Government of Maharashtra
Department of Goods and Services Tax
Office of the Assistant Commissioner of State Tax,
(MUM-INV-D-024)
Cabin No. B-4, 3rd Floor, Old Building, GST Bhavan, Mazgaon, Mumbai- 400010,
Tel-022-23760314, Email:

FORM GST DRC – 07

[Order u/s 74 of MGST Act, 2017; Refer Rule 142 (5)]

No.AC-D-24/INV-B/ Sudal Industries Ltd /DRC-07/2024-25/ B-87 /Mumbai, dated- 12.08.2024

SUMMARY OF THE ORDER

A. Any person deeming himself aggrieved by this Order may appeal against this Order to the Appellate Authority, Deputy Commissioner of State Tax (DC-Appeal-III) (CST-APP-E-003), 8th floor, D-11, GST Bhavan Mazgaon, Mumbai-400010 within 3 months period from the date of communication of this order.

B. The Appeal should be filed in Form No. GST-APL-01 through Common Portal. The appeal shall be accompanied by a copy of the order appealed against, digitally signed by the appellant. All supporting documents should be uploaded on common portal while filing appeal.

C. Details of the case and the grounds etc., if not possible to describe in the appeal to be filed online, may be prepared separately and uploaded at the time of filing of appeal.

D. The appeal against this order shall lie before the Appellate Authority on payment of the prescribed fee and other charges, if any, under the provisions of Section 107 of GST Act, 2017. The payment shall be made through common portal at the time of filing the appeal.

To,

M/s.	:-	**M/s. SUDAL INDUSTRIES LIMITED**
GSTIN	:-	**27AAACS0705K1ZJ**
Address	:-	2nd, 26, Nariman Bhavan, Nariman Point, Mumbai - 400021.
Email	:-	mumbai@sudal.co.in
Contact No.	:-	+91-22-22023845, 61577100, 61577177

Tax period: 1st April 2020 to 31st March-2021
Financial Year: 2020-21

Ref. –

1. Case ID- ARN- AD2708210113594
2. Investigation visit dtd.10/08/2021
3. This office request letter B- 195/ 22/02/2022 for discharging tax liability
4. Personal hearing of Mr. Sudarshan Chokhani (Director) and Mr. Shirish Raut (Purchase manager) on 02/03/2022 and on 08/02/2022 respectively and personal hearing of Mr. Mukesh Ashar (CFO) on 02/03/2022 and 08/03/2022 and 15/03/2022.

5. Intimation Reference No.: Case ID- AD270722031908V DRC-01A dated 29.07.2022 issued to the Noticee
6. No reply received from the Noticee to DRC-01A.
7. Show Cause Notice vide DRC-01 dated 31.10.2022 - No.AC-D-24/INV-B/ Sudal Industries Ltd /DRC-01/2022-23/B- 54 /Mumbai, dated- 31.10.2022 issued to the Noticee
8. Adjournment sought vide letter dated 30.11.2022 by the Noticee and extension of time by 4 weeks to file its reply
9. Adjudication proceedings put on hold on Noticee's request and grounds of natural justice for 4 weeks.
10. Written submissions dated 29.12.2022 filed by the Noticee in reply to the SCN dated 31.10.2022
11. Reminder on 29.07.2024 issued to Noticee granting Personal Hearing (PH) on 07.08.2024
12. PH attended by the Noticee's authorised persons and additional reply filed in response to the said SCN dated 31.10.2022

[At the outset, I would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST act also mean a reference to the same provisions under the MGST ACT, further to the earlier, henceforth for the purpose of this proceedings, GST Act would mean CGST Act and MGST Act.]

A) <u>Brief facts of the case:</u>

1. **M/s. SUDAL INDUSTRIES LIMITED** (hereinafter referred to as the **Noticee**) is a registered Taxpayer under GST Act, 2017 having GSTIN - **27AAACS0705K1ZJ**, w.e.f. 01.07.2017 and having its

registered address of Principal Place of Business as 26A, Nariman Bhavan, Nariman Point, Mumbai -400021.

