltd. is a Private Limited Company came into existence in 2012. Shri Parixit Patel along with his father Shri Amrutbhai I. Patel are the Directors of the Company;
- M/s Nami Steel Pvt. Ltd. is registered with GST department and have been allotted GST No. 24AAECN0653R1Z5. They fall under the jurisdiction of Range-2, Division-III, Ahmedabad North GST Commissionerate;
- M/s Nami have filed GSTR-1 Return only for the period from July'2017 to January'2018 and filed GSTR-3B only for the month of July'2017 &

August'2017. They have neither filed GSTR-1 Return after January'2018 and nor paid GST from September' 2017 to April, 2018; M/s Nami knowingly failed to timely file the GSTR-1 and GSTR-3B returns under Section 37 and Section 39 respectively, with an intent to evade the payment of Tax at applicable rates for the period from Sept 2017 to April, 2018 before initiation of investigation by DGGI.

- Their GST liability for the period from July'2017 to April'2018 is Rs. 16,42,90,751/-, out of which they have paid GST liability for the month of July'2017 & August'2017 amounting to Rs. 3,14,14,613/- before initiation of this investigation on 30.10.2017 and 04.01.2018 respectively; As they have failed to discharge their GST liability on their entire taxable supplies for the period from Sept, 2017 to April, 2018, the same is required to be demanded and recovered from them.
- M/s Nami Steel Pvt. Ltd. have their unpaid GST liability for the period from September'2017 to April'2018 to the tune of Rs. 13,28,76,138/-. He further stated that out of this Output GST liability, they have Input GST Credit of Rs. 12,38,43,795/-;
- M/s Nami have paid GST for period from Sept, 2017 to Nov, 2017, amounting Rs. 3,97,61,783/- as per Table - A;
- On being asked about availing huge quantum of Input Tax Credit both at the starting of GST regime as well as during the period from July'2017 to April'2018 by M/s Nami Steel Pvt. Ltd it was explained that the value addition in their finished goods is on average 7-9% and most of the inputs are Cenvatable, therefore in general the tax liability to be discharged, by M/s Nami, through cash is lower. The Cenvat to Cash ratio has remained almost same during pre-GST regime as well as in GST regime. The difference is that in Central Excise regime the proportion of 'Cash' duty payment was more in Cenvat to Cash ratio for discharging their Central Excise duty liability. However their liability of VAT/ CST payment through 'Cash' was Nil during pre-GST era because the rate of VAT/ CST on our finished goods was lower than the VAT/ CST paid on inputs and therefore they always had accumulated Input Tax Credit of VAT/CST for discharging their output VAT/ CST liability;
- The reason for the huge quantum of Input Tax Credit of Rs. 31,05,532/- as Input Tax Credit of CGST & Rs. 83,83,042/- as opening balance of Input Tax Credit of SGST, available to them, at the beginning of July'2017, was that the Opening Balance of Rs. 31,05,532/- as Input Tax Credit of CGST

at the beginning of July'2017 was on account of regular Input Cenvat Credit on their inputs viz. Scrap, Ferro Alloys Furnace Oil, etc. Similarly, the Rs. 83,83,042/- as opening balance of Input Tax Credit of SGST at the beginning of July'2017 is on account of accumulated Tax Credit of VAT/CST on their input materials. The quantum of balance Input Tax Credit on account of VAT/CST is higher because pre-GST the raw material bore VAT @ 5%, however most of the finished goods sold by them attracted VAT @ 1%.

- M/s Nami had failed to file the stipulated returns (GSTR-3B) on time for the period Sept 2017 to April 2018. But later after initiation of inquiry, M/s. Nami had discharged the liability of Rs. 13,28,76,138/- through various challans and ITC.
- They had collected GST but not deposited the same to the Govt. exchequer during the period from Sept 2017 to April 2018. If this investigation had not been initiated by DGGI, AZU and inspection to their premises were not conducted; then the assessee would have continued their practice of suppressing the taxable income in their books of accounts and thereby evading GST, causing loss to Govt. exchequer. This shows that despite having knowledge of CGST Acts & Procedures, the act of mis-declaration by the taxpayer shows the suppression of facts and contravention of provisions with intent to evade payment of GST on the part of M/s Nami.
- The evasion of GST along with date of filing respective months GSTR-1M and GSTR-3B, by M/s.Nami on the taxable supplies made by them during the period from Sept 2017 to April 2017, details of the same along with GST return filing date and amount from July-2017 to June-18 are given as under in Table C:

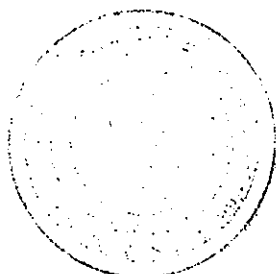
TABLE-C

(Amt. in Rs.)

Nami Steel Pvt Ltd (24AAECN0653R1Z5)						
Date of Initiation	11.06.2018					
Month-Year	Date of Filing of GSTR-1M	Taxable Value in GSTR-1M	Total Tax	Date of Filing of GSTR-3B	Taxable Value in GSTR-3B	Total Tax
Jul-17	NO DATE	71273425	12829223	30-10-2017	71814514	12872651
Aug-17	NO DATE	103252034	18585367	04-01-2018	103526285	18599106
Sep-17	10-01-2018	99728943	17951209	11-06-2018	100375632	17977918
Oct-17	10-01-2018	52175206	9391536	11-06-2018	52304909	9393873
Nov-17	10-01-2018	68948768	12410778	11-06-2018	69304262	12389993

Dec-17	05-02-2018	110868730	19956372	16-07-2018	111263953	19975615
Jan-18	06-03-2018	95513075	17192354	16-07-2018	96094196	17220590
Feb-18	02-07-2018	93450133	16821024	16-07-2018	93665168	16831786
Mar-18	02-07-2018	132130335	23783461	15-09-2018	132835132	23818711
Apr-18	28-09-2018	346132182	56639522	10-10-2018	85935097	15446372
May-18				10-10-2018	105545838	17692752
Jun-18				17-11-2018	158321446	24066732
						205560846

- M/s Nami, after initiation of inquiry had paid total outstanding GST liability as shown in Table D on the next page:



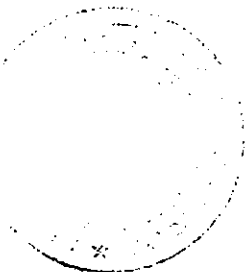
Details of payment of GST made by M/s Nami Steel Private Limited as reflect in GSTR-3B

