

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P (T) No. 23 of 2022

M/s RSB Transmissions (India) Limited, Adityapur Industrial Area, Jamshedpur, Gamharia, Saraikela-Kharswan through its Authorized signatory and General Manager S.M. Nausherwan

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Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, New Delhi
2. The Commissioner of Central Goods and Services Tax & Central Excise, Jamshedpur
3. The Superintendent of Central Goods and Services Tax & Central Excise, Adityapur – V Range, Jamshedpur
4. Goods and Services Tax Network through its Chairman, New Delhi

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CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner: Mr. M.S. Mittal, Sr. Advocate, Salona Mittal, Advocate
For the Respondents: Mr. P.A.S. Pati, Advocate

07 / 18.10.2022 The question posed for adjudication in the instant writ petition is, whether under the provisions of GST Act, the amount deposited as tax through valid challans by a registered person in the Government Exchequer prior to the filing of the GSTR 3B returns could be treated as discharge of the tax liability due against such person for the period in question in respect of which the GSTR- 3B return is being filed later, and whether interest could be levied on delayed filing of GSTR-3B in such circumstances under Section 50 of the Act?

2. In the case of the present petitioner, interest of Rs. 13,23,783/- has been levied due to delay in filing of GSTR-3B returns for the period July 2017 to December 2019, in terms of Section 50 of the CGST Act at the applicable rate, vide impugned letter dated 22nd July 2021 (Annexure-2 to the writ petition). The tabular chart containing the details of period of tax and the date of filing of GSTR 3B returns and computation of interest for such delay as contained in the letter dated 22nd July 2021 is extracted hereunder as the particulars relating thereto are not in dispute, except that the petitioner denies liability to pay interest on the delay in filing of GSTR 3B for the relevant periods on the ground that the amount of tax has already been deposited prior to filing of the GSTR.3B return in its Electronic Cash Ledger:

“It has been observed from GSTIN portal that you have delayed filing of GSTR 3B returns for some months during the period July 2017 to December 2019, details of which is as under:

1 GSTR 3B delay filing interest calculation for the period July 2017 to December 2019

	Taxpayer name	RSB Transmission (I) Ltd.							GSTIN	20AABCR3925R127		
Sl. No	Month	Year	Cash deposit	RCM	Due date if extended : Date	Date of return filing	Delay in days by system	Interest rate, if any	Interest payable	paid	Differential amount	remarks
1.	2.	3.	8.	9.	10.	11.	12	13	14	15.	16	17.
1.	July	2017	56269 252	172310	28-08- 2017	02-09- 2017	5	18	139170.9 75	0	139170. 975	
4.	October	2017	88437 9196	423717	20-11- 2017	15-12- 2017	25	18	1096063. 31	0	109606 3.31	
5.	November	2017	74726 981	187685 5	20-12- 2017	21-12- 2017	1	18	37777. 2342	0	37777.2 342	
9.	March	2018	10218 8585	764672	20-04- 2018	21-04- 2018	1	18	50771. 4692	0	50771.4 692	
	Total		32166 4014						1323782. 99	0	132378 2.99	

It appears that you have not deposited interest Rs. 13,23,783/- raised due to delayed filing of GSTR 3B Returns. Therefore, you are requested to pay interest Rs. 13,23,783/- for the period July 2017 to December 2019 in terms of Section 50 of CGST Act, 2017 at applicable rate on delayed payment of tax in 05 working days otherwise coercive action will be taken. Matter most urgent.”

According to the petitioner, only an amount of Rs.2,32,77,535/- was paid belatedly in cash against which interest amount of Rs.1,53,260/- was leviable under Section 50 of the CGST act and had been duly deposited by Form GST DRC-03 dated 06th August 2022. Petitioner contended that interest could be leviable only on that part of the tax debited from the Electronic Cash Ledger after the due date of filing of GSTR-3B returns.

