

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.983 OF 2020

KLT Automotive and Tubular Products Limited
through its Director Mr. Jubin Thakkar ... Petitioner
Vs.
Union of India and others ... Respondents

Mr. Vikram Nankani, Senior Advocate with Mr. Prithwiraj Choudhary i/b.
Mr. P. K. Shetty for Petitioner.
Mr. J. B. Mishra a/w. Mr. Sham Walve for Respondents.

**CORAM : UJJAL BHUYAN &
ABHAY AHUJA, JJ.**

Reserved on : OCTOBER 15, 2020

Pronounced on: OCTOBER 27, 2020

P.C. : (*Per Ujjal Bhuyan, J.*)

Heard Mr. Nankani, learned senior counsel along with Mr. Prithwiraj Choudhary, learned counsel for the petitioner and Mr. Mishra, learned counsel for the respondents.

2. Though the writ petition was hotly contested by the respondents by filing a number of affidavits and was also heard at length, because of subsequent development it may not be necessary for an adjudication into the rival contentions as the grievance of the petitioner has been substantially met by administrative instructions dated 18.09.2020 issued by the Central Board of Indirect Taxes and Customs.

3. However, for a proper perspective, we feel that it would be apposite to briefly highlight the controversy involved and the reliefs claimed.

4. Petitioner is a limited company having its registered office at Andheri (East), Mumbai. It is engaged in the business of manufacture of

automotive components. It is registered under the Central Goods and Service Tax Act, 2017 as well as under the Maharashtra Goods and Service Tax Act, 2017.

4.1. Petitioner has stated that it has been availing input tax credit of the taxes charged by the suppliers and remitting goods and service tax (GST) on its output supplies after deducting the input tax credit. However, it has been admitted by the petitioner that there was some delay in filing the monthly returns in form GSTR-3B and GSTR-1, details of which have been mentioned in paragraph 4.14 of the writ petition.

4.2. When the petitioner was intimated about the payment of interest on delayed payment of taxes for certain periods, it remitted the interest computed on net tax liability. Respondent No.5 sent email dated 14.02.2020 levying interest of Rs.5,06,06,060.00 for late payment of GST for the months from July, 2017 to December, 2019. It is stated that the interest was computed on gross liability. By another email dated 25.02.2020, respondent No.5 revised the demand of interest to Rs.7,62,15,267.00 for late payment of GST for the months from July, 2017 to March, 2020; the interest was computed on the gross liability.

4.3. Thereafter proceedings were initiated against the petitioner whereafter recovery (garnishee) notices were issued to various customers of the petitioner, in all 6 garnishee notices, all dated 16.07.2020 despite the fact that on 13.07.2020 and 14.07.2020 petitioner had remitted the interest liability as computed on the basis of net GST liability upto January, 2020.

4.4. It is alleged that without following the due process, respondents issued the garnishee notices to the customers of the petitioner for recovery of interest amount.

4.5. Raising various contentions, more particularly centering around

section 50 of the Central Goods and Service Tax Act, 2017, the present writ petition came to be filed with the primary contention that interest could be demanded only on the net liability and not on gross liability.

4.6. The following reliefs have been sought for by the petitioner in the writ petition:-

- a) That this Hon'ble Court may issue a writ of declaration or any other appropriate writ or direction declaring the provisions of section 50 of CGST/MGST Act, 2017 enclosed as Exhibit-A as unconstitutional vide Articles 14/19/265 being unenforceable as the machinery provisions are not prescribed;
- b) That this Hon'ble Court may issue a writ of declaration or any other appropriate writ or direction declaring that the provisions of section 39(7) and 75(12) of CGST/MGST Act, 2017 enclosed as Exhibit-B as unconstitutional being violative of Articles 14/19 of the Constitution;
- c) That this Hon'ble Court may issue a writ of declaration or any other appropriate writ or direction declaring the provisions of section 164(3) of CGST/MGST Act, 2017 enclosed as Exhibit-C as being unreasonable and discriminatory and therefore liable to be struck down as violative of Articles 14 and / or 19 of the Constitution;
- d) That this Hon'ble Court may issue a writ of declaration or writ of certiorari or any other appropriate writ or direction declaring the provisions of Rule 61(5) of CGST Rules, 2017 and the notifications issued thereunder enclosed as Exhibit-D as being beyond the statutory provisions of section 39 of the CGST/MGST Act, 2017 as also unreasonable, arbitrary and discriminatory and therefore be struck down as violative of Articles 14 and /

or 19 of the Constitution;