Month	Taxable Value	Total GST payable				GST Paid through CASH	GST Paid through ITC			
		IGST	CGST	SGST	Total Payable		Total Tax Paid in Cash	IGST	CGST	SGST
1	2	3	4	5	6	7	8	9	10	11
Sep'17	10037563 2	2539368	7719275	7719275	17977918	1647371	2539368	6054652	7702023	16296043
Oct'17	52304909	1502565	3945654	3945654	9393873	1221880	1502565	2719735	3941615	8163915
Nov'17	69304262 11126395 3	1990661	5199666	5199666	12389993	0	1990661	5183363	5183363	12357387
Dec'17	96094193	1293360	7963615	7963615	17220590	1944715	1194996	8288577	8432553	17916126
Jan'18	93665168	948352	7941717	7941717	16831786	0	948352	7936341	7936341	16821034
Feb'18	13283513 2	2772939	1052288 6	1052288 6	23818711	3521690	2772939	7091554	1039728 8	20261781
Mar'18	85935097 8	3105838	6170267	6170267	15446372	3187690	1983604	5133316	5133316	12250236
April'18	74177834 6	16995878	5802949 0	5802949 0	13305485 8	13562875	1422379 2	49385137	5570409 8	119313027
Total										

Total GST paid (Cash + ITC)				Paid Under Reverse charge	Total GST paid + RCM			
IGST	CGST	SGST	Total Tax Paid	Total Tax Paid in RCM	IGST	CGST	SGST	Total Paid
12	13	14	15	16	17	18	19	20
2539368	7702023	7702023	17943414	34504	2539368	7719275	7719275	17977918
1502565	3941615	3941615	9385795	8078	1502565	3945654	3945654	9393873
1990661	5183363	5183363	12357387	32606	1990661	5199666	5199666	12389993
2842795	8556430	8556430	19955655	19960	2842795	8566410	8566410	19975615
1293360	7948930	7948930	17191220	29370	1293360	7963615	7963615	17220590
948352	7936341	7936341	16821034	10752	948352	7941717	7941717	16831786
2772939	10505266	10505266	23783471	35240	2772939	10522886	10522886	23818711
3105838	6166044	6166044	15437926	8446	3105838	6170267	6170267	15446372
16995878	57940012	57940012	132875902	178956	16995878	58029490	58029490	133054858

TABLE - D

(Amt in Rs)



25. Suppression of facts

The term "suppression" is specifically explained to mean:

- non-declaration of facts or information which a taxable person is statutorily required to declare in the return, statement, report or any other document furnished under the Act or the rules made thereunder, or
- failure to furnish any information on being asked for, in writing, by the proper Officer.

26. It is pertinent to mention here that the system of self-assessment is specifically incorporated in respect of GST under the provisions of Section 59 of the CGST Act, 2017. In the scheme of self-assessment, the department comes to know about the supplies made and payment made only during the scrutiny of the statutory returns filed by the taxpayers under Rule 59 made there under read with Section 39 of the CGST Act, 2017. Therefore, it places greater onus on the taxpayer to comply with higher standards of disclosure of information in the statutory returns.

74. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-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 utilised 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.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own

ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.—For the purposes of section 73 and this section,— (i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132; Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts.

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

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.

27. It is seen from the facts emerged during the investigation of the instant case that M/s Nami in order to suppress their taxable income from the department, they had not filed the GSTR-1 and GSTR-3B Returns timely under

Section 37 and Section 39 of CGST Act 2017, respectively for the period from Sept 2017 to April 2018. The fact about collecting and not depositing GST was detected only when the department (DGGI) initiated the present investigation. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of evaluation of tax behaviour of M/s Nami, it shows their intent to evade payment of GST by an act of omission in as much as M/s Nami though being well aware of the unambiguous provisions of the CGST, 2017 and Rules made there under, failed to disclose to the department at any point of time, their taxable income on which GST was collected but not paid by them, by way of not filing their GST Returns viz. GSTR-1 for Feb, 2018, March, 2018 and April, 2018 & GSTR-3B from Sept, 2017 to April, 2018 before initiation of the present investigation.

28 Therefore, it appeared that M/s Nami have wilfully suppressed the above facts with intent to evade payment of GST. And only after the initiation of enquiry M/s Nami had discharged their GST liabilities. Hence, as envisaged under Section 74 of CGST Act, 2017, for the demand and recovery of GST (CGST, SGST & IGST) as quantified in the subsequent para is applicable in the instant case.

29. M/s Nami had not discharged their regular GST liability for the period from Sept 2017 to April 2018, which is Rs. 13,28,76,138/- as per available records. Details from Sales/Supply Ledger are given in Table E below:

TABLE E (Amt in Rs.)

Details from Sales/Supply ledger				
Month-Year	CGST	SGST	IGST	TOTAL
Sep-17	7702023	7702023	2539368	17943414
Oct-17	3941615	3941615	1502565	9385795
Nov-17	5183363	5183363	1990661	12357387
Dec-17	8556430	8556430	2842795	19955655
Jan-18	7949408	7949408	1292642	17191457
Feb-18	7936341	7936341	948351	16821033
Mar-18	10505266	10505266	2772939	23783471
Apr-18	6166044	6166044	3105838	15437926
Total :	57940490	57940490	16995159	132876138

30. M/s Nami had completely discharged the GST liability at the tune of Rs. 13,30,54,858/- for the period from Sept, 2017 to April, 2018 as shown in table F below (please refer Table-D at page number 14 of this SCN):

TABLE – F

(Amt in Rs)

Details of payment of GST made by M/s Nami Steel Private Limited as per GSTR-3B							
Month' Year	Taxable Value	Total GST payable	Paid through CASH	Paid through ITC	Total GST paid (Cash + ITC)	Paid Under Reverse charge	Total GST Paid
Sep'17	100375632	17977918	1647371	16296043	17943414	34504	17977918
Oct'17	52304909	9393873	1221880	8163915	9385795	8078	9393873
Nov'17	69304262	12389993	0	12357387	12357387	32606	12389993
Dec'17	111263953	19975615	2039529	17916126	19955655	19960	19975615
Jan'18	96094193	17220590	1944715	15246505	17191220	29370	17220590
Feb'18	93665168	16831786	0	16821034	16821034	10752	16831786
Mar'18	132835132	23818711	3521690	20261781	23783471	35240	23818711
April'18	85935097	15446372	3187690	12250236	15437926	8446	15446372
			13562875	119313027	132875902	178956	133054858

31. From the above table, it appeared that M/s. Nami, during the period from Sept 2017 to April 2018 evaded and later paid the GST. But applicable interest under Section 50 of and a penalty under Section 74 equivalent to such amount need to be charged from them.

