

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 1404 of 2020

.....

R.K. Transport Private Limited, Phusro, Bokaro. --- --- Petitioner

Versus

1. The Union of India through the Principal Commissioner,
Central Goods and Services Tax and Central Excise, Ranchi.
2. Assistant Commissioner, Central Goods and Services
Tax and Central Excise, Ranchi. -- --- Respondents

.....

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

For the Petitioner : Mr. Sumeet Gadodia, Advocate
For the CGST : Mr. P.A.S. Pati, Advocate

05/16.02.2022 Heard learned counsel for the petitioner Mr. Sumeet Gadodia and learned counsel for the respondents CGST Mr. P.A.S. Pati.

2. Interest amounting to Rs.83,96,873/- on the alleged ground of delay in furnishing GSTR-3B return for the period July 2017 to December 2019 has been levied by the impugned letter dated 28th February 2020 / 2nd March 2020 issued by the respondent no.2 Assistant Commissioner, CGST and Central Excise, Ranchi. The same has been challenged on the specific ground that since the liability has been disputed by the petitioner, the same could not have been levied without any adjudication proceeding under Section 73 or 74 of the CGST Act which has not been done admittedly in this case. Petitioner has by way of his reply dated 9th March 2020 (Annexure-5) disputed the liability. According to the petitioner, no rules have been prescribed in terms of Section 50 Sub-Section (2) for computation of the interest under Sub-Section (1). Interest cannot be charged on the gross tax liability. In this regard learned counsel for the petitioner has referred to the Finance Act, 2021. Section 112 has inserted a proviso to Section 50 of the CGST Act in the following terms :

“112. In Section 50 of the Central Goods and Services Tax Act, in sub-section (1), for the proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely :--

“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.”

3. The due date for filing return in GSTR-3B has also been extended from time to time by the respondent authorities. Learned counsel for the petitioner submits that the issue under consideration is fully covered by the decision rendered by the Coordinate Bench of this Court in the case of ***Mahadeo Construction Company Vrs. Union of India & Ors.*** W.P.(T) No.3517 of 2019 dated 21st April 2020.

4. Respondent CGST has filed a counter affidavit. Paragraph-5 of the counter affidavit reads as under :-

“5. It is humbly submitted that the Writ Petition No.3517 of 2019 (Mahadeo Construction Co. Vs. UOI) and Writ Petition No.1404 of 2020 (R.K. Transport Pvt. Ltd. Vs. UOI and Ors.), are similar in as much as the issue related to the determination and recovery of interest without initiating any adjudication process, only. Both the writ petitions were filed by separate entities however the issue is similar. The aforementioned both Writ Petitions are different and not tagged with each other.”

5. Learned counsel for the CGST Mr. P.A.S. Pati has further submitted that monthly returns in Form GSTR-3B and payment of tax have been made after the due date prescribed under Section 39(1) of the CGST Act without discharging the applicable interest payable on the delayed payment of tax under Sub-Section 1 of Section 50 of the CGST Act. Further, the interest payable on such delayed payment of tax can be recovered under Section 79 read with Section 75(12) of the CGST Act. It is submitted that Rule 61(5) of the CGST Rules has been amended retrospectively w.e.f. 1st July 2017 vide notification no.49 of 2019 Central Tax dated 9th October 2019 providing that GSTR-3B shall be a return under Section 39 of the CGST Act. Further Rule 61(6) of the CGST Rules has also been omitted vide notification dated 9th October 2019. At para-14 the following statement has been made in reply to para-25 of the writ petition:

“14. That with regard to submissions made in para-25 of the writ petition, it is humbly stated and submitted that payment of tax is functionally independent from Filing of return but filing of return is functionally dependent on payment of tax which is restricted to 20th day of following month within the meaning of Sub-Section 1 of Section 39. Hence, delayed payment of tax and delayed filing of return result “Interest” and “Late Fee” respectively and the two, i.e. interest & late fee are not

identical.”

6. Learned counsel submits that by notification no.13/2017 Central Tax dated 28.06.2017 the rate of interest per annum has also been notified for the purposes of calculation of interest which has come into force from 1st July 2017. According to the respondents, if the returns have been filed belatedly and the tax dues have not been paid within time by default interest and late fee are confirmed demands within the meaning of Section 50 and 47 of the Act respectively which do not require any adjudication process under Section 73 or 74 of the CGST Act. Learned counsel for the respondent however does not dispute that the same issue has been considered and decided by this Court in the case of *Mahadeo Construction Co. (supra)* where the following two questions were framed for answer :-