2. Investigation visit u/s 67 of the MGST Act 2017 was conducted at the place of Business of M/s Sudal Industries Limited, GSTIN 27AAACS0705K1ZJ on dated 10/08/2021. The taxpayer is engaged in the trading in metal and scrap Commodities covered by HSN code 76042100/ 76042930/ 76041039/ 76041020/ 76042990.
3. During Investigation visit u/s.67 of MGST Act, 2017 conducted at your place of business on dated 10/08/2021, on verification of GST return it is observed that tax payer has availed excess Input Tax Credit (ITC) of Rs.57,91,743/- in GSTR3B than as reflected in GSTR2A.
4. On verification of GST returns and books of accounts, it was found that, tax payer has declared less sale in GSTR-3B than his Sales Register at Rs. 1,66,689/-.
5. On verification of GST returns and books of accounts, it is also observed that, there was disposal of fixed assets at Rs. 47,39,000/- on which tax was not paid.
6. During Investigation visit u/s.67 of MGST Act, 2017 conducted at your place of business on dated 10/08/2021, it is found that M/s. Sudal Industries Ltd. has availed ITC of Rs.6,13,60,586/- from non-genuine/non-existent/registration Cancelled entities namely M/s. Dolphin Overseas, GSTIN 27AJFPM4268C1Z9 and M/s. Prime Overseas, GSTIN 27AULPS2114E2ZP.
7. The Noticee was issued DRC-01A vide Intimation No.: AC (D-024)/SGST/27AAACS0705K1ZJ/DRC-01A/Mumbai, Date: 28.07.2022 Case ID No. Assignment No. AD2708210113594 and directed to file its reply to the said DRC-01A by 17.08.2022. (hereinafter referred to as the **said DRC-01A**). However, the Noticee failed to respond to the said DRC-01A.

8. Subsequently, after 3 months of issuance of DRC01A and on no reply being filed by the Noticee, Show Cause vide DRC-01 dated 31.10.2022 - No.AC-D-24/INV-B/ Sudal Industries Ltd /DRC-01/2022-23/B- 54 /Mumbai, dated- 31.10.2022 was issued to the Noticee. (hereinafter referred to as the **said SCN/DRC-01**)
9. In response to the said DRC-01, the Noticee filed submitted a letter dated 30.11.2022, the Noticee sought adjournment and requested for 4 weeks' time to file its reply to the said DRC-01.
10. In view of the Noticee's aforementioned request and to ensure natural justice, adjudication of the said SCN was not carried out.
11. The Noticee finally filed its reply to the said DRC-01 vide its written submission dated 29.12.2022.
12. The Noticee was granted Personal Hearing on 07.08.2024 which was attended by Mr. Ashish Agarwal (CA) and Mr. Mukesh Ashar (Director) and wherein the Notice submitted additional written submissions in response to the said DRC-01.

B) <u>Issues communicated to the Noticee:</u>

13. Excess ITC claimed in GSTR-3B but not confirmed in GSTR-2A:

During investigation, after scrutinizing of GST returns it was found that, tax payer has availed excess Input Tax Credit of Rs. 57,91,743/- in GSTR-3B than reflected in GSTR-2A. The details are as under –

FY	ITC claimed in GSTR-3B	Accrued as per GSTR-2A	Difference (3B-2A)
2020-21	12,61,15,642	12,03,23,899	57,91,743

14. Difference in Net tax liability:

During Investigation, it was found that, tax payer has declared less sale in GSTR-3B than his Sales Register at Rs. 1,66,689/-. The details are as under –

Tax Period	Net Tax as per GSTR 3B	Net Tax as per Sales Register	Differential Tax Liability
2020-21	14,67,01,031	14,68,67,720	1,66,689

15. Disposal of fixed assets reported in financials:

On verification of books of accounts of the company, it was found that, tax payer has reported assets disposal of Rs. 47,39,000/- but tax on such disposal of assets was not found paid for the period 2020-21. Tax payable on such assets' disposal at Rs. 9,63,220/-.

16. Inward supplies from M/s Dolphin Overseas and M/s Prime Overseas having with claim of ITC:

a) Independent investigation of above these two suppliers, proprietor of M/s. Dolphin Overseas and proprietor of M/s Prime Overseas were arrested for offence u/s 132 of MGST Act 2017 and charge sheet has been filed against the proprietor of said entities before the Hon courts.

b) During investigation, it was found that you have availed Input Tax Credit at Rs 6,13,60,586/-for the period 01/04/2020 to 31/03/2021 from following suppliers.