In light of the facts discussed hereinabove and the material evidences available on records, it is revealed that M/s. Nami have contravened the following provisions of the CGST Act, 2017:

- (i) Section 9 of the CGST Act, 2017, in as much as they failed to pay the appropriate GST on supply of taxable supply made by them to their customers/clients, with intent to evade payment of Tax;
- (ii) Section 15 of the CGST Act, 2017 in as much as they suppressed the actual value of the taxable supplies made by them, with an intent to evade payment of Tax.
- (iii) Section 35 of the CGST Act, 2017, in as much as they failed to maintain a true and correct account of outward supplies made by them and of the outward tax payable by them, with an intent to evade payment of Tax;
- (iv) Section 37 of the CGST Act, 2017 read with Rule 59 of the CGST Rules, 2017 in as much as they failed to file the GSTR-1 after Jan 2018 with an intent to evade payment of Tax;

- (v) Section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Act, 2017 in as much as they failed to file GSTR-3B returns for the period Sept 2017 to April 2018, with an intend to evade payment of tax;
- (vi) Section 49(8) of the CGST Act, 2017, in as much as they failed to discharge their tax liability, with an intend to evade payment of tax;
- (vii) Section 59 of the CGST Act, 2017, in as much as they failed to self assess their tax liability with an intend to evade payment of tax;
- (viii) Section 74 of the CGST Act, 2017 in as much as their wilful act of suppression and mis-declaration of facts with sole intention to evade GST;

32 M/s. Nami, have failed to discharge the applicable GST on the outward taxable supplies made by them on time during the period from Sept 2017 to April 2018. For their willful act of suppression and mis-declaration of facts with sole intention to evade GST, provision of Section 74 of CGST Act, 2017 is invocable for demanding GST for the period from Sept 2017 to April 2018 in the subject matter. Accordingly, GST of Rs. 13,28,76,138/- [Rupees Thirteen Crore Twenty Eight Lakh Seventy Six Thousand one Hundred Thirty Eight only) evaded by M/s. Nami, during the period from Sept 2017 to April 2018, M/s. Nami also appeared to be liable to pay interest as per Section 50 of the Finance Act, 1994 on the aforesaid evaded GST.

33 The GST amount evaded of Rs. 13,28,76,138/- paid through ITC and Challans, as discussed here-in above by M/s Nami during investigation, needs to be appropriated against their outstanding GST liability.

34. Further, all above acts of contravention constitute an offence of the nature as described under the provisions of Section 39, 49, 59, Section 122(1)(iii), 122(1)(iv), 122(1)(xvi) and 122(2)(b) of the CGST Act, 2017, rendering themselves liable to penalty under Section 74 and/or 122 of the CGST Act, 2017 for failure to file the statutory GST Returns duly discharging the tax liability, failure to pay tax, failure to self assess the tax liability and non-compliance of various provisions of the act leading to penalty under Section 122 of the CGST Act, 2017, as referred here-in-above.

35. The above said GST liabilities of M/s. Nami, for the period from Sept 2017 to April 2018, have been worked out on the basis of records/data/information withdrawn during inspection and received from M/s.



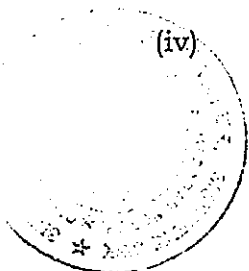
Nami subsequently. Thus, the present notice relates exclusively to the information available on record and period covered.

36. Shri Parixit Patel, Managing Director of M/s Nami in his statements dated 11.06.2018 has stated that all the works viz. accounting, taxation, billing etc. of M/s Nami were done under his supervision and he is fully responsible for all the act including the present evasion of GST by M/s Nami. Shri Parixit Patel has wilfully committed the act of collecting GST but not paying the same to the Govt. exchequer. Hence, proceedings are required to be initiated against him under Section 137(2) of the CGST Act, 2017.

37. M/s Nami was communicated the details of, interest and penalty due to them vide Form GST DRC-01A Part A dated 19.08.2020, under Rule 142(1A) of the CGST Rule, 2017. And M/s Nami replied to the same vide GST DRC-01A Part B dated 19.08.2020, under Rule 142(2A) of the CGST Rule, 2017, in which M/s Nami contest to pay applicable Interest and Penalty. Hence, the present Show Cause Notice is being issued.

38. Therefore, M/s Nami Steel Pvt. Ltd. Survey No. 316(P), 317(P), 342(P) & 343(P), Opp. Chharodi Railway Station, Nano Ford Road, Sanand, Distt-Ahmedabad were called upon to show cause to the Addl./Joint Commissioner, CGST, Ahmedabad - North, vide Show Cause Notice F.No. DGGI/AZU/36-32/2020-21 dated 31.08.2020 issued by the Joint Director, DGGI, Ahmedabad Zonal Unit, Ahmedabad as to why:-

- (i) The GST amount of Rs. 13,28,76,138/- [Rupees Thirteen Crore Twenty Eight Lakh Seventy Six Thousand one Hundred Thirty Eight only), evaded on providing such taxable supplies during the period from Sept 2017 to April 2018 should not be demanded and recovered from them under Section 74(1) of the CGST Act, 2017;
- (ii) The GST amount evaded of Rs. 13,28,76,138/- paid by them through ITC and Challans, as discussed here-in above by M/s Nami during investigation, should not be appropriated against their outstanding GST liability.
- (iii) Interest at applicable rates should not be demanded and recovered from them under Section 50 of the CGST Act, 2017 on the GST liability mentioned at Sr. No. (i) and (ii) above;
- (iv) Penalty should not be imposed upon them under Section 74 of the CGST Act, 2017 for non-payment of GST amounts mentioned in (i) and (ii) above.



- (v) Penalty should not be imposed upon them under Section 122 (1)(iii) of the CGST Act, 2017 for collecting tax and not depositing to the Government beyond a period of three months from the date on which such payment becomes due;
- (vi) Penalty should not be imposed upon them under Section 122 (1)(iv) of the CGST Act, 2017 for collecting any tax in contravention of the provisions of this Act but failing to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- (vii) Penalty should not be imposed upon them under Section 122 (1)(xvi) of the CGST Act, 2017 for failing to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
- (viii) Penalty should not be imposed upon them under Section 122(2)(b) of the CGST Act, 2017 for reason of fraud or wilful misstatement or suppression of facts to evade tax;
- (ix) Penalty should not be imposed upon them under Section 122 (1) of the CGST Act, 2017 for violating various provisions of law.
- (x) Proceedings against Shri Parixit Patel, Managing Director of M/s Nami Steel Pvt Ltd should not be initiated under Section 137 (2) of the CGST Act, 2017, for wilful suppression of the facts resulting in evasion of GST by M/s Nami Steel Pvt Ltd.

Defence Reply:

39. Vide letter dated 10.10.2020, M/s.Nami Steels submitted their reply to the show cause notice wherein they stated that -

39.1 They are engaged in manufacturing of stainless steel billets, flats, black bars, bright bars, etc. In pre-GST regime, they are availing the benefit of Cenvat credit on the inputs/ capital goods and input services under the provisions of the Cenvat Credit Rules, 2004 wherever applicable. Further, they were also availing the benefit of Input Tax Credit for the supply received in the course or furtherance of business under the Provision of Central Goods and Services Tax Act, 2017 ("CGST Act, 2017").

