

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On 10.12.2019
Delivered On 19.12.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.A.Nos.2127 and 2151 of 2019
and
CMP Nos.14341, 14344, 14424 and 14426 of 2019

W.A.No.2127 of 2019:

- 1.The Assistant Commissioner of CGST & Central Excise,
Maraimalai Nagar Division,
Plot No.40, Ranga Colony,
Rajakilpakkam, Chennai 600 073.
- 2.The Commissioner of CGST & Central Excise,
Chennai Outer Commissionerate,
Newry Towers, 12th Main Road,
Anna Nagar, Chennai 600 073.Appellants

Vs

M/s.Daejung Moparts Pvt Ltd.,
Rep. by its Director Sri Dokyoc An,
Plot No.6, Sengundram Industrial Estate,
Meirosapuram, Singa Perumal Koil,
Kanchipuram District 631 501. Respondent

Prayer :Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge passed in W.P.No.15978 of 2019 dated 13.06.2019.

Prayer in WP.No.15978/19: Writ Petition is filed under Article 226 of constitution of India, seeking for a writ of certiorarified To call for the records relating to the impugned proceedings issued by the 1st respondent Form GST DRC-13-Notice to a Third Person under Sec. 79(1) of the CGST Act addressed to Indian Overseas Bank Maraimalai Nagar Branch attaching the Bank account (Cash Credit A/C No. 76102000001034 of the petitioner and to quash the same as issued without adhering to the mandatory requirements specified under the GST act arbitrary and illegal.

W.A.No.2151 of 2019:

- 1.The Superintendent of Central Taxes,
Kanchipuram Range No.28/7, Madam Street,
(Near Moongil Mandapam),
Kancheepuram 631 501.
- 2.The Assistant Commissioner of CGST & Central Excise,
Maraimalai Nagar Division,
Plot No.40, Ranga Colony,
Rajakilpakkam, Chennai 600 073.Appellants

Vs

1. M/Dongsung Automotive Pvt.Ltd.,
Rep. by its Managing Director,
Mr.Jongkyu Lee,
112, Singadivakkam Village & Post,
Kanchipuram District 631 501.
- 2.Indian Overseas Bank,
SH 57, Ramanujar Nagar,
Irrungatukottai Branch,
Sriperumbudur 602 105. Respondents

Prayer :Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge passed in W.P.No.15624 of 2019 dated 13.06.2019.

Prayer in WP.No.15624/19: Writ Petition is filed under Article 226 of the constitution of India, seeking for a writ of ceriorari Calling for the records in File No.C.No. IV/16/30/2019- Tech-III dated 23.05.2019 on the file of the Second Respondent and quash the same as illegal arbitrary and violative of Principle of natural justice.

For Appellants : Mr.V.Sundareswaran
in both W.As. Senior Standing Counsel

For Respondents : Mr.MA.Mudimannan
in W.A.No.2127/2019

For Respondents
in W.A.No.2151/2019 : Ms.P.Jayalakshmi

C O M M O N O R D E R

These writ appeals are listed before me by way of reference, in pursuant to the order passed by the Hon'ble Chief Justice, under the following facts and circumstances.

2. The respondent in W.A.No.2127 of 2019, as the writ petitioner in W.P.No.15978 of 2019, challenged the notice dated 21.05.2019 issued in Form GST DRC-13 under Section 79 (1)(c) of the CGST Act to M/s. Indian Overseas Bank, Maraimalai Nagar, calling upon the said Bank to pay a sum of Rs.41,74,617/- to the Government under CGST and SGST heads equally, from the account maintained by the writ petitioner. In effect, it is a bank attachment proceedings.

3. The first respondent in W.A.No.2151 of 2019, as the writ petitioner filed W.P.No.15624 of 2019, challenging similar notice issued under Section 79(1)(c) of the said Act to M/s. Indian Overseas Bank, Sriperumbudur, calling upon the said bank to pay a sum of Rs.10091755/- to the Government under CGST and SGST Act heads dividing equally, from the account maintained by the petitioner herein. Here again, in effect, the impugned proceedings is bank attachment.