Sr. No.	Name of Supplier	GSTIN	ITC (Rs.)	RC Status	Remarks
1	Dolphin Overseas	27AJFPM4268C1Z9	6,08,91,686	Cancelled suo-moto by Tax Officer	Registration cancelled for the reason "*Fraud, wilful misstatement, suppression of*

					facts".
2	Prime Overseas	27AULPS2114E2ZP	4,68,718	Cancelled suo-moto by Tax Officer	Registration cancelled for the reason "*Rule 22(1)/ sub-rule (2A) of rule 21A*".
		Total	6,13,60,586		

c) These two Suppliers had fraudulently availed input tax credit and said Input tax credit was passed to you at Rs. 6,13,60,586/-. The transactions through which Input tax credit has been passed to you by these supplying entities on said transactions actual tax had not been paid at any point of time in government treasury in contravention to section 16(2)(c) of MGST Act,2017 is violated .

d) Investigation visit u/s 67 of MGST Act, 2017 was conducted in the case of M/s. Dolphin Overseas GSTIN-27AJFPM4268C1Z9. During investigation, it is noticed that M/s. Dolphin Overseas has claimed ITC at Rs.27,76,58,212/- in Form GSTR-3B for the periods 2018-19, 2019-20, 2020-21 & 2021-22 (upto July-21); but inward ITC of Rs.20,49,98,431/- only is found accrued in GSTR2A of M/s.Dolphin Overseas for the same periods. Thus, there is a claim of ITC of Rs.7.27 Cr in excess of that accrued in GSTR-2A. Further, Smt. Prima Mhatre, Proprietor of M/s. Dolphin Overseas has been found preparing sales invoices of its own inward suppliers further showing them as purchases in its own firm and maintained accounts of such entities at the place of business of M/s. Dolphin Overseas. It was also revealed that Smt. Prima Mhatre has availed fake Input Tax Credit at Rs.18, 84, 54,513/- from non-existent/non-genuine entities/registration cancelled suppliers. Hence, the action of arrest under section 69 of the MGST Act, 2017 has been taken against Smt. Prima Mhatre, Proprietor of M/s. Dolphin Overseas for the offences committed under section 132 of the MGST Act, 2017. The details of fake Input Tax Credit availed by M/s Dolphin Overseas are depicted in the Table below:

Non-existent/Non-genuine/Registration Cancelled Suppliers of M/s Dolphin Overseas

Srno	GSTIN	Name of the Supplier	Input Tax Credit	Date of GST Registration	Date of Cancellation of GST Registration	Reason for GST Registration cancellation	Investigation/ Enquiry Authority
1	GSTIN - 27BHBPS8250H1Z3	M/s Arjun Enterprises	50244551	17/01/2020	01/04/2021	Fraud, wilful misstatement, suppression of facts.	Assistant Commissioner of State Tax (D-022), Investigation - B, Mumbai.
2	GSTIN - 27AMAPK9161C1Z8	M/s Shree VDC Star	36806133	01/12/2020	01/12/2020	Taxpayer Non-existent at place of business.	Investigation conducted by Assistant Commissioner of State Tax (D-027), Investigation-B, Mumbai.
3	GSTIN - 27CIHPB1175J1ZB	M/s Reader Impex	30186106	30/10/2019	31/10/2019	Wrongful availment or utilization of Input Tax Credit or Refund.	Investigation conducted by Assistant Commissioner of State Tax (D-026), Investigation-B, Mumbai.
4	M/s Asheerwad Enterprises	GSTIN - 27BCSPP0189C3Z9	18415750	03/03/2021	03/03/2021	Fraud, wilful misstatement, suppression of facts.	Investigation conducted by Assistant Commissioner of State Tax (D-043), Investigation-B, Mumbai.