3. In response to the petitioners reply through letter dated 11th August 2021, the Respondent No. 3 issued letter dated 13th August 2021 requesting him to pay remaining interest of Rs. 11,70,523/- out of total interest of Rs. 13,23,783/- for the period July 2017 to December 2019 in terms of section 50 of the CGST act 2017 at applicable rates immediately. Respondent No. 3 distinguished the case of M/s Vishnu Aroma Pouching Private Limited decided by the Gujarat High Court by judgment dated 14th November 2019 on facts as in the case of the present petitioner, neither were any technical glitches in filing GSTR 3B return for the concerned periods in GSTIN Portal, nor had it intimated to the jurisdictional officer and GSTIN help desk in timely manner. He also reiterated that the deposits made by challans mentioned in petitioners reply is reflected in their Electronic Cash Ledger and stays in that cash ledger

till GSTR 3B return is filed. Only then the cash ledger is debited and that amount is deposited in Government account as tax. The Electronic Cash Ledger is an account of the taxpayer maintained by the GSTIN system reflecting the cash deposits in recognized banks and payments of taxes and other dues made by the taxpayer. It contains a summary of all the deposits and payments made by a taxpayer. Merely depositing an amount in Electronic Cash Ledger does not make it a tax deposit / payment to a Government account. The letter dated 13th August 2021, has also been impugned by the petitioner.

4. The petitioner has also sought a declaration that interest under Section 50 (1) of the CGST Act 2017 can only be levied when the Government is deprived of the tax beyond the due date for payment of tax. No interest could be levied on tax, which was deposited by the petitioner prior to the due date of payment of tax, that is prior to the due date of filing of GSTR 3B returns for the month in question. Petitioner has, in the alternative, also made a prayer for declaring that the provisions of Section 50 (1) of the CGST Act 2017 should be interpreted in a manner that if interest is leviable on that portion of tax already deposited prior to the due date of filing of GSTR 3B return for the month in question, the same would render Section 50 (1) as confiscatory, arbitrary, unreasonable and violative of Article 14 and 19 (1) (g) of the Constitution of India. Petitioner has also sought quashing of the letter dated 9th December 2021, (Annexure-7) by which his representation to refund the amount of Rs. 11,70,523/- collected as interest under Section 50 of the CGST Act 2017 on that portion of tax, which stood earlier deposited in the Government Exchequer prior to the due date of filing of GSTR 3B returns for the month in question has been rejected. Petitioner has also sought consequential relief of refund of the amount of Rs. 11,70,523/- collected as interest under Section 50 of the act of 2017.

5. Petitioner is a Company registered under the Companies Act 2013. The factual details as borne out of the pleadings on record and reflected in the foregoing paragraphs are not in dispute amongst the parties.

6. Learned Senior Counsel for the petitioner has made the following submissions in support of the prayer made in the writ petition:

It is the primary contention of the petitioner that interest cannot be levied upon delayed filing of return but only on delayed payment of tax. Late Fee is paid for delayed filing of return under Section 47 of the Act. Since petitioner had made a deposit of Rs.29,83, 86,479/- out of the total net tax liability after adjustment of ITC of Rs. 32,16,64,014/- available with him much prior to the

due date, the interest can only be levied on the balance amount of Rs. 2,32,77,535/- which was deposited belatedly and not on the entire sum. Learned senior counsel for the petitioner relies upon the provisions of Section 39 (7) of the Act which stipulates that the due date of making payment of tax is not later than the last date on which he is required to furnish GSTR 3B return. According to him, the natural inference of the same could be that payment of tax can be made prior to the due date of filing of such return. He has further referred to Explanation to Section 49 as well as Rule 87 (6) and 87 (7) and submitted that when an amount is deposited towards tax in the Government bank account and is reflected as credited in the Electronic Cash Ledger, upon filing of GSTR 3B return, such amount is merely shown as being debited from the Electronic Cash Ledger and there is no real movement or transfer of money from the petitioner's end as the amount is already in the Government exchequer.