4. The case of the writ petitioner in W.P.No.15978 of 2019 is as follows:

After the introduction of GST from July 2017, three types of returns are liable to be filed, GSTR-1 showing the details of outward supplies of goods or services by the assessee (details of purchases), GSTR-2 showing the details of inward supplies of goods or services (details of sales) and GSTR-3 stating the total purchases and total sales and the tax payable and the input tax credit permissible and also GSTR-3B, a monthly return through which the assessee has to remit the tax calculated after deducting the input tax credit available. While discharging the monthly dues, the available ITC can be deducted and the balance is to be paid by way of cash. Because of delay in making payment by the purchasers due to recession in the market, the petitioner could not file the monthly returns for the period from July 2017 to March 2018 in time and consequently, could not remit the dues along with the returns. However, on receipt of the amounts from the purchasers, the petitioner filed monthly returns and paid the taxes, after crediting the ITC. For the period from July 2017 and September 2017, there was no delay in filing the return and also paying the tax dues. However, the Superintendent of Central Excise, Chengalpattu Range, through a communication dated 02.05.2019, demanded a sum of Rs.41,74,620/- as interest for the belated payment of tax for the period from July 2017 to March 2018. The petitioner, by letter dated 10.05.2019 informed that the interest payable works out to Rs.915121/- only. The petitioner enclosed an Annexure, having the due date for filing return/payment of tax and the actual date of payment and number of days and interest payable. However an attachment of bank account of the petitioner for the alleged non payment of interest as stated in the communication of the said Officer dated 02.05.2019 was issued.

5. The case of the writ petitioner in W.P.No.15624 of 2019 is as follows:

The petitioner is taking input tax credit as and when based on the invoices and other documents as prescribed under law. The petitioner duly filed their GSTR 1 every month on their entire value of supply each month. Even though the petitioner has input tax credit in their ledgers the same cannot be utilised for the payment of tax i.e. by filing GSTR 3B unless and until the petitioner makes full payment of tax. Law does not prohibit the payment of tax in part. The first respondent issued a communication on 14.03.2019, directing to pay interest on delayed payment of taxes for the period from July 2017 to November 2018. The interest liability was worked out on the entire tax liability instead of restricting the tax liability to the extent of tax unpaid. The petitioner responded through their communication dated 29.03.2019, informing that as per worksheet, interest has been calculated for the period from July to November 2018 and that the said worksheet also shows that the petitioner has ITC credit every month. As against the total GST payable Rs.85,27,87,219/-, the petitioner has ITC credit of Rs.623,772,546/- and only Rs.229,014,673/- is to be discharged in cash. As they had sufficient ITC credit every month (73%), they had adjusted the same against the total GST payable and worked out the interest on the balance cash component. As per their working, the interest liability works out to Rs.22,9,413/-. However, the impugned bank attachment was issued for realisation of a sum of Rs.10091755/-.

6. Both the writ petitioners are engaged in the business of manufacturing their respective products. It is not in dispute in both cases there was some delay in filing the return and paying the GST within the time. Therefore, the Revenue, by relying upon Section 50 of the said Act, resorted to recover interest on the delayed payment. Such recovery proceedings culminated into the impugned bank attachments. According to the writ petitioners, the impugned bank attachment proceedings were issued in violation of the principles of natural justice and without passing any order determining the liability to pay interest.

7. It is seen that the Revenue contested the writ petitions by claiming that payment of interest under Section 50 of the said Act is automatic. In other words, it appears that the Revenue's contention before the Writ Court was that once a delayed payment of tax was made, liability to pay interest on the same becomes automatic, for which no separate proceedings need to be initiated for determining such interest liability. In support of the above contention, the learned counsel for the Revenue seems to have relied on a Division Bench order of the Telengana High Court dated 18.04.2019 made in W.P.No.44517 of 2018 in Megha Engineering and

Infrastructures Limited vs Commissioner of Central Tax and Others.