- e) That this Hon'ble Court may issue a writ of certiorari or any other appropriate writ or order to quash the recovery proceedings initiated vide letters dated 25.02.2020 by respondent No.5 enclosed as Exhibit-E as violative of Articles 14, 19 and 300A of the Constitution being unreasonable, arbitrary, oppressive, excessive and issued without following due process of law;
 - f) That this Hon'ble Court may issue a writ of certiorari or any other appropriate writ or order to quash the recovery proceedings initiated vide letters dated 09.07.2020 by respondent No.4 enclosed as Exhibit-F as violative of Articles 14, 19 and 300A of the Constitution being unreasonable, arbitrary, oppressive, excessive and issued without following due process of law;
 - g) That this Hon'ble Court may, in the alternative, issue a writ of mandamus directing that the interest be calculated on net liability basis and not on gross liability basis;
 - h) Direct the respondents to refund the interest already remitted;
 - i) for costs;
- and
- j) for such further and other reliefs as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

5. Section 50 of the Central Goods and Service Tax Act, 2017 as it stood prior to amendment read as under:-

“50.(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.”

6. By Finance (No.2) Act, 2019, section 50 has been amended by insertion of a proviso in sub-section (1). The proviso 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 proceeding 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.”

7. The said amendment has been given effect from 01.09.2020 vide notification No.63/2020-Central Tax dated 25.08.2020.

8. A press release dated 26.08.2020 was issued by the Central Board of Indirect Taxes and Customs ('Board' hereinafter) on the subject 'interest on delayed payment of GST'. Board clarified that the notification dated 25.08.2020 relating to interest on delayed payment of GST has been issued prospectively due to certain technical limitations. However, Board has assured that no recoveries shall be made for the past period as well by the central and state tax administration in accordance with the decision taken in the 39th meeting of GST Council. It was stated that this would ensure full relief to the taxpayers as decided by the GST

Council. The press release was issued in response to lot of queries with respect to notification dated 25.08.2020.

9. During the hearing, respondents contested the contentions of the petitioner and in respect of the press release of the Board, it was stated that the same was not officially communicated to the field formations.

10. The matter was heard at length on 10.09.2020 when it was reserved for delivery of judgment. Thereafter parties filed written submissions. In the written submissions filed on behalf of the respondents, a copy of the administrative instructions of the Board dated 18.09.2020 was fairly annexed thereto. It appeared to us that the said administrative instructions addressed the grievance of the petitioner. Therefore, the case was listed again on 15.10.2020 on which date the following order was passed:-

“1. Though arguments were concluded and the matter was reserved for judgment on 10th September, 2020, administrative instructions dated 18th September, 2020 of the Central Board of Indirect Taxes and Customs have been brought to our notice by way of written submissions of the respondents filed thereafter.

2. For that reason, the matter has been listed today to elicit the views of learned counsel for both the sides on the aforesaid administrative instructions.

3. Mr.Mishra, learned counsel for the respondents submits that in view of clear instructions in paragraph 3 of the administrative instructions dated 18th September, 2020, interest can be recovered only on the net cash liability with effect from 1st July, 2017. On a query by the court he submits that the show cause notices issued as well as the garnishee notices have become ineffective.

4. To this Mr.Nankani, learned senior counsel for the petitioner submits that the garnishee notices would have to be set aside because in the absence of the same parties holding money for the petitioner would not release the amounts to the petitioner, for example, Mahindra & Mahindra.

5. Submissions made have been taken due note of.

6. Order is reserved.”

11. From the above we find that parties are broadly in agreement that

the above administrative instructions have taken care of the grievance of the petitioner.

