

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T) No. 2043 of 2020

.....
 Bluestar Malleable Pvt. Ltd. Petitioner

Versus

1. The State of Jharkhand.
2. The Chief Commissioner, CGST and CX, Ranchi Zone, Central Revenue Building (Annexe), Birchand Patel Path, Patna.
3. The Superintendent of the CGST and CX, Adityapur-1 Range, Jamshedpur.
4. The Principal Chief Commissioner, CGST, Ranchi Zone, Ranchi.
5. The Chairman, Goods and Service Tax Network (GSTN), New Delhi.
..... Respondents

With

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W.P.(T) No. 2051 of 2020

Bluestar Malleable Pvt. Ltd.Petitioner

Versus

1. The Union of India through the Secretary Ministry of Finance, Government of India, New Delhi.
2. The Chief Commissioner, CGST and CX, Ranchi Zone, Central Revenue Building (Annexe), Birchand Patel Path, Patna.
3. The Assistant Commissioner, GST and CX division-III, GST Bhawan, Jamshedpur.
4. The Superintendent of the CGST and CX, Adityapur-1 Range, Jamshedpur.
5. The Principal Chief Commissioner, CGST, Ranchi Zone, Ranchi.
6. The Chairman, Goods and Service Tax Network (GSTN) New Delhi.
.....Respondents.

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

For the Petitioner : Mr. Atanu Banerjee, Adv.
 For the Res-CGST : Mr. Amit Kumar, Adv.

8/18.8.2022

Per Deepak Roshan, J. Since both these writ applications are interconnected as such both are heard together and being disposed of by this common order.

2. W.P. (T) No.2043 of 2020 has been preferred by the petitioner challenging the letter dated 6th November 2018 (Annexure-6) issued by the respondent no.3-Superintendent, CGST & Central Excise, Jamshedpur; whereby the petitioner has been called upon to pay interest for a sum of Rs.72,49,126/- on account of alleged irregular input tax

credit taken by it on 24th August 2017 and reverted on 13th August 2018. Petitioner has also sought quashing of letter dated 28th January 2019 (Annexure-10) issued by the respondent no.3 whereby the objection of the petitioner against raising of the demand of interest under Section 50 of the Jharkhand Goods & Service Tax Act, 2017 (herein after to be referred as JGST Act) has been rejected. Petitioner has further sought declaration that it is not liable to pay interest for such mistake in filing GSTR-3B for the month of July 2017 wherein inadvertently he had included the transitional credit amount of Rs.3,11,43,255/- again though it was filed in GSTR TRAN-1 as transitional credit in terms of Section 140 of the Act. Petitioner has sought a protection from taking coercive action against it.

In W.P.(T) No.2051 of 2020, petitioner has challenged the part of refund sanction order dated 9th November 2018 (Annexure-3), so far it relates to adjustment of refund against the demand of interest made in terms of letter dated 6th November 2018 impugned in W.P.(T) No.2043/2020. Petitioner has also laid challenge to the order dated 31st January 2020 (Annexure-5) passed by the Additional Commissioner (Appeals) whereby the appeal preferred by him against part of the refund sanction order dated 9th November 2018 has been rejected.

3. Brief facts of the case is that the petitioner found itself entitled to claim transitional credit of ITC under the provisions of the JVAT Act 2005 and submitted a declaration in form TRAN-1 as per section 140 of the JGST Act, 2017 with a claim of credit for a sum of Rs.3,11,43,255/- which was filed electronically on the common portal of the respondent department. The accountant of the petitioner company repeated the said claim of transitional credit for the same amount in the GSTR-3B furnished in July, 2017. The said repetition being due to human error, absence of adequate practice/familiarity in the working of the new concept of Goods and Services Tax laws, which had been introduced in 2017 itself. Immediately, in July, 2018 petitioner took step to reverse the said entry to rectify the error. In GSTR-3B of July 2018, the sum of Rs.3,11,43,255/- has been reversed towards Input Tax Credit of SGST. It

is specific case of the petitioner that the said amount of transitional credit mistakenly mentioned in form GSTR-3B for July 2017 was never utilized by the petitioner company against the output tax liabilities arising out of daily business transactions.