7. He refers to Section 50 (1) of the Act which provides for levy of interest on that part of tax which has been paid beyond the period prescribed. According to him, since the period prescribed for payment of tax is the last date for filing of GSTR 3B return under Section 39(7), interest can only be levied on that part of tax which has been deposited later than the due / last date for filing of GSTR 3B return. Relying upon the proviso to Section 50 (1), it is contended that since the Electronic Cash Ledger is debited only at the time of filing of GSTR 3B return, levy of interest on the entire amount of tax paid through cash upon belated filing of GSTR 3B return cannot be sustained because amounts towards tax already lies with the Government exchequer much prior to the filing of GSTR 3B return. The debit entry is only a fictional entry which does not postulate any further movement of money. It is contended that proviso to Section 50 (1) was inserted to remove the possibility of levy of interest on tax through availment of Input Tax Credit (ITC). Since ITC is deemed to be as good as tax paid, there is no real distinction between the Electronic Cash and Credit Ledgers as far as amount of tax being in the hands of the Government is concerned. It is further contended that proviso has to be read in conjunction with section 50(1) of the Act and the basic tenet of levy of interest i.e. compensation for depriving the Government with tax revenue beyond the prescribed time limit. Learned Senior Counsel for the petitioner has relied upon the following decisions

(1) *Prannoy Roy & Another versus Commissioner of Income Tax and Another* [2001 SCC Online Del 1362,(para 9] on the proposition that interest

cannot be levied on tax that has already been deposited, even though the returns are filed belatedly. This judgment relates to the provisions of the Income Tax Act.

(ii) **Magadh Sugar & Energy Ltd versus State of Bihar and others [2021 SCC online SC 801 para-28, 29 and 31]** in support of the proposition that when pure questions of law are involved, the writ petition is maintainable without reference to the factual scenario.

(iii) He has also relied upon a decision of Hon'ble Supreme Court in the case of **Dwarka Prasad versus Dwarka Das Saraf [(1976) 1 SCC 128 para-17 and 18]**

(iv) **Pratibha Processors and others versus Union of India and others [(1996) 11 SCC 101 para 13]**. Learned counsel for the petitioner has relied upon the aforesaid judgment in support of the plea that interest is compensatory in nature and not penal. No contumacious conduct or deliberate violations of the provisions of the statute have been alleged or made out on the part of Revenue.

(v) Reliance has also been placed on the case of **J.K. Synthetics Limited versus Commercial Taxes Officer [(1994) 4 SCC 276 para 16]** on the manner in which taxing statutes have to be interpreted.

(vi) Reliance is also placed on the case of **Grasim Industries Ltd. Versus Collector of Customs, Bombay [(2002) 4 SCC 297 para 10]** on the proposition that no words or phrase in a statute should be interpreted so as to render it redundant or superfluous. It is submitted that the elementary principle of interpreting any word while considering the statute is to gather the intention of the Legislature. Learned counsel for the petitioner has referred to the definition of 'Ledger' in the Black's Law Dictionary (sixth Edition page 891) and submitted that ledger is only a book of accounts which records business transactions one for the debit entries and other for the credit. Beyond the literal interpretation of ledger, the expression used in the statute i.e. Electronic Cash Ledger cannot on its own be meant to create a liability to pay interest when the amount of tax already stood deposited in the Electronic Cash Ledger prior to the filing of the GSTR-3B returns. Learned counsel for the petitioner lastly submits that since the amount has been realized under a mistake of law, it ought to be refunded to the petitioner. Learned counsel for the petitioner further submits that under the composition scheme regarding which QRNP scheme has been issued for filing of quarterly return by the department, a tax payer can be allowed to opt for payment of tax in a deferred manner i.e. quarterly basis also.

Such scheme shows that interpretation regarding delay in filing of GSTR-3B return despite payment of tax prior thereto in Electronic Cash Ledger amounts to payment of tax within time and does not invite interest for such delayed payment in terms of Section 50(1) of the Act.