39.2 M/s. Nami submitted that on 01.07.2017, GST was introduced by the government of India and all the assesses registered in pre-GST regime, before the various authorities, were migrated into the GST regime. In GST regime, the M/s.Nami are required to file 3 monthly returns i.e. GSTR - 1 for the outward supply made during

the month, GSTR - 2 for the inward supply received during the month and GSTR - 3 for the payment of Tax. However, due to technical difficulties, the Central Board of Excise and Customs (CBEC) introduced simple tax return form i.e. GSTR - 3B for the payment of tax.

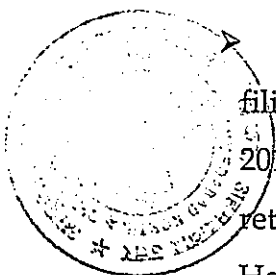
39.3 As information was received from DGGI, HQ, New Delhi, by the DGGI, Ahmedabad it was alleged that M/s. Nami have discharged their GST liability only for the period from July 2017 to August 2017 and filed GSTR - 3B for the said 2 Months. Based on the intelligence regarding evasion of GST by M/s. Nami, an inspection was conducted by officers of DGGI, AZU at their registered premises on 11.06.2018. During the visit various records were examined and preliminary inquiry revealed that after migration to GST regime, M/s. Nami have properly filed GSTR - 1 return for the period July 2017 to January 2018 however, they had only filed the GSTR - 3B return for the period July 2017 and August 2017 i.e. they had discharged the GST liability only for the said 2 months. Pursuant to the said investigation, summons was issued to Shri Parixit Patel, Managing Director of M/s. Nami, to give statement, which was duly provided by him and he duly accepted that they failed to file GSTR - 3B after August 2017.

39.4 M/s.Nami further stated that after the scrutiny of the documents and the GST returns it was found that they had filed GSTR - 1 return from July 2017 to January 2018 and filed GSTR - 3B for the month of July and August 2017. Their GST liability for the period September 2017 to January 2018 worked out to be Rs. 13,28,76,138/-. M/s.Nami duly accepted the objections raised during the inquiry and paid the liability of GST for the period September 2017 to April 2018 from the Input Tax Credit and through various challans.

39.5 M/s.Nami stated that the present show cause notice dated 31.08.2020 demanding the GST amounting to Rs. 13,28,76,138/- along with interest and penalty has been issued to them alleging that they had collected the GST amount however, failed to pay the same to the government in the GST (GSTR - 3B) returns filed for the period September 2017 to April 2018.

- M/s.Nami has stated that they had duly paid the GST liability at the time of inquiry and investigation.

Since GST being the new law and lot of confusions going on at the time of filing the return, they failed to file the GSTR - 3B for the month of September 2017 to April 2018 within the stipulated time period. With respect to GSTR - 1 return, they filed the GSTR -1 for the period July 2017 to January 2018. However, they failed to file return for the period February, 2018 to April 2018 i.e. for 3 months.



➤ M/s.Nami duly accepted the mistake and paid the GST liability in full which shows they do not have any malafide intention.

➤ M/s.Nami have paid the GST liability in full before issuance of show cause notice. Therefore, the show cause notice demanding the GST liability is itself bad in law and liable to be dropped.

➤ No suppression since the demand is based on the GSTR - 1 return which is public document.

➤ Nowhere in the SCN, reasons have been specified that they have suppressed the true taxable value. Merely non-filing of returns does not mean that they have suppressed the true taxable value.

➤ Further, it is pertinent to note that the demand raised in the show cause notice is based on the GSTR - 1 (outward supply) return which is a public document and it is trite law that if the information is available in the public document then the allegation of suppression cannot be sustained.

➤ M/s.Nami placed reliance on the case of *M/s Swarn Cars Pvt. Ltd. v. C.C.E., Kanpur 2020 (2) TMI 222*.

➤ Further, they submitted that the show cause notice nowhere clarified that why Section 122 (1) of the CGST, 2017 Act is invoked against them. It is a settled principle in law that, it is necessary for the assessee to be put on notice as to the exact nature of contravention for which the assessee was liable under the provisions of the law.

➤ They submitted that the need for a show cause notice to have a specific indication with regards to the precise provision under which the penalty is being imposed was emphasized by the Hon'ble Supreme Court in *Amrit Food v. Commissioner of Central Excise, U.P., [2005 (190) E.L.T. 433 (S.C.)]*. The said judgment has been followed by the Hon'ble High Court of *Punjab & Haryana in Commissioner of Central Excise, Jalandhar v. Max G.B. Limited [2008 (221) E.L.T. 491 (P & H)]* and by the Hon'ble High Court of Bombay in the case of *Commissioner of Central Excise & Customs v. Nakoda Textile Industries Limited [2009 (240) E.L.T. 199 (Bom.)]*.

➤ M/s.Nami submitted that it is well settled law that the burden of proof is on the Department to establish an act of suppression or mis-declaration with an intent to evade payment of tax. In this connection, they placed reliance on the following decisions:

(a) *Cosmic Dye Chemical vs. Collector of Central Excise, Bombay*

1995 (75) E.L.T. 721 (S.C.)

- (b) Tamil Nadu Housing Board vs. Collector 1994 (74) E.L.T. 9 (S.C.)
- (c) Cadila Laboratories Pvt. Ltd. vs. CCE 2003 (152) E.L.T. 262 (S.C.)
- (d) Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay 1995 (78) E.L.T. 401 (S.C.)
- (e) M/s. Continental Foundation Joint Venture Holding, Naphtha H.P. vs. CCE, Chandigarh-I 2007 (216) E.L.T. 177 (S.C.)
- (f) Alumeco Extrusion vs. CCE 2010 (249) ELT 577
- (g) National Rifles vs. CCE 1999 (112) E.L.T. 483
- (h) SPGC Metal Industries Pvt. Ltd. vs. CCE 1999 (111) E.L.T. 286
- (i) Gujarat State Fertilizers vs. CCE, Vadodara 1996 (84) E.L.T. 539
- (j) ITI (TID) Ltd. vs. CCE 2007 (11) ELT 316 (Tri)
- (j) Neyveli Lignite Corporation Ltd. vs. CCE 2007 (209) ELT 310 (Tri)
- (k) Commissioner vs. Bentex Industries 2004 (173) ELT A079 (SC)
- (l) Commissioner vs. Binny Limited 2003 (156) ELT A327 (SC)
- (m) Collector vs. Ganges Soap Works (P) Ltd. 2003 (154) ELT A234 (SC)

39.6 Moreover, in order to allege suppression, there must be a positive act on their part to withhold or hide the facts from the Department with a view to evade payment of tax. Mere non-payment of tax is not enough to allege that they are guilty of suppression. In this regard, reliance is placed on the following judgments:

- (i) Padmini Products v. CCE 1989 (43) ELT 195 (SC)
- (ii) CCE v. Chemphar Drugs & Liniments 1989 (40) ELT 276 (SC)
- (iii) GopalZardaUdyog v. CCE 2005 (188) ELT 251 (SC)

➤ 39.7 M/s.Nami stated that the Show cause notice does not disclose any specific acts in this case, of fraud and suppression with intent to evade tax liability. They have all along acted honestly in a bonafide manner.