5	M/s Decslane Trading Private Limited	GSTIN - 27AAHCD9264 F1ZE	11713803	09/09/2020	09/09/2020	Principal place of business not found/ available at the time of field visit.	Investigation conducted by Assistant Commissioner of State Tax (D-022), Investigation-B, Mumbai.
6	M/s Arvind Enterprises	GSTIN - 27AOVPB2420 A1ZG	9467790	01/07/2017	01/07/2017	Principal place of business not found/ available at the time of field visit.	Investigation conducted by Assistant Commissioner of State Tax (D-037), Investigation-B, Mumbai.
7	M/s Prime Overseas	GSTIN - 27AULPS2114 E2ZP	5753362	11/03/2019	11/03/2019	No business activity has been found at place of business.	Investigation conducted by Assistant Commissioner of State Tax (D-022), Investigation-B, Mumbai.
8	M/s Hexa Enterprises	GSTIN - 27AXPPP8556 Q1Z4	5657617	21/12/2020	21/12/2020	Registration taken by third person with fraudulent intention.	CGST Palghar issued vide letter F.No.VV/Pre.Gr - II/Inv/Hexa/42 1/2021dated 21/06/2021 to cancel the registration with ab-initio effect as registration taken by third person with fraudulent intention, the GST registration is hereby cancelled under section 29 of the CGST Act.
9	M/s Swaastik Trading Corp	GSTIN - 27ADTPN6023 C2ZH	5534512	21/12/2020	30/04/2020	Fraud, wilful misstatement, supression of facts.	Investigation conducted by Assistant Commissioner of State Tax (D-027), Investigation-B, Mumbai.
10	M/s Umang Enterprises	GSTIN - 27ATWPA3705 B1ZY	5234762	03/03/2021	19/08/2021	Fraud, wilful misstatement, supression of facts.	Investigation conducted by Assistant Commissioner of State Tax (D-016), Investigation-B, Mumbai.
11	M/s S S Traders	GSTIN - 27DTSPS1202 N1Z4	371970	17/07/2020	17/07/2020	Taxpayer has not filed returns for a continuous period of six months.	Investigation conducted by Assistant Commissioner of State Tax (D-025), Investigation-B, Mumbai.

12	M/s Nesa Global	GSTIN - 27AFYPJ5270L1ZN	2608077	15/07/2019	30/09/2019	Failure to furnish returns for a continuous period of six months.	Registration Cancelled by State Tax Officer (C-016), Thane.
13	M/s Manohar & Co	GSTIN - 27ACPPM9855L1ZK	2177364	17/06/2021	31/07/2021	Discontinuation / Closure of Business.	Enquiry by way of summons conducted by State Tax Officer (C-001), Investigation - B, Mumbai.
14	M/s N D Enterprises	GSTIN - 27AHRPD0292K2Z1	2151889	21/05/2019	17/12/2020	Failure to furnish returns for a continuous period of six months.	Superintendent (Andheri – East_701)
15	M/s Ishan Enterprises	GSTIN - 27BMEPS5797K1Z4	2130827	01/07/2017	31/12/2017	Failure to furnish returns for a continuous period of six months.	Assistant Commissioner of State Tax (C-016), Thane
		TOTAL	188454513				

e) Investigation visit u/s 67 of the MGST Act, 2017 was conducted in the case of M/s Prime Overseas was conducted by the Assistant Commissioner of State Tax (D-022), Investigation-B, Mumbai. During physical verification of the declared place of M/s Prime Overseas situated at Building No -2, Gala No 21, Singh Industrial Estate, Ram Mandir Road, Goregaon West, Mumbai 400104, it was found that M/s Prime Overseas is not conducting any business from the premises. During search, no books of accounts either in physical form or electronic form or stock of goods of M/s Prime Overseas were found. On verification of GST Returns, it is revealed that M/s Prime Overseas has availed FAKE Input Tax Credit Rs.32,63,12,419/- from non-existent/non-genuine entities/registration cancelled suppliers. Hence, the action of arrest under section 69 of the MGST Act, 2017 has been taken against Shri Sanjeev Singh, Proprietor of M/s. Prime Overseas for the offences committed under section 132 of the MGST Act, 2017. The details of fake Input Tax Credit availed by M/s Prime Overseas are depicted in the Table below.