8. The Writ Court disposed W.P.No.15624 of 2019 on 13.06.2019, wherein the operative portion at paragraph 16 reads as follows:

"16. In the light of narrative thus far, the following order is passed:

a) Writ petitioner undertakes to pay the admitted liability of Rs.22,39,413/- (Rupees Twenty two lakhs Thirty Nine Thousand Four hundred and Thirteen only) (as admitted in petitioner's aforementioned letter dated 29.03.2019 to the Department within one week from today i.e., on or before 20.06.2019).

b) On payment of aforesaid amount on or before 20.06.2019, the impugned communication dated 23.05.2019 bearing reference C.No.IV/16/30/2019-Tech-III from the second respondent to the third respondent bank will stand set aside.

c) If the aforesaid payment is not made on or before 20.06.2019, this writ petition will stand dismissed and the impugned order will continue to operate without any reference to this Court.

d) On payment of aforesaid amount on or before 20.06.2019 by the writ petitioner, as mentioned supra, impugned communication from the second respondent to third respondent bank inter-alia under Section 79 of CGST Act will stand set aside and the second respondent shall consider all the points raised in writ petitioner's reply dated 29.03.2019, more particularly the annexed working sheet, pass an order in a manner known to law and communicate the same to the writ petitioner under due acknowledgement within one week therefrom.

e) If the decision taken by the second respondent is in favour of the writ petitioner, it is the end of the matter. If that not be so, as mentioned supra, writ petitioner shall avail alternate remedy of preferring a statutory appeal to the appellate Authority under Section 107 of CGST Act.

This writ is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed."

9. Likewise, W.P.No.15978 of 2019 was also disposed on 13.06.2019, by following the order made in W.P.No.15624 of 2019, as follows:

"5. Following the order made in W.P.No.15624 of 2019, this writ petition is disposed of with

the following directions:

a) Writ petitioner has produced a computer generated statement for his bank account i.e, Account No.076102000001034, Customer ID 656931 with Indian Overseas Bank, Maraimalainagar (0761), 34, Nandanar Street, Maraimalainagar, Chengalpattu, Tamil Nadu ? 603 209, Email Id: iob0761@iob.in, IFSC Code: IOBA0000761 to show that the balance available in the writ petitioner's account as of 12.06.2019 is Rs.33,77,394/- (Rupees Thirty Three Lakhs Seventy Seven Thousand Three Hundred and Ninety Four only).

b) As the bank has not been arrayed as respondent, Registry shall communicate this order to the aforesaid bank at the aforesaid address and from and out of the aforesaid balance of little over Rs.33,00,000/-, the said bank shall pay out an admitted sum of Rs.9,15,121/- (Rupees Nine Lakhs Fifteen Thousand One Hundred and Twenty One only) to the Assistant Commissioner of GST and Central Excise, Maraimalainagar Division (first respondent herein) forthwith.

c) In all other aspects, communication dated 21.05.2019 bearing reference C.No.IV/16/30/2019-Tech-III from the first respondent to the aforesaid bank will stand set aside. This would mean that the writ petitioner can operate aforesaid bank account with the exception of aforementioned admitted sum of Rs.9,15,121/-, which shall be paid by the Bank to the first respondent.

d) On payment of aforesaid amount on or before 20.06.2019, the impugned communication dated 21.05.2019 bearing reference C.No.IV/16/30/2019-Tech-III from the second respondent to the Indian Overseas Bank will stand set aside.

e) On payment of aforesaid amount of Rs.9,15,121/- on or before 20.06.2019 by the writ petitioner's banker, as mentioned supra, impugned communication from the second respondent to Indian Overseas Bank inter-alia under Section 79 of CGST Act will stand set aside and the second respondent shall consider all the points raised in writ petitioner's reply dated 10.05.2019, more particularly the annexed working sheet, pass an order in a manner known to law and communicate the same to the writ petitioner under due acknowledgement within one week therefrom.

f) If the decision taken by the second respondent is in favour of the writ petitioner, it

is the end of the matter. If that be not so, as mentioned supra, writ petitioner shall avail alternate remedy of preferring a statutory appeal to the appellate Authority under Section 107 of CGST Act.

