

## Demand and recovery of interest payable under Section 50 of the CGST Act, 2017 & garnishee proceedings

### ***Mahadeo Construction Co. v. The Union of India and Ors.***<sup>1</sup>

#### Order

The Jharkhand High Court allowed the Writ Petition filed by the Petitioner and held that the demand for interest on belated payment of tax under Section 50(1) of the CGST Act, 2017 and the recovery thereof under Section 79 of the CGST Act, 2017 cannot be initiated without the initiation and completion of the adjudication proceedings under Section 73 or 74 of the CGST Act, 2017. Accordingly, the garnishee notice issued to the Banker of the petitioner was also set aside.

#### Summary of the Petition

- The Petitioner was issued a notice for demand of interest under Section 50(1) of the CGST Act, 2017 on belated payment of tax and thereafter, a notice was issued to the Petitioner's banker under Section 79 of the CGST Act, 2017 for recovering such interest amounts payable by the Petitioner.
- In the Petition, the following two questions came up for consideration:
  - Whether interest liability can be determined without initiating any adjudication proceedings

under Section 73 or 74 of the CGST Act, 2017, especially where the tax-payer disputes the interest liability?

- Whether recovery proceedings can be initiated under Section 79 of the CGST Act, 2017 without the initiation and completion of adjudication proceedings?

#### Analysis of the Petition

- The Hon'ble High Court interpreted Section 73 of the CGST Act, 2017, and stated that if there is a short payment of tax or non-payment of tax, a notice is required to be issued by the concerned officer for the recovery of such short / non-payment along with an opportunity to show cause as to why such demand of tax along with interest and penalty should not be recovered.
- Although the liability to pay interest under Section 50 of the CGST Act, 2017 arises automatically, but in case where such liability is disputed, the Officer will have to initiate the adjudication proceedings under Section 73 or 74 of the CGST Act, 2017 for the recovery of the amount of "short paid" or "not paid" interest on the tax amount.

<sup>1</sup> W.P.(T) No. 3517 of 2019



- Only once the adjudication proceedings are completed, can the amount of interest become payable under the Act. Thus, without completion of these proceedings, the recovery procedures under Section 79 of the CGST Act, 2017 cannot be initiated by the Officers.
- Thus, notice for recovery of interest under section 50 of the CGST Act is a pre-requisite in such cases and even for cases where such tax short paid has already been paid by the tax-payer, as tax not paid within the prescribed time limit would fall within the ambit of the expression “tax not paid” under section 73 of the CGST Act, 2017 [reliance placed on *M/s Godavari Commodities Ltd. vs Union of India and ors*<sup>2</sup>].

### **Dhruva Comments / Observations**

The decision pronounced by the Hon'ble High Court in the present case is in line with the rulings pronounced by the other Courts in the cases of *The Union of India & Ors. v. M/s LC Infra Projects Pvt Ltd*<sup>3</sup> and *M/s Godavari Commodities Ltd. vs Union of India and Ors* (supra) which are based on similar facts.

On perusing the rulings, it is observed that all the Courts have emphasized the importance of issuance of Notice under the CGST Act, 2017, as a pre-requisite to enable the authorities to proceed for recovery of the interest liability.

**The ruling goes a step ahead to note that even recovery proceedings [in the form of garnishee notices] must wait till the completion of such adjudication process. Thus, where such adjudication process culminates into an appeal, the recovery process comes to a standstill till the final determination of the issue by the Appellate forums.**

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<sup>2</sup> 2019 SCC Online Jhar 1839

<sup>3</sup> 2020-VIL-170-KAR – The Hon'ble High Court of Karnataka





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