07.09.2021
p.b.
Sl. No.1.

W.P.A. 16781 of 2019
With
CAN 1 of 2020
CAN 2 of 2020
CAN 5406 of 2020
CAN 5408 of 2020

Shree Automotive (P) Ltd. & Anr.
Vs.
Joint Commissioner of State Tax,
Government of West Bengal & Ors.

(Via Video Conference)

Mr. J. P. Khaitan,
Ms. Swapna Das,
Mr. Saurabh Bagaria,
Mr. Indranil Banerjee.
…….for the petitioner.

Ms. Sarbari Datta.
……..for the respondent no.5.
Mr. Vipul Kundalia,
Mr. Sujit Mitra.
……..for the Union of India.
Mr. A. Ray,
Mr. S. Mukherjee,
Mr. D. Ghosh.
…….for the State.

Both the parties are present.

In this writ petition, the petitioner has challenged the vires of several sections of the GST Act including Section 50 and order dated May 14, 2019 demanding interest of Rs.2,51,15,982/- under Section 50 for the period July, 2017 to March, 2018. The petitioner has also challenged the garnishee notice under Section 79 dated

May 27, 2019 issued to HDFC Bank and recovery of Rs.1,42,74,642/- under the said notice.

The petitioner submits that during the pendency of this writ petition, Section 50 Sub-Section (1) of the GST Act has been amended by the Finance Act, 2021 under Section 112 of the Finance Act which is quoted hereunder:-

"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."

In view of this legal position, interest under Section 50 is payable only on that portion of the tax which is paid by debiting the electronic cash ledger. It is the case of the petitioner that interest of Rs.1,22,283/- only is payable by it under Section 50 and the rest of the demand is in respect of tax paid by debiting the electronic credit ledger.

This interest amount of Rs.1,22,283/- is mentioned in the petitioner's supplementary affidavit dated September 24, 2019 and has not been disputed in the affidavit in opposition dated December 17, 2019.

In view of the retrospective amendment of Section 50 with effect from July 1, 2017 the impugned order dated May 14, 2019 is not sustainable in law and is set aside. Consequentially, the garnishee notice dated May 27, 2019 is also set aside.

The respondent no.1 will recalculate the demand in accordance with law and after taking into consideration the aforesaid amendment of Section 50 of GST Act within a period of 4 weeks and the refund the excess amount collected. Respondent shall also consider the claim of the petitioner for interest on excess amount collected in accordance with law.

Accordingly, the writ petition being W.P.A. No.16781 of 2019 is disposed of.

The applications being CAN 1 of 2020, CAN 2 of 2020, CAN 5406 of 2020 and CAN 5408 of 2020 are also disposed of.

(Md. Nizamuddin, J.)