- (i) *Whether interest liability under Section 50 of the Central Goods and Services Tax Act, 2017 (for short ‘CGST Act’) can be determined without initiating any adjudication process either u/s 73 or 74 of the CGST Act in the event of an assessee raising dispute towards liability of interest?*
- (ii) *Whether recovery proceedings u/s 79 of the CGST Act can be initiated for recovery of interest u/s 50 of the said Act without initiation and completion of the adjudication proceedings under the Act?*

7. However, it is submitted that the said decision has been challenged before the Apex Court in Special Leave to Appeal (Civil) No.8370/2021. By order dated 16th July 2021 the petition has been tagged with Special Leave to Appeal (Civil) No.6977/2021 arising out of a judgment dated 3rd March 2020 passed in W.A. No.188/2020 in the case of M/s L.C. Infra Projects Pvt. Ltd. Vrs. Union of India & Ors. on the same issue. However, he submits that till date there is no interim stay of the operation of the judgment in the case of Mahadeo Construction Company.

8. We have considered the submissions of learned counsel for the parties. We have taken note of the relevant materials on record.

9. The issue at hand is whether interest liability under Section 50 of the CGST Act can be determined without initiating any adjudication proceeding either under Section 73 or 74 of the CGST Act in the event the assessee disputes its liability towards interest. It is not in dispute that no such proceeding has been initiated in the case of the petitioner, though the liability has been disputed by the petitioner by way of a reply to the notice of recovery

under Section 79 of the CGST Act, 2017 vide Annexure-5 dated 9th March 2020 on specific grounds as also referred to above. The issue as on date stands answered by the decision rendered by the Coordinate Bench of this Court of which one of us (Deepak Roshan, J.) was a Member.

10. The operative portion of the judgment para-21 is quoted hereunder for better appreciation :-

*“21. It is not a true that liability of interest under Section 50 of the CGST Act is automatic, but the said amount of interest is required to be calculated and intimated to an assessee. If an assessee disputes the liability of interest i.e. either disputes its calculation or even the leviability of interest, then the only option left for the Assessing Officer is to initiate proceedings either under Section 73 or 74 of the Act for adjudication of the liability of interest. Recently, the Hon’ble Madras High Court, in its decision dated 19th December, 2019 rendered in Writ Appeals in the case of **The Assistant Commissioner of CGST & Central Excise and others Vs. Daejung Moparts Pvt. Ltd. and ors**, has taken similar view. The said Writ Appeals were initially decided by a Two Judges Bench of the Hon’ble Madras High Court and divergent views were taken by the Hon’ble Judges on the issue of initiation of adjudication proceedings before imposing liability of interest under Section 50 of the Act. The matter was, thus, referred to learned Third Judge, which was decided vide Judgment dated 19th December 2019 in the following terms:-*

“27. A careful perusal of the above said provision would show that every person who is liable to pay tax, but fails to pay the same or any part thereof within the period prescribed shall, on his own, pay interest at such rate not exceeding 18% for the period for which the tax or any part thereof remains unpaid. Thus, sub clause (1) of Section 50 clearly mandates the assessee to pay the interest on his own for the period for which the tax or any part thereof remains unpaid. The liability to pay interest is evidently fastened on the assessee and the same has to be discharged on his own. Thus, there cannot be any two view on the liability to pay interest under Section 50(1) of the said Act. In other words, such liability is undoubtedly an automatic liability fastened on the assessee to pay on his own for the period for which tax or any part thereof remains unpaid.

28. Sub-section (2) of Section 50 contemplates that the interest under Sub-section (1) shall be calculated in such manner as prescribed from the day succeeding the day on which such tax was due to be paid. Sub-section (3) of Section 50 further contemplates that a taxable person who makes an undue or excess claim of input tax credit under Section 42(10) or undue or excess reduction in output tax liability under Section 43 (10) shall have to pay interest on undue or excess claim or such undue or excess reduction, at the rate not exceeding 24 percent.

29. A careful perusal of sub Sections (2) and (3) of Section 50 thus would show that though the liability to pay interest under Section 50 is an automatic liability, still the quantification of such liability, certainly, cannot be by way of an unilateral action, more particularly, when the assessee disputes with regard to the period for which the tax alleged to have not been paid or quantum of tax allegedly remains unpaid. Likewise, whether an undue or excess claim of input tax credit or reduction in output tax liability was made, is also a question of fact which needs to be considered and decided after hearing the objections of the assessee, if any. Therefore, in my considered view, though the liability fastened on the assessee to pay interest is an automatic liability, quantification of such liability certainly needs an arithmetic exercise after considering the objections if any, raised by the assessee. It is to be noted that the term “automatic” does not mean or to be construed as excluding “the arithmetic exercise”. In other words, though liability to pay interest arises under Section 50 of the said Act, it does not mean that fixing the quantum of such liability can be unilateral, especially, when the assessee disputes the quantum as well as the period of liability. Therefore, in my considered view, though the liability of interest under section 50 is automatic, quantification of such liability shall have to be made by doing the arithmetic exercise, after considering the objections of the assessee. Thus I answer the first issue accordingly.