8. Respondents have filed counter affidavit. They have referred to Section 39 of the Act which relates to furnishing of returns (as amended by Finance Act (No. 02 of 2019 brought into force with effect from 10.11.2020). According to them, every deposit made by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS) or by over the counter deposit on account of tax, interest, penalty, fee or any other amount is credited to the appellant taxpayer's Electronic Cash Ledger in terms of Explanation (a) to Section 49 of CGST Act, 2017 and Rule 87 of CGST Rules, 2017. As per Explanation (a) to Section 49, the date of credit to the account of the Government in the authorized bank shall be deemed to be date of the deposit of the deposit in the Electronic Cash Ledger. It is submitted that Section 49 of CGST Act, 2017 relating to payment of tax prescribes that any deposit made towards tax, etc. shall be credited to the Electronic Cash Ledger and ITC shall be credited to the Electronic Credit Ledger. Section provides that the amount available in the Cash Ledger / Credit Ledger can be used for payment of taxes. The order of utilization of credit from the Credit Ledger is also provided. Rule 86 provides that the ITC shall be credited to the Credit Ledger and the ledger shall be debited to the extent of discharge of any liability. Rule 87 provides that Cash Ledger shall be maintained for crediting any amount deposited and debiting therefrom for payment towards tax, interest, penalty, fee or any other amount. As per Section 39(7) of the CGST Act, 2017, a registered person is required to file return under Section 39(1) of the Act and 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. Thus, in respect of any GST payment made in cash or through a Bank reflected in the Electronic Cash Ledger of the registered taxpayer only after offsetting at the time of filing return only, the amounts gets debited from Electronic Cash Ledger of the taxpayer to Government coffers. The writ petitioner has filed the GSTR-3B returns delayed for the months of July 2017, October 2017, November 2017 and March 2018 by 05 days, 25 days, 01 day and 01 day respectively and thus, the cash amount of the Electronic Cash Ledger of the petitioner got debited after such delay and thus, interest under Section 50 became automatic on net cash tax liability. Learned counsel for the

Respondent has further submitted that Section 50 of the CGST Act, 2017 deals with levy of interest on delayed remittance of the output GST liability as prescribed under Section 39(1) read with Section 39(7) of the CGST Act, 2017. The Proviso to Section 50 makes it clear that the interest shall be calculated only on the net GST liability i.e. only that portion which was paid through Cash Ledger and it was made applicable only prospectively effective from 01.09.2020 vide Notification No. 63/2020 dated 25.08.2020. The CBIC vide Administrative Instruction dated 18.09.2020 further reiterated that the amendment by insertion of Proviso to Section 50 of the Act was intended to be retrospective and thus, recovery of interest will only be on net cash tax liability from 01.07.2017. Thus, the amounts deposited prior to filing of GSTR-3B returns by the petitioner taxpayer in the Electronic Cash Ledger and credited in Electronic Credit Ledger, though reflected in the Electronic Cash Ledger, were debited to the Government coffer after filing of GSTR-3B returns for the said tax period i.e. after some delay. Thus, interest under Section 50 became automatic on net cash tax liability. The payment of tax by the normal taxpayer is by 20th day of the succeeding month. Cash payments, if any, required to be paid, is first deposited in the Cash Ledger and the taxpayer shall debit the ledger while making payment in the monthly returns and the relevant debit entry number is reflected on his / her ledger after filing relevant return. It is further stated that the cash amount of Rs. 29,83,86,479/- deposited prior to due date and Rs. 2,32,77,535/- deposited after the due date for filing of GSTR-3B return by the petitioner remained in taxpayer's Electronic Cash Ledger and only after filing the GSTR-3B returns, these cash amounts credited in Electronic Cash Ledger of the petitioner got debited to Government coffers. Thus, set off of tax amount after the due date of filing of return attracted levy of interest. Learned counsel for the Respondent CGST has submitted that the impugned letter has only determined the interest liability calculated on the basis of the date of filing of GSTR-3B returns which is correct and justified. Writ petitioner did not ever inform that the return for the month of October 2017 was delayed due to technical glitch, it rather informed vide letter dated 04.10.2021 regarding payment of remainder amount of Rs. 11,70,523/- through DRC-03.

9. Petitioner has filed rejoinder to the counter affidavit of the Respondent reiterating its assertion. It contended that GSTR-3B returns cannot be furnished unless full payment of tax is made by the taxpayer. Therefore, if the contention of the Respondents was accepted that the tax paid through cash and credited in the Electronic Cash Ledger is only appropriated at the time of furnishing of

GSTR-3B returns, then that proviso of Section 50(1) which seeks to levy interest on part of tax which remained unpaid beyond the prescribed period, would be rendered otiose. Counter affidavit of the Respondents was silent on this issue as well. Therefore, the proviso that was enacted to overcome an anomaly cannot be used to justify a similar anomaly.

10. Considering the legal issues involved in the instant writ petition, the Respondent No. 2-Commissioner of Central Goods and Services Tax and Central Excise, Jamshedpur was asked to assist the court vide order dated 08.09.2022. The Commissioner, State Tax also was asked to appear along with him as the issue concerns both the Central and State Tax authorities. Both the Officers appeared before this Court on 15.09.2022 and made their presentation and submissions. Commissioner of CGST and State Tax have also submitted a compilation containing certain facts concerning the petitioner. The same were brought on record by way of an affidavit.

11. In order to appreciate the issue in controversy involved in the writ petition, it would be proper to refer to the relevant provisions of the CGST Act hereunder. Section 39 which relates to furnishing of returns is quoted hereunder.

Chapter IX **39. Furnishing of returns**

“(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, to which such details pertain], 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.”

Section 47 of the CGST Act, 2017 reads as under:

47. Levy of late fee

“(1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

(2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent of his turnover in the State or Union territory.”

Section 49 and 50 of the Act is also extracted hereunder:

CHAPTER X
PAYMENT OF TAX

“49. Payment of tax, interest, penalty and other amounts.— (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.

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of—

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax [Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]72;

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax: [Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]73

(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

(6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:—

(a) self-assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to the return of the current tax period;

(c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.

(9) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

(10) [A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.

(11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in subsection (1).]

Explanation.—For the purposes of this section,—

(a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;

(b) the expression,—

(i) —tax dues means the tax payable under this Act and does not include interest, fee and penalty; and

(ii) —other dues means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.”

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

Provided that the interest on tax payable in respect of suppliers 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 levied on that portion of the tax that 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) 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.”

Since the issue in controversy also involves the interpretation of the Rule 87 of CGST Rules, 2017, the same are also extracted hereunder:

“87. Electronic Cash Ledger.-

(1) The electronic cash ledger under sub-section (1) of section 49 shall be maintained in FORM GST PMT-05 for each person, liable to pay tax, interest, penalty, late fee or any other amount, on the common portal for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.

(2) Any person, or a person on his behalf, shall generate a challan in FORM GST PMT-06 on the common portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount:

[Provided that the challan in FORM GST PMT-06 generated at the common portal shall be valid for a period of fifteen days.

Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) may also do so through the Board's payment system namely, Electronic Accounting System in Excise and Service Tax from the date to be notified by the Board.]

(3) The deposit under sub-rule (2) shall be made through any of the following modes, namely:-

- (i) Internet Banking through authorised banks;
- (ii) Credit card or Debit card through the authorised bank;
- (iii) National Electronic Fund Transfer or Real Time Gross Settlement from any bank; or
- (iv) Over the Counter payment through authorised banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft:

Provided that the restriction for deposit up to ten thousand rupees per challan in case of an Over the Counter payment shall not apply to deposit to be made by –

(a) Government Departments or any other deposit to be made by persons as may be notified by the Commissioner in this behalf;

(b) Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;

(c) Proper officer or any other officer authorised for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any ad hoc deposit:

[Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) may also make the deposit under sub-rule (2) through international money transfer through Society for Worldwide Interbank Financial Telecommunication payment network, from the date to be notified by the Board.]

Explanation.– For the purposes of this sub-rule, it is hereby clarified that for making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the person making such payment.

(4) Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated through the common portal.

(5) Where the payment is made by way of National Electronic Fund Transfer or Real Time Gross Settlement mode from any bank, the mandate form shall be generated along with the challan on the common portal and the same shall be submitted to the bank from where the payment is to be made: Provided that the mandate form shall be valid for a period of fifteen days from the date of generation of challan.

(6) On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan.

(7) On receipt of the Challan Identification Number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.

(8) Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number is generated or generated but not communicated to the common portal, the said person may represent electronically in FORM GST PMT-07 through the common portal to the bank or electronic gateway through which the deposit was initiated.

(9) Any amount deducted under section 51 or collected under section 52 and claimed [in FORM GSTR-02] by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger[in accordance with the provisions of rule 87].