Non-existent/Non-genuine/Registration Cancelled Suppliers of M/s Prime Overseas

Sr no	GSTIN	Name of the Supplier	Input Tax Credit	Date of GST Registration	Date of Cancellation of GST Registration	Reason for GST Registration cancellation	Investigation/ Enquiry Authority
1	27BCSPP0189C3Z9	Asheerwad Enterprises	135854794	03/03/2021	03/03/2021	Fraud, wilful misstatement, suppression of facts.	Assistant Commissioner of State Tax (D-043), Investigation-B, Mumbai.
2	27AOVPB2420A1ZG	Arvind Enterprises	83943960	01/07/2017	01/07/2017	Principal place of business not found/ available at the time of field visit.	Assistant Commissioner of State Tax (D-037), Investigation-B, Mumbai
3	27AXPPP8556Q1Z4	Hexa Enterprises	46198814	21/12/2020	22/12/2020	Registration taken by third person with fraudulent intention.	CGST Palghar issued vide letter F.No.VV/Pre.Gr-II/Inv/Hexa/421/2021dated 21/06/2021 to cancel the registration with ab-initio effect as registration taken by third person with fraudulent intention, the GST registration is hereby cancelled under section 29 of the CGST Act.
4	27ATWPA3705B1ZY	Umang Enterprises	37505901	03/03/2021	19/08/2021	Fraud, wilful misstatement, supression of facts.	Assistant Commissioner of State Tax (D-016), Investigation-B, Mumbai.
5	27ADTPN6023C2ZH	Swaastik Trading Corp	12551675	30/04/2020	30/04/2020	Fraud, wilful misstatement, suppression of facts.	Assistant Commissioner of State Tax (D-027), Investigation-B, Mumbai.
6	27AHRPD0292K2Z1	N D Enterprises	3485405	21/05/2019	17/12/2020	Failure to furnish returns for a continuous period of six months.	Superintendent (Andheri –East_701)
7	27BHBPS8250H1Z3	Arjun Enterprises	2998766	17/01/2020	01/04/2021	Fraud, wilful misstatement, suppression of facts.	Assistant Commissioner of State Tax (D-022), Investigation -B, Mumbai

8	27AFYPJ 5270L1Z N	Nesa Global	2754733	15/07/2019	30/09/2019	Failure to furnish returns for a continuous period of six months	State Tax Officer (C-016), Thane.
9	27BMEP S5797K1 Z4	Ishan Enterprise s	574660	01/07/2017	31/12/2017	Failure to furnish returns for a continuous period of six months	Assistant Commissioner of State Tax (C-016), Thane
10	27AJFPM 4268C1Z 9	Dolphin Overseas	443711	10/09/2018	16/09/2021	Fraud, wilful misstatement, suppression of facts	State Tax Officer (C-001), Investigation-B, Mumbai.
		Total	326312419				

f) Investigation visit u/s 67 of the MGST Act, 2017 was conducted in the case of M/s Arjun Enterprises, GSTIN-27BHBPS8250H1Z3 was conducted by the Assistant Commissioner of State Tax (D-022), Investigation-B, Mumbai.

g) During investigation the taxpayer was not found operative hence, GSTN registration has been cancelled ab-inito and prosecution has been launched against the tax payer. The transactions through which Input tax credit has been passed to you by this supplying entity had not paid actual tax at any point of time in government treasury.

h) Considering the input tax provision under section 16 of MGST/CGST Act, 2017 you have wrongly availed ineligible ITC by wilful manner. Hence the ITC of Rs. 5, 29, 52,281/- claimed by you in the returns filed for the period 2020-21 is not allowable. Section 16(2)(C) of MGST/CGST Act, 2017 is reproduced here for reference –

> *16. **Eligibility and conditions for taking input tax credit**. -*
>
> *(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*
>
> *(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—*

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
(b) he has received the goods or services or both.
1[Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—
(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]
(c) Subject to the provisions of 2[section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply…

(d)----------

17. Tax and other dues:

Tax Period	Act	Tax	Interest payable	Penalty	Total
1	2	3	4	5	6
2020-21	CGST	3,41,41,119	2,11,69,365	3,41,41,119	8,94,51,603
	SGST	3,41,41,119	2,11,69,365	3,41,41,119	8,94,51,603
	Total	6,82,82,238	4,23,38,729	6,82,82,238	17,89,03,205

The Noticee was directed to show cause as to why the amount of tax as ascertained above and in the said DRC-01 along with the amount of applicable interest and penalty under the GST provisions should not be levied.

C) <u>Submissions of the Noticee:</u>

18. In response to the said DRC-01, the Noticee filed submitted a letter dated 30.11.2022, the Noticee sought adjournment and requested for 4 weeks' time to file its reply to the said DRC-01.

19. In view of the Noticee's aforementioned request and to ensure natural justice, adjudication of the said SCN was not carried out.

20. The Noticee finally filed its reply to the said DRC-01 vide its written submission dated 29.12.2022.

21. The Noticee was granted Personal Hearing on 07.08.2024 which was attended by Mr. Ashish Agarwal (CA) and Mr. Mukesh Ashar (Director) and wherein the Notice submitted additional written submissions in response to the said DRC-01.

D) <u>Discussions and Findings:</u>

22. I have carefully gone through all the records of the case and also relied on the oral and written submissions of the Noticee made earlier in reply to the said DRC-01 and also the relevant provisions of law applicable to the present case.

23. Before dwelling into the above issues, it would be appropriate to look at the provisions applicable to the present case -

a. *<u>Section 16 of GST Act: -</u>*

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

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

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

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

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

(c) Subject to the provisions of 2[section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

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

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

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961(43 of 1961), the input tax credit on the said tax component shall not be allowed.

*(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the 1[thirtieth day of November] following the end of financial year to which such invoice or 2*** debit note pertains or furnishing of the relevant annual return, whichever is earlier.*

b. *Section 74 of GST Act: -*

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 wilful-misstatement or suppression of facts.—

(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;*
>
> *(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.

c. ***<u>Section 50 of GST Act: - Interest on delayed payment of tax-</u>***

(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.

[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.]

(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) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed

d. ***<u>Section 78 of the GST Act, 2017 – Initiation of recovery proceedings—</u>***

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

e. ***<u>Rule 142 Notice and order for demand of amounts payable under the Act -</u>***

(1)…

(2)…

(3)…

(4)…

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

24. With regards to the **Issue pertaining to excess ITC claimed in GSTR-3B but not confirmed in GSTR- 2A**, the Noticee has submitted that it does not agree with the observations and findings of the undersigned. The Noticee has submitted that it has complied with all the relevant provisions of the GST laws, more specifically section 16 of the Act r/w Rule 36. That mere possession of tax invoices, alleged receipt of goods and filing of GST returns does not make it eligible to claim ITC. And that as per Section 155, the burden to prove that it is eligible to claim ITC lies on the Noticee. Moreover, partial compliance of provisions does not mean proper compliance. The Noticee has to ensure all the provisions of the Section 16 r/w rule 36 are complied with. In view of this, the Noticee is not eligible to avail such ITC. Furthermore, the Noticee has, also submitted that it is in the process of procuring certificates from its suppliers evidencing reasons for non-disclosure of their respective invoices in the FORM GSTR-2A of the Noticee and also share invoice level / aggregate level reconciliation between the updated FORM GSTR-2A and FORM GSTR-3B. Hence, the Noticee has agreed that its suppliers have failed to comply with the provisions. It is pertinent to note that the said SCN dated 31.10.2022 was issued to the Noticee in October 2022. The Noticee sought adjournment of 4 weeks and filed its submissions belatedly vide written submission dated 29.12.2022. That it was granted another opportunity to file further reply and personal hearing which was duly availed by it. However, even ow after lapse 21 months, the Noticee has still not been able to make proper submissions and is seeking more time, with the simply intention of delaying the present proceedings. That on ground of natural justice and Noticee's request, enough time has been granted to the Noticee and since, it has failed to make proper submissions to the satisfaction of the undersigned, the request of the Noticee to drop proceedings in the excess ITC issue is rejected and the Noticee shall be liable to pay the entire liability pertaining to the said excess ITC issue as directed by the undersigned.

25. With regards to the issue of the **Difference in Net tax liability,** the Noticee has submitted that the said difference arose due certain inadvertent errors and mistakes in the accounting software as well as on its own account. The Noticee has submitted explanation as to why the difference arose and that after considering the inadvertent errors, the actual difference stood at Rs. 13,682.29. That the said submissions of the Noticee are accepted and the Noticee is required to dispense its liability to the extent of Rs.13,689.29.

26. With regards to the issue pertaining to **Disposal of fixed assets,** the Noticee has submitted that it has relied on the provisions of sections 15 and 18. On the issue involving the "dies", the Noticee has submitted it has not availed ITC, it has paid tax on the transactional value of the capital goods. On the sale of "Tata Indica, the Noticee has submitted that it has not availed ITC and hence, it has paid on the transactional value. In the sale of "Innova" it has not received any consideration on the transaction and it has also not availed any ITC. The submissions of the Noticee are accepted and the proceedings pertaining to the disposal of the fixed assets are accordingly dropped.