This writ is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed."

10. It is further seen from the order passed in W.P.No.15624 of 2019 that the learned counsels appearing on either side were not in a position to inform the Writ Court as to whether the aforementioned Megha Engineering's case has been put to challenge before the Hon'ble Supreme Court. Thus, taking note of the aforesaid circumstances and considering the factual matrix of the case, the Writ Court left the question open as to whether Megha Engineering and Infrastructure Limited's case would apply to the instant case. In Megha Engineering case, the Division Bench of Telangana High Court has observed that the liability to pay interest under Section 50(1) of the said Act arises automatically, when a person, who is liable to pay interest fails to pay the tax to the Government within the period prescribed. This finding of the Telangana High Court was relied on before the Writ Court to contend that imposition of interest under Section 50 of the Act is automatic. However, the Writ Court without going into such question disposed the writ petitions by setting aside the bank attachment proceedings subject to a condition that the petitioner in each case to pay the admitted liability. The Writ Court further directed that on making such payment, the Revenue shall consider all the points raised in the reply submitted by each petitioner and to pass an order in a manner known to law and communicate the same to each writ petitioner. It is also made clear in the said order that if the decision taken by the second respondent therein is in favour of the writ petitioner, it is the end of the matter and on the other hand, if it goes against the writ petitioner, they should avail alternative remedy of preferring a statutory appeal to the appellate authority under Section 107 of the CGST Act.

11. Challenging the above orders of the Writ Court, the Revenue preferred the above two writ appeals. In the grounds of appeal, it is contended by the Revenue that the Writ Court failed to see that there is an admitted default in filing the self assessed monthly statements/returns within the statutory period and payment of admitted self assessed tax, which consequently attracts payment of interest under Section 50 of the GST Act. In other words, it is the contention of the Revenue that interest envisaged under Section 50 of the said Act is automatic and to be paid by the defaulter on his own.

12. Both the writ appeals were taken up together for

hearing on 23.07.2019 by the Hon'ble Division Bench. However, after hearing both sides, the Hon'ble Judges individually passed two different orders. While Dr.Vineet Kothari,J. dismissed the writ appeals, C.V.Karthikeyan,J. held that the appellants have raised an arguable point which requires deeper consideration of the scope of Section 50 of the Central Goods and Service Tax Act 2017 and that the summary dismissal of the Writ Appeal at the admission stage itself and the view taken by the learned Single Judge require to be revisited. Thus, C.V.Karthikeyan,J. referred the matter to the Hon'ble Chief Justice under Clause 36 of the Letters Patent on the issue as to whether under Section 50 of the CGST Act, interest on delayed filing of returns arises automatically or on assessment and after considering the explanation offered by the assessee and whether at all that explanation has to be considered by the Assessing Officer and then pass further orders.

13. For better clarity, the individual orders passed by the Hon'ble Judges in the above writ appeals are extracted hereunder:

Per: Dr.VINEET KOTHARI, J.

"The Revenue has filed these two intra court appeals aggrieved by the orders dated 13.6.2019 passed by the learned Single Judge of this court directing the Assessing Authority who is the present appellant before us to decide the objections of the Assessee dated 10.5.2019 and 29.3.2019 filed in pursuance of the Notice demanding interest issued under Section 50 of the CGST Act by the present Appellant on 2.5.2019 and 14.3.2019 to the Respondent/Assessee.