(10) Where a person has claimed refund of any amount from the electronic cash ledger, the said amount shall be debited to the electronic cash ledger.

(11) If the refund so claimed is rejected, either fully or partly, the amount debited under sub-rule (10), to the extent of rejection, shall be credited to the electronic cash ledger by the proper officer by an order made in FORM GST PMT-03.

(12) A registered person shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.

Explanation 1.-The refund shall be deemed to be rejected if the appeal is finally rejected.

Explanation 2.– For the purposes of this rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

[(13) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under

the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09.]”

12. Section 39(7) provides that every registered person who is required to furnish a return under sub-section (1) other than the person referred to in the proviso thereto, 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. Every such registered person is required to file his return in terms of Section 39(7) in Form GSTR-3B by 20th day of the succeeding month and on failure to file such return by the due date, a late fee shall be paid in terms of Section 47 of the Act.

13. Chapter-X provides for ‘Payment of Tax’. A bare reading of Section 49(1) indicates that 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. It therefore indicates that any deposit made in the modes prescribed under Section 49(1) are mere deposits towards tax, interest, penalty, fee or any other amount by such person which can be credited to the Electronic Cash Ledger.

14. As per Rule 87 (6), such payment is to be made in the mandatory form along with Challan on the common portal and submitted in the Bank from where the payment is to be made and on successful credit of the amount to the concerned Government account maintained in the authorized Bank, a Challan identification number is generated by the collecting Bank and is indicated in the Challan. On receipt of such Challan identification number from the collecting Bank, the said amount shall be credited to the Electronic Cash Ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.

15. A combined reading of Section 49(1) of CGST Act, 2017 and Rule 87 (6) and (7) of CGST Rules, 2017 both go to show that such deposit does not mean that the amount is appropriated towards the Government exchequer. On other hand other, a bare reading of sub-section (3) of Section 49 indicates that such amount available in the Electronic Cash Ledger is used for making payment towards tax, interest, penalty, fees or any other amount under the provisions of the Act and the Rules in the manner prescribed and subject to

such conditions as may be prescribed. As per sub-section (4), the amount available in the Electronic Credit Ledger may be used for making any payment towards output tax under this Act or IGST Act in the manner prescribed and subject to the conditions. Explanation to sub-section (11) of Section 49 also makes it clear that the date of credit to the amount of Government in the authorized Bank shall be deemed to be the date of deposit in the Electronic Cash Ledger. The deposit in the Electronic Cash Ledger, therefore, does not amount to payment of the tax liability. If the scheme of the Act and the relevant provisions of Section 39(7) is read in conjunction with the manner of payment of tax prescribed under Section 49, it is clear that any registered person can pay the tax not later than the last date on which he is required to furnish such return. But on filing of GSTR-3B only, the amount lying in his Electronic Cash Ledger is debited towards payment of tax, interest or tax liability. Under the scheme of the Act, no person can make payment of tax prior to filing of GSTR 3B return, though such deposits may be made or are lying in his Electronic Cash Ledger. Tax liability gets discharged only upon filing of GSTR 3B return, the last date of which is 20th of the succeeding month on which the tax is due and even though GSTR-3B return can be filed prior to the last date and such tax liability can be discharged on its filing, but mere deposit of amount in the Electronic Cash Ledger on any date prior to filing of GSTR-3B return, does not amount to payment of tax due to its State exchequer. The expression 'deposit' used in **Section 49(1)** and the expression 'may be used' in **Section 49(3)** leave no room of doubt in this regard. Further, a bare reading of the proviso to Section 50, which has been introduced by amendment in the Finance Act, 2019 and made retrospectively effective from 1st July, 2017, also goes to show that the interest on tax payable during the 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 proceeding 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. This again goes to show that only on filing of GSTR-3B return, the debit of the tax dues is made from Electronic Cash Ledger and any amount lying in deposit in the Electronic Cash Ledger prior to that date does not amount to discharge of tax liability. A combined reading of Section 39 (7), 49 (1) and Section 50(1) read with its proviso and Rule 61(2) also confirms this position. Rule 61(2) provides that 'every registered person required to furnish return under Sub-Rule (1) shall subject to provisions of Section 49, discharged

