

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W. P. (T) No. 1908 of 2020

M/s. BGR Mining & Infra Limited, Dhanbad Petitioner
Versus
1. The State of Jharkhand, through the Secretary-cum-
Commissioner, State Tax Department, Ranchi
2. Joint Commissioner of State Tax (Appeal), Dhanbad
Division, Dhanbad
3. Deputy Commissioner of State Tax, Dhanbad
Circle, Dhanbad
4. Goods and Services Tax Council, through its Secretary, New Delhi..Respondents
With
W. P. (T) No. 1907 of 2020

M/s. BGR Mining & Infra Limited, Dhanbad Petitioner
Versus
1. The State of Jharkhand, through the Secretary-cum-
Commissioner, State Tax Department, Ranchi
2. Joint Commissioner of State Tax (Appeal), Dhanbad
Division, Dhanbad
3. Deputy Commissioner of State Tax, Dhanbad
Circle, Dhanbad Respondents
With
W. P. (T) No. 1909 of 2020

M/s. BGR Mining & Infra Limited, Dhanbad Petitioner
Versus
1. The State of Jharkhand, through the Secretary-cum-
Commissioner, State Tax Department, Ranchi
2. Joint Commissioner of State Tax (Appeal), Dhanbad
Division, Dhanbad
3. Deputy Commissioner of State Tax, Dhanbad
Circle, Dhanbad ..Respondents
With
W. P. (T) No. 1910 of 2020

M/s. BGR Mining & Infra Limited, Dhanbad Petitioner
Versus
1. The State of Jharkhand, through the Secretary-cum-
Commissioner, State Tax Department, Ranchi
2. Joint Commissioner of State Tax (Appeal), Dhanband
Division, Dhanbad
3. Deputy Commissioner of State Tax, Dhanbad
Circle, