

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.12.2021
PRONOUNCED ON : 08.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

WP.NO.7129 OF 2021
AND
WMP.NOS.7645 & 7647 OF 2021

M/s.Srinivasa Stampings
Represented by its Proprietor
Mr.M.Pappiah
No.4/77 J86 E4, Bedarapalli
SIPCOT Post
Hosur - 635 126
Krishnagiri District.

...Petitioner

Vs.

1.The Superintendent of GST and Central Excise
Hosur IIA Range
67/A SIPCOT Industrial Complex, Phase I
Hosur 635126
Krishnagiri District

2.The Assistant Commissioner
GST & Central Excise
Hosur II Division, 67/A, II Floor,
SIPCOT Industrial Complex, Hosur 635126
Krishnagiri District

...Respondents

Prayer : - Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 1st respondent in connection with the notice dated 29.12.2020 bearing O.C.No.260/2020 and quash the same.

For Petitioner : No Appearance

For Respondents : Mr.R.Gunalan,
Junior Standing Counsel

ORDER

There is no representation on behalf of the petitioner for the last two occasions. Even today, there is no representation on behalf of the petitioner.

2. The short point that arises for consideration in the present Writ Petition is whether the petitioner is entitled to stall the recovery of interest payable on delayed payment of tax under Section 50 of CGST Act, 2017. Earlier the petitioner was issued with a notice dated 04.03.2020 bearing reference OC No.97 of 2020, whereby a sum of Rs.6,58,233/- was demanded from the petitioner as interest payable under Section 50(1) of CGST Act, 2017 r/w Notification No.13/2017-Central Tax, dated 28.06.2017. The petitioner was directed to pay the aforesaid amount by 10.03.2020. The petitioner appears to have replied for the same by reply dated 09.03.2020 and thereafter, proceeded to file W.P.No.12667 of 2020 to quash the aforesaid demand notice dated 04.03.2020.

3. The petitioner's Writ Petition along with a batch of Writ Petitions came to be disposed by a common order dated 29.09.2020 by a learned Single Judge of this Court. The Writ Petition was disposed by directing the respondents to issue appropriate order to recompute the amount of interest liability for delayed payment of cash and refund the balance of amount. The operative portion of the order reads as follows:

"In W.P.No.12492 of 2020, learned counsel for the petitioner states that the interest liability relating to belated payment of tax both by cash and reversal of ITC has been coercively recovered. In light of my decision as aforesaid, a direction is issued to the appropriate authority to compute the interest liability for belated remittances of cash and refund the balance of the amount collected from the petitioner within a period of four weeks from date of uploading of this order."

4. While passing the above order, the learned Single Judge referred to the GST Councils Meeting on 21.06.2019 and observed as follows:-

"11.The 39th GST Council meeting held on 21.06.2019 made recommendations to amend Section 50 vide Section 100 of Finance (No.2) Act, 2019 to provide for charging interest on net cash liability and the Council in its meeting on 14.03.2020 recommended charging of interest on net cash tax liability with effect from 01.07.2017 with a retrospective amendment of the Act from the aforesaid date. On 14.03.2020, the Council issued a press release wherein, under the head "Measures for trade Facilitation" it was stipulated categorically that interest for delay in payment

of GST would be charged only on net cash tax liability with effect from 01.07.2017 and that the proviso to Section 50 would be retrospective, with effect from 01.07.2017.

12. On the heels of the aforesaid recommendation came Notification No.63 of 2020-Central Tax dated 25.08.2020, which stated that the proviso would operate with effect from 01.09.2020. Naturally, this resulted in a barrage of apprehension and doubts from taxpayers. The CBIC reacted promptly and vide press release dated 26.08.2020, issued on the very next day after the aforesaid Notification, clarified that the Notification had been issued only on account of and to get over certain technical limitations and the decision of the GST Council in the 39th meeting would be give full effect. The press release is extracted below:

Press Release

CBIC

26.08.2020

Interest on delayed payment of GST:CBIC
New Delhi: The Central Board of Indirect Tax & Customs (CBIC) today clarified that the Notification No. 63/2020#126;Central Tax dated 25th August 2020 relating to interest on delayed payment of GST has been issued that prospectively due to certain technical limitations. However, it has assured that no recoveries shall be made for the past period as well as by the Central and State tax administration in accordance with the decision taken in the 39th Meeting of GST Council. This will ensure full relief to the taxpayers as decided by the GST Council.

CBIC explanation came in response to an assortment of comments in the social media with respect to Notification dated 25th August 2020 regarding charging of interest on delayed payment of GST on net liability (the tax liability discharge in cash) w.e.f. 1st September 2020.

13. Barring one matter in this batch, all writ petitions challenge action taken by the Central GST Authorities levying interest on tax paid by reversal of ITC. In one matter alone, the challenge is to recovery taken under the Tamil Nadu Goods and Services Tax Act, 2017 (TNGST Act). Learned Special Government Pleader would adopt the

submissions of the Central authorities and state that the position of the State Government is in line with the view expressed by the Centre in press release dated 26.08.2020.

14. It is thus clear that there is a meeting of minds of the Centre, the State of Tamil Nadu and the Board to the effect that the proviso to Section 50 is operative effective 01.07.2017, and no interest is liable to be levied on tax remitted by reversal of available ITC.

15. While this is so, the GST authorities have adopted a contradictory stand by issuing orders, styled as notices, levying interest for allegedly belated remittance of tax by reversal of ITC. No opportunity appears to have been granted in most of the matters calling for explanation from the assessee prior to raising of the impugned demands of interest and coercive recovery action by attachment of bank accounts have been resorted to by the respective Assessing Officers.

.....

.....

22. Thus, notwithstanding that the Amendment Act provided for the deletion to come into effect from 01.04.1988, the Honble Supreme Court held that the deletion would operate with effect from 01.04.1984 itself. The ratio of this decision is clearly applicable to the case on hand."

5. Ultimately from paragraphs 27 to 29, this Court has held as follows:

"27. Thus, the Board has yet again reiterated that the amendment by insertion of proviso of Section 50 of the CGST Act is intended to be retrospective. Perhaps the relegation of the show cause notices to the call book is to await the passing of the amendments in the central and state statutes. To my mind, the Centre, the State and the CBIC are in agreement that the operation of the proviso of Section 50 should only be retrospective and the interpretation to the contrary by the authorities constituted under the Board is, in my view, clearly misplaced as is the consequential coercive recovery.

28. Thus, notwithstanding that the proviso has been stated to be effective only from 01.09.2020

by Notification No.63 of 2020 dated 25.08.2020, I cannot but take note of (i) the resolution of the GST Council dated 22.12.2018 introducing the proposal for amendment of Section 50 to allow payment of interest on net cash liability, taking into account admissible credit that amount payable through electronic cash ledger (ii) the GST Council meeting dated 21.06.2019 wherein the recommendation was made to amend Section 50 vide Section 100 of Finance (No.2) Act, 2019 to provide for charging interest on net cash liability (iii) the Council in its meeting on 14.03.2020 recommending charging of interest on net cash tax liability with effect from 01.07.2017 and accordingly, retrospective amendment of the Act from the aforesaid date (iv) the press release of the Council post the 39th meeting also dated 14.03.2020 allaying apprehensions of the tax payers that the amendment of Section 50 would be prospective, setting out clearly as a trade facilitation measure, the assurance that the insertion of the proviso would be retrospective, applicable with effect from 01.07.2017 (v) the fact that close on the heels of Notification No.63 of 2020 dated 25.08.2020 stipulating the effective date as 01.09.2020, the CBIC issued a press release assuaging apprehensions by stating that the prospective notification was only on account of technical limitations.

29. The Board has, in my view, extended a waiver of recovery for the past period in line with the decisions of the Council (vi) Notification dated 18.09.2020, that cemented the long line of assurances of the GST Council and the Board in letter and spirit. While promising that the amendment in question will be clarified to be retrospective, the Board has indicated certain difficulties in carrying out the stated amendment at this juncture. I would be loath to speculate on the nature of the difficulties expressed and restrict myself to concluding that the sequence of events that I have set out above make it more than amply clear to me that the present writ petitions are liable to be allowed."

6.The petitioner has now approached this Court once again and has challenged the impugned communication asking the

petitioner to pay a sum of Rs.7,48,190/- being the delayed payment of tax by cash for the period between July 2017 to October 2020.

7.The learned counsel for the respondent submits that in the light of the stay obtained by the petitioner, the respondents are unable to recover the amount. The learned counsel for the respondent also placed reliance on the order passed by a learned Single Judge in W.P.No.1914 and 17524 of 2021 vide order dated 25.08.2021 wherein it was held as follows:

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

a). II impugned notice dated 13.08.2021, bearing reference No.DIN-20210759XP000000C598 is set aside solely for the purpose of personal hearing as ingrained in first proviso to Section 29(2) (a) being given to the writ petitioner;

b).Though obvious, it is made clear that no opinion or views are expressed on the merits of the matter and that II impugned order is set aside solely for the purpose of enabling personal hearing being given to the writ petitioner;

c).The writ petitioner shall deposit a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) to the regular CGST account being a portion of demand of Rs.24,75,183/- within two weeks from today i.e., on or before 08.09.2021.

d).If the writ petitioner complies with the above condition, personal hearing shall be on 15.09.2021 (Wednesday) at half past 11 in the office of the first respondent in the II writ petition.

e).If the writ petitioner does not comply with the condition of deposit of Rs.10,00,000/- on or before 08.09.2021, first respondent in II writ petition will be under no obligation to afford personal hearing.

f). If the writ petitioner complies with the condition and if personal hearing is held on 15.09.2021, the respondent shall complete the exercise as expeditiously as possible and pass an order within three weeks therefrom i.e., by

06.10.2021 and communicate the same to the writ petitioner under due and proper acknowledgement, until then I impugned order will be kept in abeyance and its revival (in full or in part) or closure will follow based on the conclusion of this exercise of de novo decision making qua II impugned order.

g) If the writ petitioner does not comply with the aforesaid conditional order of deposit, II impugned order which has now been set aside will stand revived and the consequences will follow."

8. I have considered the arguments advanced by the learned counsel for the respondent.

9. The point to be considered is whether the recovery under the proposed notice pursuant to the order passed by this Court on an earlier occasion will come within the purview of Section 50 of CGST Act, 2017 r/w 142(A) of CGST Rules, 2017 as inserted vide notification No.60/2018-Central Taxes, dated 30.10.2018 w.e.f., 30.10.2018. Rule 142A reads as follows:-

"142A. Procedure for recovery of dues under existing laws. -

(1) A summary of order issued under any of the existing laws creating demand of tax, interest, penalty, fee or any other dues which becomes recoverable consequent to proceedings launched under the existing law before, on or after the appointed day shall, unless recovered under that law, be recovered under the Act and may be uploaded in FORM GST DRC 07A electronically on the common portal for recovery under the Act and the demand of the order shall be posted in Part II of Electronic Liability Register in FORM GST PMT 01.

(2) Where the demand of an order uploaded under sub-rule (1) is rectified or modified or quashed in any proceedings, including in appeal, review or revision, or the recovery is made under the existing laws, a summary thereof shall be uploaded on the common portal in FORM GST DRC 08A and Part II of Electronic Liability Register in FORM GST PMT 01 shall be updated accordingly."

10. As far as the reversal of Input Tax Credit wrongly availed and for payment of interest is concerned, the substantive provisions are under Rule 37(3) & (4) of CGST Rules, 2017 which reads as under:-

37: Reversal of Input Tax Credit in the case of Non-payment of Consideration :

(1).

(2).

(3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.

(4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier."

11. The petitioner appears to have paid the tax for the month of July, 2017 to December 2019 belatedly. Therefore, the petitioner was earlier called upon to pay interest under section 50 of the respective GST Enactments under Notice on 04.03.2020. Proviso to section 50 (1) on the strength of which the present writ petition has been filed was inserted vide Finance Act (No. 2) Act, 2019. It is not relevant to the facts of the present case. The proviso to section 50 (1) reads as under:-

"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 levied on that portion of the tax that is paid by debiting the electronic cash ledger"

12. The above proviso to Section 50(1) came into force with effect from 1.9.2020 in terms of Notification No. 63/2020-Central Tax Dated 25.08.2020. The Central Board of Indirect Taxes and Customs has also clarified on 26.8.2020 that no recovery of interest shall be made for the past in the light of the decision taken by the GST Council in its 39th meeting on delayed payment of GST.

13. A reading of the above proviso makes it clear that it is applicable to the cases where returns were filed after the due date under Section 39 of the respective GST enactments. Even there interest levied is to be paid from the electronic cash ledger. This proviso is not applicable to the facts of the case as the case of the petitioner does not fall under the circumstances specified therein .

14. The Court had earlier considered the issue relating to recovery of interest on account of reversal of input tax credit. The batch was disposed by the Court by its common order along with W.P.No. 12667 of 2020 filed by the Petitioner by oversight as the interest liability of the petitioner was not on account of reversal of ITC. There is also no indication interest liability arose any reversal of input tax credit on the petitioner.

15. On the other hand, interest has been demanded on the net tax liability of the petitioner on account of belated payment of tax during the aforesaid period under Section 50(1) of the CGST Act, 2017.

16. Since tax was paid by the petitioner belatedly, petitioner is liable to interest during the period default. There was no excuse for not paying the tax in time from its electronic cash register. Nothing precluded the petitioner from discharging the tax liability from its electronic credit.

17. If there is a belated payment of tax declared in the returns filed, interest has to follow. The petitioner has to pay the interest on the belated payment of tax and as has been demanded. Even where there is a failure to file returns or circumstances specified under Sections 73 and 74 of CGST Act, 2017, in interest has to be paid.

18. There is therefore no merits in the present writ petition. Therefore, this writ petition deserves to be dismissed. Accordingly, it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

pgp/kkd

To:

- 1.The Superintendent of GST and Central Excise
Hosur IIA Range
67/A SIPCOT Industrial Complex, Phase I,
Hosur 635126,
Krishnagiri District.
- 2.The Assistant Commissioner
GST & Central Excise
Hosur II Division
67/A, II Floor, SIPCOT Industrial Complex,
Hosur 635126,
Krishnagiri District

+1cc to Mr.R.Gunaalan, Advocate Sr.No.24727

W.P.No.7129 of 2021

MT(CO)
RVM(05/05/2022)