➤ 39.8 M/s.Nami further stated that the entire issue is a question of interpretation of law and there was no intention or mensrea on their part to evade payment of tax. They submitted that for imposing penalty, there should be an intention to evade payment of tax. The penal provisions are only a tool to safeguard against intentional contravention of the provisions. In the present case, there is neither any contravention nor any intention to evade tax by them. Therefore, no penalty is imposable on them under Section 122 or Section 125 of the CGST Act, 2017. M/s.Nami placed reliance on the decision of the Hon'ble Supreme Court in the case of *Hindustan Steel Ltd. v. The State of Orissa [A.I.R. 1970 (S.C.) 253]*. The above decision of the Hon'ble Apex Court, was followed by the Hon'ble CESTAT in the case of *Kellner*

Pharmaceuticals Ltd. v. C.C.E. [1985 (20) E.L.T. 80] and it was held that proceedings under Rule 173Q are quasi-criminal in nature and as there was no intention on the part of the appellants to evade payment of duty the imposition of penalty cannot be justified. The ratio of these decisions applies in all force to the present case. In the present case, there was no intention to evade payment of tax. In view of the foregoing, no penalty can be imposed on them.

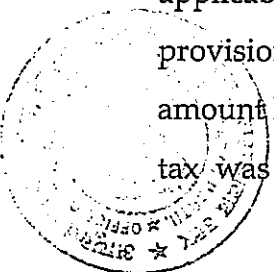
39.9 M/s.Nami stated that Section 74 of the CGST Act, 2017 will not be applicable in the present case. They submitted that the plain reading of the provision shows that Section 74 of the CGST Act, 2017 shall be fully applicable in cases where the tax was not paid for any reason other than fraud, suppression or mis-representation. However, in the present case the tax has already been paid by them before the issuance of demand notice and further there is no suppression by them as they have duly filed the GSTR - 1 return for the period September 2017 to January 2018. They placed reliance on the case of *M/s Commercial Steel Engineering corporation v. The state of Bihar &ors.2019 (7) TMI 1452*. They stated that the aforementioned judgement clarified that Section 73 of the CGST Act, 2017 cannot be invoked only for claiming the interest amount as the power vested under Section 73 is held per se illegal and an abuse of the statutory jurisdiction. Hence, the present show cause notice issued under Section 74 is per se illegal and liable to be set aside.

➤ 39.10 M/s.Nami stated that the GSTR - 3B is not a return and the same is pending before the supreme court which involves bona fide interpretation of law.

➤ 39.11 M/s.Nami referred to Section 39 of the CGST Act, 2017 and Rule 61 of the CGST Rules, 2017

➤ 39.12 M/s.Nami stated that the issued was decided by the Hon'ble Gujarat high Court in the case of *AAP & Co. v. UOI &Ors. SCA 18962 of 2018*, in which the Hon'ble high Court has held that the GSTR - 3B is not a return. However, the Hon'ble Supreme Court stayed the order of the Gujarat High Court but the same clarified that the present issue is an interpretation issue and cannot be said to be suppression of fact. Therefore, there is no suppression on their part Hence, the present show cause notice is liable to be dropped on this ground alone.

➤ 39.13 M/s.Nami stated that Section 122 (1) (iii), Section 122 (1) (iv) is not applicable in the present case. They submitted that they collected the amount as per the provisions of the CGST Act, 2017, that they have duly paid the amount of GST as the amount has been collected as per the provisions of CGST Act, 2017. Since, the amount of tax was not collected in contravention of Act, the present show cause notice with



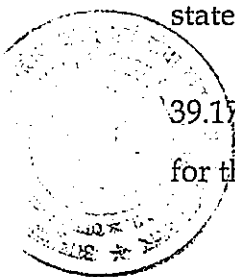
respect to Section 122 (1) (iv) is liable to be dropped. M/s.Nami stated that Section 122 (1) (xvi) are not applicable in the present case.

➤ 39.14 Section 126 will be applicable in the present case. They submitted that Section 126 of the CGST Act, 2017 is squarely applicable in the present case which states that no officer shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence. Since, they by mistake failed to furnish the GSTR - 3B which is already rectified by them by duly filing the GSTR - 3B returns and paid the tax liability by Input tax credit and various challans. Hence, the penalty should not be imposed on them.

➤ 39.15 M/s.Nami stated that they are liable to pay interest on the net tax dues on account of delayed filing of GSTR - 3B. They submitted that the levy of interest u/s 50(1) of the CGST Act, 2017 shall be payable only on the net tax liability i.e. total tax payable minus total eligible input tax credit. They referred to Section 50(1) of the CGST Act, 2017. They placed reliance on the case of *Eicher Motors Ltd. v. Union of India 1999 (106) E.L.T. 3 (S.C.)* has held that that the credit is as good as the tax paid. Said principle was also reiterated in the case of *Collector of Excise v. Dai IchiKarkaria Ltd. 1999 (112) E.L.T. 353 (S.C.)*. They also referred to the decision of Hon'ble Supreme Court in the case of *Pratibha Processors v. Union of India 1996 (88) E.L.T. 12 (S.C.)*. M/s.Nami submitted that they cannot be penalized by way of demanding the interest on the amount of tax paid by utilizing the ITC for the fault of the GSTN portal. It is settled principle that the taxpayer cannot be made to suffer for no fault (re: *Vision Distribution Pvt. Ltd. v. Commissioner W.P.(C) 8317/2019 (Del.)* wherein it has been held that the tax payer cannot be made to suffer on account of failure of the Government in devising smooth GST systems). Hence, they submitted that even on this ground interest cannot be demanded on the gross amount of output tax.

➤ 39.16 They referred to Section 50(2) of the CGST Act, 2017 and stated that till date no such rules have been formulated to prescribe the manner for calculating the interest u/s 50(1). Therefore, demanding the interest on the gross amount of tax is not in accordance with Sec. 50(2) in absence of any rule allowing such determination of interest amount on gross dues. They placed reliance on the decisions in the case of *M/s Landmark Lifestyle Vs. Union of India and Ors. (Case No. 6055/2019) (Del.)* and *BharatbhaiManilal Patel Vs. State of Gujarat (Case No. 17642 of 2019) (Guj.)* and stated that the interest shall be payable only on the net amount of tax payable.