2. The interest demand on the alleged delay in filing returns under CGST Act was computed to the tune of Rs.41,74,620/- and Rs.1,70,71,048.31 respectively whereas the Assessee in his objections has raised certain issues about the Output GST liability for each month and that the Input Tax Credit available to the Assessee as per Electronic Credit Ledger which has to be adjusted and only on the net Tax payable by cash, the interest liability under Section 50 of the Act on the delay in filing the Returns has to be recalculated to the extent of Rs.9,15,121/- and therefore, against the Garnishee proceedings initiated by the Assessing Authority directing the Respondent-Bank on the basis of impugned notice dated 2.5.2019 and the Bank was not even arrayed as Respondent in the present Writ Petition, was bad in law.

3. The learned Single Judge passed the following direction in the order impugned before us:-

"5.Following the order made in W.P.No.15624 of 2019, this writ petition is disposed of with the following directions:

a) Writ petitioner has produced a computer generated statement for his bank account i.e, Account No.076102000001034, Customer ID 656931 with Indian Overseas Bank, Maraimalainagar (0761), 34, Nandanar Street, Maraimalainagar, Chengalpattu, Tamil Nadu ? 603 209, Email Id: iob0761@iob.in, IFSC Code: IOBA0000761 to show that the balance available in the writ petitioner's account as of 12.06.2019 is Rs.33,77,394/- (Rupees Thirty Three Lakhs Seventy Seven Thousand Three Hundred and Ninety Four only).

b) As the bank has not been arrayed as respondent, Registry shall communicate this order to the aforesaid bank at the aforesaid address and from and out of the aforesaid balance of little over Rs.33,00,000/-, the said bank shall pay out an admitted sum of Rs.9,15,121/- (Rupees Nine Lakhs Fifteen Thousand One Hundred and Twenty One only) to the Assistant Commissioner of GST and Central Excise, Maraimalainagar Division (first respondent herein) forthwith.

c) In all other aspects, communication dated 21.05.2019 bearing reference C.No.IV/16/30/2019-Tech-III from the first respondent to the aforesaid bank will stand set aside. This would mean that the writ petitioner can operate aforesaid bank account with the exception of aforementioned admitted sum of Rs.9,15,121/-, which shall be paid by the Bank to the first respondent.

d) On payment of aforesaid amount on or before 20.06.2019, the impugned communication dated 21.05.2019 bearing reference C.No.IV/16/30/2019-Tech-III from the second respondent to the Indian Overseas Bank will stand set aside.

e) On payment of aforesaid amount of Rs.9,15,121/- on or before 20.06.2019 by the writ petitioner's banker, as mentioned supra, impugned communication from the second respondent to Indian Overseas Bank inter-alia under Section 79 of CGST Act will stand set aside and the second respondent shall consider all the points raised in writ petitioner's reply dated 10.05.2019, more particularly the annexed working sheet, pass an order in a manner known to law and communicate the same to the writ petitioner under due acknowledgement within one week therefrom.

f) If the decision taken by the second respondent is in favour of the writ petitioner, it is the end of the matter. If that be not so, as mentioned supra, writ petitioner shall avail alternate remedy of preferring a statutory appeal to the appellate Authority under Section 107 of CGST Act.

This writ is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed."

4. Even though only a direction has been given by the learned Single Judge to consider the objections of the Assessee dated 10.5.2019 and 29.3.2019 and pass orders in accordance with law, once the admitted interest liability is paid by the Bank, the Assessing Authority, without deciding the objections of the Assessee and re-computing the interest liability, has unnecessarily filed the present intra-court Appeals. The Assessing Authority was bound to decide the aforesaid objections of the Assessee, to determine the correct liability of interest to be paid by the Assessee and without doing so, the garnishee proceedings could not have been initiated.

5. Therefore, the learned Single Judge has rightly set aside the garnishee direction to the Bank, while directing the Bank to deposit the admitted liability for interest under Section 50 of the Act to the extent of Rs.9,15,121/- (in W.A.No.2127/2019) and Rs.22,39,413/- (in W.A.No.2151/2019) which the Assessee undertook to pay.