A clarification was sought by the department vide letter No.225 dated 22.10.2018 regarding reversal of SGST Credit amounting to Rs.3,11,43,255. A clarification was also sought as to why no interest was paid on the said reversal of ITC. Petitioner responded to the said clarification vide letter no. BSMPL /245 dated 2.11.2018. The Respondent authority vide letter No.249 dated 06.11.2018 (impugned letter) responded to the petitioner's letter. The impugned letter pertains to direction for payment of interest for Rs.72,49,126/- in respect of irregularly taken credit of Rs.3,11,43,255/-.

In the meanwhile, the petitioner filed an application on 12.09.2018 (with an acknowledgment delivered by the system on 26.09.2018) seeking refund of excess amount lying in the electronic cash ledger of the petitioner for a sum of Rs.26,45,301/-. Pursuant thereto; the refund was sanctioned by the competent authority vide the refund sanction order dated 09.11.2018. But the said refund was allowed with an adjustment towards a sum of Rs.72,49,126/- in light of the impugned letter dated 06.11.2018. Petitioner challenged the part of refund order in appeal. The above mentioned adjustment of the refundable amount also contains the liability of interest. The appeal was dismissed vide order dated 31.01.2020 passed in appeal no.01/CGST/JSR/2020.

4. The grievance of the Petitioner is that though it submitted a detailed objection to the impugned letter dated 06.11.2018 before the respondent vide letter no.351 dated 09.01.2019; the Respondents vide letter no.309 dated 28.01.2019 (impugned letter) repeated its earlier stand and refused to accept the request made by the petitioner vide letter dated 02.11.2018 and 09.01.2019. The petitioner was requested to pay the balance of Rs.40,71,403/- towards interest payment after adjustment of the refund amount sanctioned in favour of the petitioner.

5. Learned counsel for the petitioner submits that interest under

Section 50 of the JGST Act, 2017 which is primarily compensatory in nature cannot be levied upon the petitioner if the ITC has not been availed twice. Learned counsel further contended that when the dispute taking objection to the notice at Annexure-6 for payment of interest in terms of Section 50(3) of the JGST Act was made through reply dated 09.01.2019 (Annexure-9) by the petitioner; the respondent should have followed the procedure prescribed for realization of the interest.

The issue raised by the petitioner has been incorporated in the order dated 18.04.2022 which reads as under:-

1. Whether interest under Section 50 of the JGST Act, 2017 primarily being compensatory in nature can be levied upon the petitioner, if the I.T.C. has not been availed twice through mistaken filing of GSTR-3B after the same had earlier been carried forward as transitional credit through GSTR TRAN-1 and also the same got reversed in July 2018 at the behest of the petitioner. It is the petitioner's case that no tax dues remained unpaid during this period.

2. Learned counsel for the petitioner submits that despite taking an objection to the notice at Annexure-6 dated 06.11.2019 for payment of interest in term of Section 50(3) of the JGST Act through reply dated 09.01.2019 (Annexure-9) by the petitioner, the respondents have not followed the procedure prescribed for realization of the interest. No intimation in the prescribed format or proceedings have been initiated for recovery of the interest in terms of Section 50(3) of the Act.

6. Learned counsel for the respondent reiterated the stand made in the counter affidavit and submits that the claim of the taxpayer that it made all best efforts to rectify the said error by reversal of the said Input Tax Credit but due to shortcomings in the online facilitation procedures of the respondent department, the reversal of the said Input Tax Credit facilitated in the month of July, 2018; is not tenable.

The procedure for matching, reversal and reclaim of Input Tax Credit has been laid down under Section 42 of CGST Act, 2017. As per the procedure, the irregularly taken SGST Credit was required to be

reversed by adding the same to the output tax liability in the GSTR-3B return for the month of August, 2017. So, additional column for reversal of irregularly taken SGST credit was not required in the GSTR-3B. Further, while filing the GSTR-3B for the month July, 2017 the taxpayer again took the Input Tax Credit which the taxpayer already transferred into the electronic credit ledger through TRAN-1. The taxpayer was able to file GSTR-3B returns on the online portal and the facility to reversal was available in the GSTR-3B return itself, therefore the plea of taxpayer that the online portal had shortcomings is not tenable.

Further, the taxpayer itself said that it was just on account of error of understanding and absence of adequate practice and confidence in the working of the new concept of Goods and Service Tax laws introduced for the first time in the year 2017 that the concerned accountant of the petitioner company repeated the said claim of transition credit for the same amount in the return furnished in the month of July, 2017. The taxpayer himself said that they were ignorant of law and procedures related to CGST Act, 2017. It is established law that ignorance of law cannot be an excuse for non-compliance of legal provisions. The petitioner try to put their failure on online portal which is not correct and tenable.