27. With regards to the issue pertaining to **Availment of ITC from M/s. Dolphin Overseas, GSTIN 27AJFPM4268C1Z9 and M/s. Prime Overseas, GSTIN 27AULPS2114E2ZP** are discussed as below:

a) the Noticee has claimed ITC of Rs. 6,13,60,586/-for the period 01/04/2020 to 31/03/2021 from the said parties and that the said parties/suppliers were found to be Non-Genuine Tax Payer (NGTP). During independent investigation of the said suppliers, it was revealed that, the said two Suppliers had fraudulently availed ITC and that the said fraudulent ITC had been passed on to the Noticee amounting to Rs. 6,13,60,586/

b) The transactions through which the said ITC had been passed to the Noticee by the said supplying entities, the actual tax had not been paid on the said transactions at any point of time in government treasury, resulting in contravention of section 16(2)(c) of MGST Act,2017.

c) It is pertinent to note that Proprietor of M/s. Dolphin Overseas and proprietor of M/s Prime Overseas were arrested for offence u/s 132 of MGST Act 2017 and criminal complaints (chargesheet) have been filed against the proprietors of both the entities in the respective jurisdictional courts. Ms. Prima Pradeep Mhatre was arrested on date 10/02/2022 at about 3.10 PM from Surat, Gujarat by the Investigating Officer, STO, (C-001), Investigation-B, Mumbai and presented before the Hon'ble Esplanade Court on 11/02/2022. She was remanded to judicial custody by the Hon'ble Court and has got statutory bail after completion of 60 days u/s 167(2) of Cr.P.C., 1860. Similarly, Shri Sanjeev Singh was arrested in the separate investigation case of M/s Prime Overseas on 10/02/2022 at about 3.10 PM from Surat, Gujarat by the Investigating Officer, Assistant Commissioner of State Tax, (D-022), Investigation-B, Mumbai and presented before the Hon'ble Esplanade Court on 11/02/2022. He was remanded to judicial custody by the Hon'ble Court and has got statutory bail after completion of 60 days u/s 167(2) of Cr.P.C.

d) The Noticee has submitted that it has not committed any violation of the GST provisions and that it has complied with the conditions of section 16 of the Act and that it has e-way bills and other documents to prove its case of genuine purchase transactions from the said suppliers. However, this office has examined the investigation proceedings and findings of the said suppliers and it was revealed that said entities were not conducting any business as claimed by them.

e) The said suppliers were not maintaining any books of accounts, stocks or anything to support the fact that these suppliers were actually conducting any business.

f) It is also pertinent to note that when the very suppliers from whom the Noticee claims to have purchased goods are found to be non-existent, fake and non-genuine, the submissions of the Noticee cannot be accepted and the entire transactions become questionable and fake.

g) The Noticee cannot simply state that it has invoices and e-way bills to support its purchases when the fact remains that no the very supplier from whom purchases have been made have been found to have no documents or books of accounts with them. There is no corroborative evidence to confirm the genuineness of the transactions of the Noticee. Moreover, it is also clear that the entire transactions are simply paper transactions and no actual purchase or movement of good/services or both have taken place. Hence, the submissions of the Noticee are rejected and the Noticee is liable to pay the full amount as directed by the undersigned with regards to the said issue of **Availment of ITC from M/s. Dolphin Overseas, GSTIN 27AJFPM4268C1Z9 and M/s. Prime Overseas, GSTIN 27AULPS2114E2ZP**

28. Interest:

The noticee has failed to make tax payment as required under the GST Laws and also availed ineligible ITC, excess ITC in addition to wrongful availment of ITC. That the same has been established and stated in the aforesaid paras. Accordingly, Interest becomes liable to be paid by the Noticee as per Section 50 of the Act. The Noticee has not paid or rather short paid tax which attracts provisions of section 50(1). That the Noticee was not entitled to such availment and that it should not have availed in the first place and such availment most definitely fits into the meaning of section 50(3). When the noticee is availing ITC which was never due to it in the first place against items which were given by it free of cost as gifts to its franchisees, the meaning of undue ITC befits the meaning as stated in section 50(3). The Noticee is liable to pay interest u/s 50 on short payment of tax and availment of ITC which was ineligible, excess and wrongly availed and when it is called as availed wrongly, the meaning tantamount to be the same as stated u/s 50(3). Hence, the submission of the noticee is unacceptable and interest is due u/s 50 of GST.