xxx

xxx

xxx

31. It is to be noted at this juncture that in both the writ petitions, the respective writ petitioners are not disputing their liability to pay the interest on the delayed payment of tax. On the other hand, they are disputing the quantum of interest claimed by the Revenue by contending that the interest liability was worked out on the entire tax liability instead of restricting the liability to the extent of tax unpaid. It is further seen that the writ petitioners have placed some worksheets, wherein they have claimed some ITC credit for every month as well. Their grievance before the Writ Court was that the impugned bank attachment ought not to have been resorted to without determining the actual quantum of liability.

32. Therefore, it is evident that the dispute between the parties to the litigation is not with regard to the very liability to pay interest itself but only on the quantum of such liability. In order to decide and determine such quantum, the objections raised by each petitioners shall have to be, certainly, considered. Undoubtedly unilateral quantification of interest liability cannot be justified especially when the assessee has something to say on such quantum. The Writ Court, thus, in the above line, has disposed the writ petitions, that too, on a condition that the petitioner in each case should pay the admitted liability of interest.

33. A careful perusal of the direction issued by the Writ

Court does not indicate anywhere as to how the Revenue is prejudiced by the said order, especially when the Revenue is given liberty to pass an order in a manner known to law and communicate the same to the petitioners, after considering their objections. Thus, I find that the Writ Appeals preferred against the said orders of the Writ Court, as observed by Dr. Vineet Kothari, J, are wholly unnecessary. Therefore, I am in agreement with the view expressed by Dr. Vineet Kothari, J., as I find that entertaining the writ appeal is not warranted, since the Writ Court has not determined the interest liability of each petitioners against the interest of the Revenue in any manner and on the other hand, it only remitted the matter back to the concerned Officer to determine the quantum of such liability. Thus, the second question with regard to the maintainability of the writ appeals is answered accordingly.”

11. The learned court has also answered the second issue whether recovery proceedings under Section 79 of the CGST Act can be initiated for recovery of interest under Section 50 of the Act without initiation and completion of the adjudication proceedings under the Act at para-22 of the judgment which is quoted hereunder :-

“22. The next issue for adjudication in the instant writ application is as to whether garnishee proceedings under Section 79 of the CGST Act can be initiated for recovery of interest without adjudicating the liability of interest, when the same is admittedly disputed by the assessee. Section 79 of the CGST Act empowers the authorities to initiate garnishee proceedings for recovery of tax where “any amount payable by a person to the Government under any of the provisions of the Act and Rules made thereunder is not paid”. Since in the preceding paragraphs of our Judgment, we have already held that though the liability of interest is automatic, but the same is required to be adjudicated in the event an assessee disputes the computation or very leviability of interest, by initiation of adjudication proceedings under Section 73 or 74 of the CGST Act, in our opinion, till such adjudication is completed by the Proper Officer, the amount of interest cannot be termed as an amount payable under the Act or the Rules. Thus, without initiation of any adjudication proceedings, no recovery proceeding under Section 79 of the Act can be initiated for recovery of the interest amount.

12. While quashing the impugned order and the garnishee notices, liberty was left to the respondent authorities to initiate appropriate adjudication proceedings either under Section 73 or 74 of the CGST Act against the petitioner-assessee and determine the liability of interest, if any, in accordance with law after giving due opportunity of hearing to the petitioner.

13. We are of the considered opinion that the case of the present petitioner stands covered by the ratio rendered by this Court in the case of *Mahadeo Construction Co. (supra)* as despite disputing the liability towards interest, the revenue has raised a demand for payment of interest on the ground of delay in furnishing of GSTR-3B return for the period July 2017 to December 2019 without initiating any adjudication proceedings under Section 73 or 74 of the CGST Act, 2017. Earlier by an order dated 8th May 2020 a Coordinate Bench of this Court had been pleased to grant interim protection from any coercive steps against the petitioner pursuant to the impugned demand at Annexure-4.

14. In the light of the discussions made herein above and for the reasons recorded, the impugned demand contained in letters dated 28th February 2020 / 2nd March 2020 (Annexure-4) is quashed. Liberty is left to the respondent authorities to initiate appropriate adjudication proceedings and determine the liability of interest against the petitioner-assessee under the relevant applicable provisions Section 73 or 74 of the CGST Act, as the case may be, in accordance with law and after opportunity of hearing to the petitioner.

15. Accordingly, the writ petition is allowed.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J)

Shamim/