his liability towards tax, interest, penalty, fee or any other amount payable under the Act or under the provisions of Chapter by debiting the Electronic Cash Ledger or Credit Ledger and include the details in the return in the form GSTR 3B.’ Therefore, discharge of tax liability is simultaneous with the filing of GSTR 3B return under the scheme of GST regime and the provisions of GST Act intended to ensure seamless flow of movement of goods and services and payment of tax by the registered persons in the form prescribed through a digital mode maintained by GSTIN. The contention of the petitioner of having discharged the tax liability by mere deposit in the Electronic Cash Ledger prior to the due date of filing of GSTR-3B return would be against the scheme of GST Act and would make the working of GST regime unworkable. It can also be understood in a different way. There is no time prescribed for deposit of cash in the Cash Ledger. It, in fact, is just an e-wallet where cash can be deposited at any time by creating the requisite Challans. Since, the amount lies deposited in the Electronic Cash Ledger, a registered assessee can claim its refund any time, following the procedure prescribed under the Act and the Rules. Of course, while making refund from the Electronic Cash Ledger, the proper officer has to satisfy whether any outstanding tax liability remains to be discharged by the person concerned. The computation of interest liability is dependent upon the delay in filing of returns beyond the due date. The tax payer can claim refund under Section 54 of CGST Act at any point of time in accordance with the provisions of the Act. There is a distinction, so far as ITC available in the Electronic Credit Ledger and Electronic Cash Ledger is concerned. As such cash is just in the nature of deposit in the Electronic Cash Ledger, whereas the ITC is available in favour of the assessee on account of tax already paid. Therefore, certain distinction has been made under Section 50 of CGST Act as regards the computation of interest only on that portion of the tax paid after due date of filing of return under Section 39(7) of the Act by debiting the Electronic Cash Ledger.

16. The aforesaid mechanism is the only manner in which provisions of Section 39 (7) relating to furnishing of returns read with Section 49 relating to payment of tax, Section 50 relating to computation of interest and Rule 62 (1) and Rule 87 (6) and (7) can be harmoniously interpreted. If such interpretation is accorded, the contention of the petitioner that the interest so levied against the petitioner is in the nature of penalty is not worth acceptance. The decision of Delhi High Court in the case of **Prannoy Roy (Supra)** dealing with altogether different provisions of the Income Tax Act cannot be borrowed

while interpreting the provisions of CGST Act enacted under Article 246A to give effect to the principles of cooperative federalism in sphere of Indirect Tax regime. The contentions raised by the petitioner that interest cannot be levied upon delayed filing of return but only on delayed payment of tax, stands duly answered by virtue of the discussions made above and the reasons recorded.

17. Since the issue raised herein involves pure questions of law based on interpretation of the relevant provisions of CGST Act on undisputed facts, we are agreeable to the proposition advanced by learned senior counsel for the petitioner relying upon the case of **Magadh Sugar & Energy Ltd (Supra)** that the writ petition is maintainable. Applying the principles of interpretation as has been laid down by the Apex Court such as in the case **J.K. Synthetics Limited (supra)** and **Dwarka Prasad (Supra)**, we have no hesitation in holding that the liability to pay interest arises on delayed filing of GSTR-3B return and debit of tax due from the Electronic Cash Ledger. Any deposit in the Electronic Cash Ledger prior to the due date of filing of GSTR 3B return does not amount to discharge of tax liability on the part of the registered person. Since the petitioner herein filed its return after some delay for the period July, 2017, October, 2017, November, 2017 and March, 2018 i.e. GSTR-3B return were filed after 20th day of the succeeding month for which the tax was due, the Revenue has rightly computed the interest on such delayed payment and requested the petitioner to pay the differential amount of Rs. 13,23,782.99. Since the petitioner has duly discharged his liability towards interest by making payment of total amount and filing Form DRC-03, no case of refund of such amount arises. The question posed at the outset is answered accordingly. Writ petition is dismissed.

(Aparesh Kumar Singh, J)

(Deepak Roshan, J)

Ranjeet/