The department correctly issued letter to deposit interest on input Tax Credit wrongly availed by the petitioner. Section 50(3) of the CGST Act, 2017 stipulates that '*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 percent, as may be notified by the Government on the recommendation of the council*'. Accordingly, the department issued letter to deposit interest on the *suo-moto* reversal of ineligible Input Tax Credit by the taxpayer. The department also took necessary instruction from the GSTN after receiving the instant writ petition, and made a categorical query from the GSTN "*as to whether any feature of reversal*

of erroneous credit taken in GSTR-3B has been added in the system in the month of July, 2018, as claimed by the petitioner and as to when has the facility of reversal of erroneous entry of credit has been activated". The said queries of the department were replied by the GSTN which is as under:-

"GSTR-3B was enable on the GST Portal in August, 2017. The functionality for reversal of credit was also made available in Table-4(B)(2) in this deployment of FORM GSTR-3B. The user manual deployed on the GST portal, for explaining this functionality to the taxpayers, also covers the part pertaining to ITC reversed in Table -4(B)(2), which demonstrates that this functionality was also there on the GST portal".

Learned counsel concluded his argument by submitting that the procedure for matching, reversal and reclaim of Input Tax Credit has been laid down under Section 42 of CGST Act, 2017. As per the procedure the irregularly taken SGST Credit was required to be reversed by adding the same to the output tax liability in the GSTR-3B return itself for the month of August, 2017 onwards. There is a provision in the GSTR-3B return itself to reverse the credit at column 4(B) under the head 'ITC Reversed'. In view of the above, the contention of the petitioner is not tenable and both writ applications deserve to be dismissed.

7. Having heard learned counsel for the parties and after going through the documents available on record and the averments made in the respective affidavit, the only question which falls for consideration is that ***"whether liability of interest under Section 50 of the JGST Act can be raised without initiating any adjudication proceeding either under Section 73 or 74 of the JGST Act in the event assessee has raised a dispute towards liability of interest"***. In this regard, reference may be made to the case of ***Mahadeo Construction Co. Vs. Union of India*** reported in ***2020 (33) GSTL 343(Jhr.)*** wherein this Court has laid down the law as under:-

"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

assesse. If an assessee disputes the liability of interest i.e. either disputes its calculation or even the levability 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 12 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.

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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.”

8. After going through the aforesaid order passed by this Court in the case of ***Mahadeo Construction*** (*supra*) it appears that if any assessee disputes the liability of interest under Section 50 of the JGST Act then the revenue will have to follow the specific procedure as stipulated under Section 73 or 74 of the JGST Act. In the instant case, admittedly; a notice was issued to the petitioner dated 6.11.2018 (Annexure-6 to W.P.T No.2043/20) thereafter, the petitioner duly replied in form of objection with regard to non-payment of interest vide its reply dated 9.1.2019 (Annexure-9 to W.P.T No.2043/20). However the respondent-department vide letter dated 28.1.2019 repeated its earlier stand and refused to accept the petitioner’s stand and the petitioner was directed to pay the balance amount of Rs.40,71,403/- towards interest payment after adjustment of refund amount sanctioned in favour of the petitioner (Annexure-10 to W.P.T No.2043/20). Thus, it clearly transpires that the respondents have not followed the procedure as enshrined in Section 73 or 74 of the JGST Act. Thus, the issue involved in the writ applications is squarely covered by the decision passed by this Court in the case of ***Mahadeo Construction*** (*Supra*).

9. Having regard to the facts of the case and the discussions made

hereinabove and the law laid down by this Court, both these writ applications requires interference. Consequently, letter dated 6.11.2018 (Annexure-6) issued by the respondent No.3 whereby the petitioner was called upon to pay interest for the sum of Rs.72,49,126/- on account of alleged irregular Input Tax Credit as well as the impugned order dated 28.1.2019 (Annexure-10) whereby the objection filed by the petitioner towards payment of interest under Section 50 of JGST Act has been negated, are hereby, quashed and set aside. The appellate order is also quashed and set aside.

The matter is remitted back to the revenue to initiate a fresh proceeding with regard to the liability towards interest under Section 50 of JGST Act in accordance with law as stipulated in JGST Act. It goes without saying that after following the procedure and dependant on the proceedings, fresh refund order be issued in accordance with law.

10. With the aforesaid observations and directions made hereinabove, both these writ applications stand allowed.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)