39.17 M/s.Nami stated that no suppression in case of delay in filing the return for the period 2017-18 and 2018-19 (till April 2018). They submitted that after the



introduction of GST, technical and procedural issues were raised with respect to delay in filing the return. Hence, the Central Government issued notifications vide Notification No. 22/2018-C.T., dated 14-5-2018 whereby, the government waives the late fee payable under section 47 of the CGST Act for failure to furnish the return in FORM GSTR-3B by the due date for each of the months from October, 2017 to April, 2018. They also stated that Notification No. 41/2018-C.T., dated 4-9-2018 was issued whereby the Central government waives the late fee paid under section 47 of the CGST Act, by the registered persons whose return in FORM GSTR-3B of the CGST Rules, 2017 for the month of October, 2017, was submitted but not filed on the common portal, after generation of the application reference number. They submitted that the notification issued by the Central government clarifies that the portal is not working properly and in case the assesses are not able to file the return on time, the late fees will not be applicable. The fact clarifies that no filing of return on time cannot be said to be suppression of facts by them as due to technical difficulties they are not able to file the return on time. Hence, the present show cause notice is liable to be dropped.

39.18 M/s.Nami Steels craved leave to refer and rely upon any judgment/case law, as and when produced. They also craved leave to produce additional documents/affidavits, if any. They requested to quash the show cause notice and set aside. . They also requested that they be given an opportunity of personal hearing before a final decision is taken in the matter.

Personal Hearing:

40 Personal Hearing in this case was held on 01.07.2021. Shri Priyam Shah, CA, along with Shri Parixit Patel, Managing Director, appeared for the personal hearing. They stated that due to the dull situation in the market immediately after the implementation of the GST, they could not pay the GST within the stipulated time, as there huge amount outstanding to be collected by them. However, they had filed GSTR1 within time. They also filed two Returns of GSTR-3B. They have already paid the GST amount involved in the present show cause notice. They are ready to pay the interest. However, they requested to waive penalty in view of the financial constrains due to the prevailing situations in the market due to the Covid-19. They requested to consider their submission dated 10.10.2020. They also requested time of 20 days of further submission. Due to change in adjudicating authority, further PH was granted on 20.08.2021, 06.09.2021, 29.09.2021, 06.10.2021 and 17.11.2021. However, neither the assessee nor any representative attended the PH, hence the case is being decided ex-parte.

Discussion and findings:

41 I have carefully gone through the records of the case, submission made by M/s.Nami in reply to the personal hearing as well as during the course of personal hearing.

It is a fact that, based on information developed by DGGI, HQ, New Delhi that M/s Nami Steel Pvt Ltd, engaged in manufacturing activity of Stainless Steel Billets, Flats, Black Bars, Bright Bars etc, and were collecting but not discharging their GST liability, that they have discharged their GST liability only for the period from July 2017 & August 2017 and filed GSTR-3B Return for the said two months, M/s. Nami Steel Pvt. Ltd. had neither filed their GSTR-1 for the period after January 2018 nor discharged their GST liability after August 2017 for the period from September, 2017 to April, 2018.

42 Acting on the above intelligence an inspection was conducted by officers of DGGI, AZU, at the registered premises of M/s Nami Steel Private Limited, Ahmedabad on 11.06.2018. Various records were examined and preliminary inquiry revealed that after migration to GST regime, M/s Nami Steel Pvt. Ltd. have filed their GSTR-1 Return for the period from July'2017 to January'2018. It is further revealed they have only discharged their GST liability for the period from July'2017 & August'2017 and filed GSTR-3B Return for the said two months. M/s Nami Steel Pvt. Ltd. had neither filed their GSTR-1 for the period after January 2018 nor discharged their GST liability after August 2017. Scrutiny of documents provided by M/s Nami Steel Pvt. Ltd., their GST liability for the period from July 2017 to April 2018 worked out to Rs. 16,42,90,751/-. M/s Nami Steel Pvt. Ltd. had discharged their GST liability for the month of July 2017 & August 2017 amounting to Rs. 3,14,14,613/-. Therefore on preliminary scrutiny the unpaid GST liability of M/s Nami Steel Pvt. Ltd., for the period from September '2017 to April '2018 worked out to Rs. 13,28,76,138/-.

43 Summons was issued to Shri Parixit Patel, Managing Director of M/s Nami to give statement. Subsequently statement of Shri Parixit Patel was recorded on 11.06.2018, wherein he has accepted the outstanding GST liability of Rs. 13,28,76,138/- towards their regular GST liability for the period from September'2017 to April'2018.

44. M/s Nami has filed the GSTR-3B Returns on 11.06.2018 and have discharged their partial liability of Rs. 3,97,61,784/- for period from Sept, 2017 to Nov, 2017 out of which Rs. 3,68,17,345/- was paid through ITC and Rs. 29,44,439/- was paid in cash towards part payment of their remaining liability vide various challans.

45. Scrutiny of the GST returns revealed that M/s Nami have filed GSTR-1 Return from July'2017 to January'2018 and filed GSTR-3B for the month of July 2017 & August 2017 only. Their GST liability for the period

from July 2017 to April 2018 is Rs. 16,42,90,751/-, out of which they have paid GST liability for the month of July 2017 & August 2017 amounting to Rs. 3,14,14,613/-; However, they have not paid GST from September'2017 to April 2018 for which total liability is Rs. 13,28,76,138/-;

46. Subsequent to initiating the inquiry, M/s Nami had paid the Tax for the months of September, 2017, October, 2017 and November, 2017, which calculated at Rs. 3,97,61,784/-. Thereafter, on various dates through challan and through ITC, M/s.Nami had paid remaining outstanding liability for period from Dec,2017 to Apr, 2018, which calculated at Rs. 9,31,89,306/-

47. It is also a fact that during the investigation of the instant case, M/s Nami in order to suppress their taxable income from the department, had not filed the GSTR-1 and GSTR-3B Returns timely under Section 37 and Section 39 of CGST Act 2017, respectively for the period from Sept 2017 to April 2018. The fact about collecting and not depositing GST was detected only when the department (DGGI) initiated the present investigation. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of evaluation of tax behaviour of M/s Nami, it shows their intent to evade payment of GST by an act of omission in as much as M/s Nami though being well aware of the unambiguous provisions of the CGST, 2017 and Rules made there under, failed to disclose to the department at any point of time, their taxable income on which GST was collected but not paid by them, by way of not filing their GST Returns viz. GSTR-1 for Feb, 2018, March, 2018 and April, 2018 & GSTR-3B from Sept, 2017 to April, 2018 before initiation of the present investigation.

48. All these facts have not been denied by M/s.Nami. On the other hand, they admitted the tax liability and paid the GST amounting to Rs.13,28,76,138/-. Investigation of the instant case that M/s Nami in order to suppress their taxable income from the department, had not filed the GSTR-1 and GSTR-3B Returns timely under Section 37 and Section 39 of CGST Act 2017, respectively for the period from Sept 2017 to April 2018. The collection of GST and not depositing the same was detected only after the department (DGGI) initiated the present investigation. As already stated above, various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be

established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of evaluation of tax behaviour of M/s Nami, it shows their intent to evade payment of GST by an act of omission in as much as M/s Nami though being well aware of the unambiguous provisions of the CGST, 2017 and Rules made there under, failed to disclose to the department at any point of time, their taxable income on which GST was collected but not paid by them, by way of not filing their GST Returns viz. GSTR-1 for Feb, 2018, March, 2018 and April, 2018 & GSTR-3B from Sept, 2017 to April, 2018 before initiation of the present investigation.