29. Penalty:

The Notice becomes liable to pay penalty it has violated the provisions of GST laws and that Section 74 clearly mandates penalty be levied at different rates depending upon the conduct and compliance or non-compliance of the Noticee, as the case may be. Hence, the contention and submission of the Noticee that no penalty is to be levied in its case are incorrect and unacceptable.

30. In fact, a bare perusal of the present SCN/DRC-01 dated 31.10.2022 clearly show that the Noticee has failed to comply with relevant provisions of the laws. In response to the said SCN the Noticee has made the afore discussed written submissions and was granted a personal hearing on 07.08.2024 which was duly availed by it though its authorised representatives and additional written submissions were also submitted by it. However, based on the written submissions of the Noticee read with the facts, findings and provisions of the GST laws, it is clearly evident and in view of the same, the Noticee has failed to provide proper submissions to the satisfaction of the office of the undersigned and hence, the adjudication proceedings have been initiated against the Noticee in the present case.

31. That the Noticee has caused revenue loss to the State of Maharashtra by the aforesaid non-compliances and violations of the GST laws and has failed to dispense with the liabilities has directed by the undersigned. In view of the above discussions and findings I pass the below paras.

32. The Noticee keeps reiterating that it has complied with the provisions of the law and hence, it is not required to pay any tax or interest or any other liability. However, the Noticee does not establish how its case and fails to prove its case as required by

Section 155. This office has explained and cited the necessary provisions and how the Noticee has violated the provisions. Hence, the applicability of the provisions of section 74 and liability to pay interest thereon is valid and sustainable and accordingly, the submissions of the Noticee are not accepted.

E) <u>Summary of proceedings and total dues payable including the tax payable along with interest thereon and penalty:</u>

33. M/s. SUDAL INDUSTRIES LIMITED having GSTIN - 27AAACS0705K1ZJ was directed vide DRC-01 dated 31.10.2022 to file its response. However, the Noticee vide its communication dated 30.11.2022, requested adjournment and extension of 4 weeks to file its response to the said SCN/DRC-01 dated 31.10.2022. Accordingly, in view of the Noticee's request and on grounds of natural justice, the adjudication proceedings were not initiated against the Noticee. The Noticee filed its written submission dated 29.12.2022. The undersigned granted the Noticee a personal hearing (PH) dated 07.08.2024 vide his communication dated 29.07.2024 which was duly availed by the Noticee and the said PH was attended by the Noticee's authorised person Mr. Ashish Agarwal (CA) and Mr. Mukesh Ashar (Director) on 07.08.2024. That during the said PH, the noticee submitted additional written submissions as well.

34. In view of above facts, submissions and discussions & findings, the details of the demand in the present case of **M/s. SUDAL INDUSTRIES LIMITED** having GSTIN - **27AAACS0705K1ZJ** are as follows:

F. Y. 2020-21	IGST	CGST	SGST	TOTAL
TAX	0	33583008	33583008	**67166015**
INTEREST	0	23368253	23368253	**46736505**
PENALTY	0	31115699	31115699	**62231398**
TOTAL	**0**	**88066959**	**88066959**	**176133918**

35. In view of the above and in exercise of my powers vested in me under Section 74 of the GST Act, 2017 pass the following order wherein **M/s. SUDAL INDUSTRIES LIMITED having GSTIN - 27AAACS0705K1ZJ** is hereby required to make the payment of –

(a) Total Tax amount of **Rs. 67166015/-** U/s 74(9) of the GST Act, 2017;
(b) Interest amount of **Rs. 46736505/-** U/s 50 of GST Act, 2017 demanded and recovered u/s 74 of the GST Act, 2017.
(c) Penalty of **Rs. 62231398/-** U/s. 74(9) of the GST Act, 2017.

The Noticee is hereby directed to pay the tax along with interest and penalty of total of Rs.176133918/- as shown above within a period of thirty days from the date of service of this Order.

If The Noticee fail to pay within the said period, then the recovery proceedings will be initiated accordingly, as per provision of law.

JADHAV KIRAN DNYANDEO
Digitally signed by JADHAV KIRAN DNYANDEO
Date: 2024.08.12 10:34:11 +05'30'

Place: Mumbai

Date: 12/08/2024

(Kiran Jadhav)
Assistant Commissioner of
State Tax (INV-D-024)
Investigation-A, Mumbai