12. We may now examine the administrative instructions dated 18.09.2020. For ready reference, the instructions are extracted hereunder:-

“ Based on the recommendations of the 35th meeting of the GST Council held on 21st June, 2019, the provision of section 50 was amended vide section 100 of the Finance (No. 2) Act, 2019 to provide for **charging interest on the net cash tax liability**. The said amendment was to be made effective from a date to be notified by the Government. Accordingly, the said provision was made effective vide notification No. 63/2020 - Central Tax dated the 25th August, 2020, **w.e.f. 01.09.2020**.

2. The GST Council, in its 39th meeting, held on 14th March, 2020 recommended interest to be charged on the net cash tax liability w.e.f. 01.07.2017 and accordingly, recommended the amendment of section 50 of the CGST Act retrospectively w.e.f. 01.07.2017. The retrospective amendment in the GST laws would be carried out in due course through suitable legislation.

3. Post issuance of notification 63/2020 - Central Tax dated the 25th August, 2020, there were apprehensions raised by taxpayers that the said notification is issued contrary to the Council's recommendation to charge interest on net cash liability w.e.f. 01.07.2017. Consequently, a press release, dated 26.08.2020 was issued to clarify the position. Further, in order to implement the decision of the Council in its true spirit, and at the same time working within the present legal framework, it has been decided to address the issue through administrative arrangements, as under:

- a. For the period 01.07.2017 to 31.08.2020, field formations in your jurisdiction may be instructed to recover interest only on the net cash tax liability (i.e. that portion of the tax that has been paid by debiting the electronic cash ledger or is payable through cash ledger); and
- b. wherever SCNs have been issued on gross tax payable, the same may be kept in Call Book till the retrospective amendment in section 50 of the CGST Act is carried out.

4. Difficulty, if any, in the implementation of these instructions may please be brought to the notice of the Board.”

13. From a perusal of the above, it is seen that amendment to section 50 of the Central Goods and Service Tax Act, 2017 was introduced by Finance (No.2) Act, 2019 for charging interest on the net cash tax liability. The said amendment was made effective prospectively from 01.09.2020 vide the Central Government notification No.63/2020-Central Tax dated 25.08.2020. GST Council in its 39th meeting recommended that interest should be charged on the net cash tax liability with effect from 01.07.2017. Recommendation was made for making the amendment to section 50 retrospectively with effect from 01.07.2017. It is stated that retrospective amendment in the GST laws would be carried out in the due course through suitable legislation. After issuance of the notification dated 25.08.2020, views were expressed by tax payers that the said notification is contrary to the recommendation of GST Council to charge interest on the net cash tax liability with effect from 01.07.2017. To clarify this position press release was issued on 26.08.2020. However, in order to implement the decision of the GST Council in its true spirit within the present legal framework, the above instructions were issued. Firstly, for the period 01.07.2017 to 31.08.2020, field formations have been instructed to recover interest only on the net cash tax liability i.e., that portion of the tax that has been paid by debiting the electronic cash ledger or is payable through cash ledger. Secondly, in those cases where show cause notices have been issued on gross tax payable, to keep those show cause notices in the call book till retrospective amendment in section 50 of the Central Goods and Service Tax Act, 2017 is carried out.

14. Therefore, the central issue raised in the writ petition i.e., whether interest under section 50 of the Central Goods and Service Tax Act, 2017 is to be levied on the gross tax liability or on the net cash tax liability has been answered by the Board in the above administrative instructions dated 18.09.2020 by categorically stating that the interest would be on the net cash tax liability for the period prior to the amendment i.e., from 01.07.2017 to 31.08.2020.

15. Consequently, we are of the view that no live issue survives for adjudication in this case. Recovery (garnishee) notices issued by the respondents on 16.07.2020 are hereby quashed. Respondents to intimate the petitioner about the quantum of interest payable on account of delayed payment of GST for the period under consideration in terms of the administrative instructions dated 18.09.2020 and the same shall be paid by the petitioner, if not already paid.

16. Writ petition is accordingly allowed. However, there shall be no order as to costs.

17. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(ABHAY AHUJA, J.)

(UJJAL BHUYAN, J.)

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