49. In reply to the show cause notice, M/s.Nami stated that-

They had accepted the mistake and paid the GST liability at the time of inquiry/investigation, before issue of show cause notice, no suppression is involved in the present case as the demand is based on GSTR-1 which is public document, Section 122(1), Section 122(1)(iii), Section 122(1)(iv) and Section 122(1)(xvi) of the CGST Act, 2017 is not applicable. They stated that Section 126 will be applicable in the present case. They also stated that interest is not applicable in the present case and the interest is payable on the net GST amount. They relied upon a large number of case laws in their favour and requested to drop the proceedings.

50. I find that the GST liability worked out by the investigating officials of DGGI has not been questioned/challenged by M/s.Nami. Further, I find that in the present case, after implementation of GST, M/s.Nami had discharged GST liabilities only for the period from July 2017 and August 2017 and also filed GSTR-3B for the said two months. They had also not filed their GSTR-1 Return after January 2018 nor discharged their GST liability after August 2017 for the period from September 2017 to April 2018. This fact has not denied by M/s.Nami. They paid the GST liabilities after the inquiry was initiated by the DGGI officials. However, they did not pay interest or penalty as applicable in the GST laws.

51. I find that during the course of recording the statement of Shri Parixit Patel, Managing Director of M/s.Nami Steel Pvt.Ltd on 11.06.2018, before the DGGI, AZU, he admitted the GST liability and assured to discharge their GST liability as soon as possible. Subsequently, they paid the dues through ITC and challans. It is also true that he has collected the GST from their customers. Therefore, M/s.Nami was under obligation to pay the GST at the rate applicable at the time of supply to their clients in terms of Section 12 of the CGST Act, 2017. The CGST Act also prescribes for payment of interest on

delayed payments, penalty for offences as detailed under Section 122 of the CGST Act, 2017. The CGST Act, 2017 has been enacted by an Act of Parliament. Therefore, M/s.Nami can not escape from the statutory obligation binding upon them for assessment based upon correct valuation, payment of Tax, filing of Returns etc. The CGST Act 2017, also prescribe for payment of interest on delayed payment and penalty for default and from Tax evaders. M/s.Nami can not seek any exemption from the statutory provisions of CGST Act, 2017 and Rules made thereunder as they have willfully evaded the payment of GST and by not filing their statutory Returns as prescribed by the law. Therefore, I find that their argument for non-payment of interest and penalty is just an excuse and they can not escape from the statutory provisions of CGST Act, 2017 and rules made thereunder.

52. During the course of personal hearing, Shri Priyam Shah, CA along with Shri Parixit Patel, Managing Director of M/s.Nami Steel appeared and stated that they have already paid the GST and are ready to pay interest and requested for waiver of penalty. Their admission of mistake on their part for non-payment of GST for the period from September 2017 to April 2018 itself is a prove of their deliberate attempt to avoid payment of GST on the pretext of fund unavailability. The non-payment of GST during the said period was not informed by them to the Department at any stage. It is only during the course of investigation and verification by DGGI officials, the non-payment of GST to the tune of Rs.13,28,76,138/- was revealed. Therefore, I do not consider any merit in their submission that they are not liable for payment of interest and penalty. On the other hand, admitting their mistake of non-payment of GST, M/s.Nami should have paid the interest and mandatory penalty as applicable immediately on detection of the GST evasion. Even after receipt of show cause notice, they have not paid up the interest and penalty.

53. M/s.Nami has relied a large number of case laws citing they are not liable to pay interest and penalty. They blamed the transitional period of implementation of GST for financial crisis for non-payment of GST. M/s.Nami even after admitting their mistake, tried to question the charges leveled in the show cause notice arguing that interest and penalty are leviable in this case. I find that M/s.Nami had charged GST from their customers and failed to deposit with the Government. Therefore, definitely there is a wilful act of suppression and misdeclaration on their part for their failure to discharge the GST liability. In view of the fact of the actual liability has been accepted by M/s. Nami and they have paid the GST liability for the notice period in question, the issue involved in the present case can not be comparable with the case laws cited by M/s.Nami.

54. In view of the above discussion it is obvious that that M/s. Nami have contravened the following provisions of the CGST Act, 2017:

- (i) Section 9 of the CGST Act, 2017, in as much as they failed to pay the appropriate GST on supply of taxable supply made by them to their customers/clients, with intent to evade payment of Tax;
- (ii) Section 15 of the CGST Act, 2017 in as much as they suppressed the actual value of the taxable supplies made by them, with an intent to evade payment of Tax.
- (iii) Section 35 of the CGST Act, 2017, in as much as they failed to maintain a true and correct account of outward supplies made by them and of the outward tax payable by them, with an intent to evade payment of Tax;
- (iv) Section 37 of the CGST Act, 2017 read with Rule 59 of the CGST Rules, 2017 in as much as they failed to file the GSTR-1 after Jan 2018 with an intent to evade payment of Tax;
- (v) Section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Act, 2017 in as much as they failed to file GSTR-3B returns for the period Sept 2017 to April 2018, with an intend to evade payment of tax;
- (vi) Section 49(8) of the CGST Act, 2017, in as much as they failed to discharge their tax liability, with an intend to evade payment of tax;
- (vii) Section 59 of the CGST Act, 2017, in as much as they failed to self assess their tax liability with an intend to evade payment of tax;
- (viii) Section 74 of the CGST Act, 2017 in as much as their wilful act of suppression and mis-declaration of facts with sole intention to evade GST;

55. Therefore, M/s. Nami, have failed to discharge the applicable GST on the outward taxable supplies made by them on time during the period from Sept 2017 to April 2018. Therefore, I find that there is a willful act of suppression and mis-declaration of facts on the part of M/s.Nami with sole intention to evade GST, and accordingly, provision of Section 74 of CGST Act, 2017 is invocable for demanding GST for the period from Sept 2017 to April 2018 in the subject matter. Accordingly, GST of Rs. 13,28,76,138/-[Rupees Thirteen Crore Twenty Eight Lakh Seventy Six Thousand one Hundred Thirty Eight only) evaded by M/s. Nami, during the period from Sept 2017 to April

2018, M/s. Nami also liable to pay interest as per Section 50 of the Finance Act, 1994 on the aforesaid evaded GST.

56. The GST amount evaded of Rs. 13,28,76,138/- paid through ITC and Challans, as discussed here-in above by M/s Nami during investigation, is to be appropriated against their outstanding GST liability.