6. I do not find any merit in the present Writ Appeals filed by Revenue and the same are liable to be dismissed. Accordingly, they are dismissed. The connected Miscellaneous Petitions are also dismissed."

Per: C.V.KARTHIKEYAN, J;

" Revenue is in appeal against the order of the learned Single Judge dated 13.6.2019.

2. Section 50 of the CGST Act has been drawn to our attention by the learned counsel for the Appellant which reads is as follows:-

"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.

(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."

3. The learned counsel for the Appellant submits that every person, who is liable to pay tax, but, fails to pay the tax or any part thereof, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest and not on his assessment. This, automatically imposes a liability upon the Assessee to pay interest. On the very admission of the Assessee that they had filed the Returns belatedly as they could not make the payment of GST on time, the liability to pay interest under Section 50(1) arises even without any Assessment as the Assessee is required to pay such interest on his own.

4. Section 50 speaks about the liability to pay interest on one contingency viz., to pay tax or any part thereof within the prescribed period, whereas in the present case, it is admitted by the Assessee in his reply dated 10.5.2019 that he has not paid tax, despite which the learned Single Judge has given the directions in the order impugned before us. When once admission is made that Returns have not been filed in time, the interest for the delay in filing the Returns automatically arises and there cannot be any explanation for the same. In this regard, with due respect to the view expressed by my learned Brother, I differ from the view taken. My view is fortified by the Division Bench Judgment of the High Court of Telangana in W.P.No.44517 of 2018 dated 18.4.2019 (Megha Engineering & Infrastructures Ltd. v. The Commissioner of Central Tax and others) wherein under very similar facts, it had been held as follows:-

"39. Admittedly, the petitioner filed returns belatedly, for whatever reasons. As a consequence, the payment of the tax liability, partly in cash and partly in the form of claim for ITC was made beyond the period prescribed. Therefore, the liability to pay interest under Section 50(1) arose automatically. The petitioner cannot, therefore, escape from this liability."

5. I therefore, hold that the appellant has raised an arguable point which requires deeper consideration of the scope of Section 50 of the Central Goods and Services Tax Act, 2017 and consequently, I am of the view that the summary dismissal of the Writ Appeal at the admission stage itself by my learned Brother and the view taken by the learned Single Judge require to be revisited.

6. The matter is, therefore, referred to the Hon'ble the Chief Justice under Clause 36 of the Letters Patent, on the issue as to whether under Section 50 of the CGST Act, the interest on delayed filing of the Returns arises automatically or on assessment and after considering the explanation offered by the Assessee and whether at all that explanation has to be considered by the Assessing Officer and then pass further orders. "

14. Consequent upon the above two differing orders, the matter is placed before me pursuant to an order passed by the Hon'ble Chief Justice.

15. Heard Mr.V.Sundareswaran, the learned Senior Standing Counsel for the appellants and Mr.MA.Mudimannan and Ms.P.Jayalakshmi, the learned counsels appearing for the respondents. Both sides placed their submissions reiterating their contentions raised before the Writ Court as well as before the Division Bench.

16. Before proceeding further, let me remind myself that the present matter is placed before me, as a third Judge by way of reference, in view of the differing view taken by the Hon'ble Judges in the Division Bench as extracted supra.

17. Let me first consider as to what is the issue, where the Hon'ble Judges had differed which requires third opinion/view.

18. A careful perusal of the separate orders passed by the Hon'ble Judges would first indicate that while Dr.Vineet

Kothari,J. dismissed the writ appeal, C.V.Karthikeyan,J. found that the summary dismissal of the writ appeal at the admission stage itself and the view taken by the learned Single Judge require to be revisited. Therefore, it is apparent that the Hon'ble Judges differed in their view regarding the issue on maintaining/entertaining the writ appeals.

19. Apart from the above issue on which the Hon'ble Judges differed, C.V.Karthikeyan,J. raised another issue as to whether the interest on delayed filing of the returns arises automatically or on assessment after considering the explanation offered by the assessee.

20. As I already pointed out, insofar as the issue viz., entertaining of the writ appeals is concerned, there is a clear difference of opinion expressed by the Hon'ble Judges, as is evident from their individual orders itself. However, insofar as the other issue raised by C.V.Karthikeyan,J. is concerned, I am unable to see any view taken or expressed by Dr.Vineet Kothari,J. on the question as to whether interest under Section 50 of the said Act is an automatic liability or the same is to be determined after considering the explanation offered by the assessee. On the other hand, I find from paragraph 4 of Dr.Vineet Kothari,J's order that the Hon'ble Judge has only observed that the Assessing Authority without deciding the objections of the assessee and recomputing the interest liability, has unnecessarily filed the present intra-court appeals and that the Assessing Authority was bound to decide the aforesaid objections of the assessee to determine the correct liability of the interest to be paid by the assessee and that without doing so, the garnishee proceedings could not have been initiated. Therefore, it is seen that Dr.Vineet Kothari,J. has not expressed any opinion or view on the larger question as to whether the interest on delayed filing of returns arises automatically or not. The Hon'ble Judge has only observed that the Assessing Officer is bound to determine the correct liability of interest after considering the objections raised by the assessee.

21. No doubt, C.V.Karthikeyan,J. has observed at paragraph No.4 of his order that once admission is made that returns have not been filed in time, the interest for the delay in filing the returns automatically arises and there cannot be any explanation for the same. In support of his view, the Hon'ble Judge relied on the Division Bench decision of the Telengana High Court made in Megha Engineering & Infrastructures Ltd. case. Insofar as the reliance placed by the Hon'ble Judge in Megha Engineering's case is concerned, it is now brought to my notice that a review petition is filed against the said order in the Telengana High Court, wherein stay has been granted.

22. Therefore, though I find that a categorical view is not expressed by Dr.Vineet Kothari,J. as to whether interest under Section 50 of the said Act is an automatic liability or the same is to be determined after considering the explanation offered by the assessee, since this matter is placed before me by way of reference pursuant to the order made by the Hon'ble Chief Justice, to answer the said question, I am bound to answer the said question as well.

23. From the above narrated facts and circumstances, it is evident that two issues arise for the third view as follows:

- a) Whether the delayed filing of returns attract the interest liability on the assessee automatically?
- b) Whether the Writ Appeals ought to have been entertained?

24. In my considered view, a reference to the third Judge has to be made only when two different views are expressed by the Hon'ble Judges in the Division Bench. In this case, except the view on the maintainability of the writ appeals, I find that the issue regarding automatic interest liability is not the issue, where two different or contra views are expressed by the Hon'ble Judges. However, as I observed supra, in view of the present reference made to me, I deal with the first issue as follows.

25. The question raised is as to whether interest on delayed payment of tax as contemplated under Section 50 of the Central Goods and Services Tax Act, 2017, is automatic or the same is to be determined, after considering the explanation offered by the assessee.

26. Before answering the said question, it is better to understand the scope and ambit of Section 50 of the said Act, which reads as follows:

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.

(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."

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.

30. Next issue to be answered herein is as to whether the dismissal of the writ appeals by Dr.Vineet Kothari,J. is correct or whether those writ appeals ought to have been entertained for further hearing.

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 appeals 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.

34. Accordingly, the writ appeals are dismissed. The connected miscellaneous petitions are also dismissed. No costs. The reference is answered in the above terms.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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+1cc to Mr.S.Muthuvenkateswaran, Advocate SR.105674

+1cc to Mr.K.Jayachandran, Advocate SR.105535

+2cc to Mr.V.Sundaraswaran, Advocate SR.106543

W.A.Nos.2127 and 2151 of 2019

RGN(CO)

CB(11/02/2020)



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