57. Further, all above acts of contravention constitute an offence of the nature as described under the provisions of Section 39, 49, 59, Section 122(1)(iii), 122(1)(iv), 122(1)(xvi) and 122(2)(b) of the CGST Act, 2017, rendering themselves liable to penalty under Section 74 and/or 122 of the CGST Act, 2017 for failure to file the statutory GST Returns duly discharging the tax liability, failure to pay tax, failure to self assess the tax liability and non-compliance of various provisions of the act leading to penalty under Section 122 of the CGST Act, 2017, as referred here-in-above.

58. The above said GST liabilities of M/s. Nami, for the period from Sept 2017 to April 2018, have been worked out on the basis of records/data/information withdrawn during inspection and received from M/s. Nami subsequently. Thus, the present notice relates exclusively to the information available on record and period covered.

59. Shri Parixit Patel, Managing Director of M/s Nami in his statements dated 11.06.2018 has stated that all the works viz. accounting, taxation, billing etc. of M/s Nami were done under his supervision and he is fully responsible for all the act including the present evasion of GST by M/s Nami. Shri Parixit Patel has wilfully committed the act of collecting GST but not paying the same to the Govt. exchequer. Hence, SCN proposed action to be initiated against him under Section 137(2) of the CGST Act, 2017.

60. M/s Nami was communicated the details of, interest and penalty due to them vide Form GST DRC-01A Part A dated 19.08.2020, under Rule 142(1A) of the CGST Rule, 2017. And M/s Nami replied to the same vide GST DRC-01A Part B dated 19.08.2020, under Rule 142(2A) of the CGST Rule, 2017, in which M/s Nami contested to pay applicable Interest and Penalty. I find that as per the statutory provisions of the GST, M/s.Nami has to pay interest on the amount of GST evaded by them along with penalty.

61. Therefore, I find that the show cause notice has been rightly proposed by the Department, demanding GST to the amount of Rs.13,28,76,138/-, proposing to appropriate the GST amount of Rs.13,28,76,138/- already paid by them, demanding interest and proposing penalties under various Section of CGST Act, 2017.

62. I find that the show cause notice has proposed proceedings against Shri Parixit Patel, Managing Director of M/s.Nami Steels Pvt.Ltd under Section 137(2) of the CGST Act, 2017 for wilful suppression of the facts resulting in evasion of GST by M/s.Nami Steels Ltd. I find that in the present case, though M/s.Nami had not discharged their GST liabilities for the period from September 2017 to April 2018 and not filed their GSTR-1 for the period after January-2018, after detection of the evasion by the DGGI officials, they had discharged their GST liabilities to the tune of Rs.13,28,76,138/- for the period from September 2017 to April 2018. During the course of personal hearing, M/s.Nami stated that due to the dull situation in the market immediately after the implementation of GST, they could not pay the GST within the stipulated time, as there were huge amount outstanding to be collected by them. However, they had filed GSTR-1 within time. They had also filed two Returns of GSTR-3B. They have already paid the GST amount involved in the present show cause notice and they are ready to pay the interest.

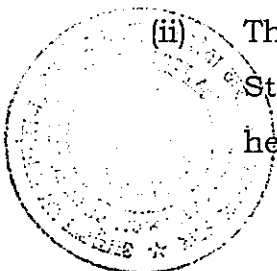
63. I find that M/s.Nami has paid up their GST liability during the period of dispute after initiation of inquiry by the DGGI officials. During the personal hearing, they made their commitment to pay the interest. Also, being their first offence under the GST regime, I am of the view that a chance to improve their compliance should be given to the tax payer. Therefore, I do not agree with the proposal to take action under Section 137(2) of the CGST Act, 2017 against Parixit Patel, Managing Director of M/s.Nami Steels Pvt.Ltd in the present case.

64. In view of the discussion and my findings above, I pass the following orders-

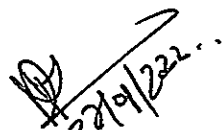
ORDER

(i) I confirm the GST amount of Rs. 13,28,76,138/- [Rupees Thirteen Crore Twenty Eight Lakh Seventy Six Thousand one Hundred Thirty Eight only), evaded by M/s.Nami Steels Pvt.Ltd, Ahmedabad, on providing such taxable supplies during the period from Sept 2017 to April 2018 recovered from them under Section 74(1) of the CGST Act, 2017;

(ii) The GST amount evaded of Rs. 13,28,76,138/- paid by M/s.Nami Steels Pvt.Ltd, through ITC and Challans, during investigation, is hereby appropriated against their outstanding GST liability.



- (iii) I order that interest at applicable rates be recovered from M/s.Nami Steels Pvt.Ltd, under Section 50 of the CGST Act, 2017 on the GST liability mentioned at Sr. No. (i) above;
- (iv) I impose a penalty of Rs. 13,28,76,138/- [Rupees Thirteen Crore Twenty Eight Lakh Seventy Six Thousand one Hundred Thirty Eight only), on M/s. Nami Steels Pvt.Ltd, Ahmedabad, under Section 74 of the CGST Act, 2017.
- (v) I impose a penalty of Rs. 13,28,76,138/- [Rupees Thirteen Crore Twenty Eight Lakh Seventy Six Thousand one Hundred Thirty Eight only), on M/s.Nami Steels Pvt.Ltd, Ahmedabad, under Section 122 (1)(iii), of the CGST Act, 2017, under Section 122 (1)(iv) of the CGST Act, 2017, under Section 122 (1)(xvi) of the CGST Act, 2017, under Section 122(2)(b) of the CGST Act, 2017 and under Section 122 (1) of the CGST Act, 2017
- (vi) I do not propose to initiate proceedings against Shri Parixit Patel, Managing Director of M/s Nami Steel Pvt Ltd under Section 137 (2) of the CGST Act, 2017.


(Mukesh Rathore)
Additional Commissioner,
CGST & C. Excise,
Ahmedabad (North)

F.No.GST/15-227/OA/2020
By Regd. Post A.D.

Dtd. 20/01/2022

To,

M/s Nami Steel Pvt. Ltd.
Survey No. 316 (P), 317 (P), 342 (P) & 343 (P),
Opp. Chharodi Railway Station,
Nano Ford Road, Sanand,
Distt- Ahmedabad, Gujarat-382170

Copy to:-

(1) DIRECTORATE GENERAL OF GOODS & SERVICES TAX INTELLIGENCE, ZONAL UNIT,
6th & 7th Floor, I- The Address Building, Near Sola Flyover, Science City Road, Sola,
Ahmedabad-380060

(2) The Commissioner, Central GST & Central Excise, Ahmedabad - North

(3) The Deputy/Assistant Commissioner, CGST, Division - III Sanand,
Ahmedabad - North Commissionerate.

(4) The Superintendent, Range - II, Division - III Sanand, Ahmedabad - North
Commissionerate.

(5) Guard file.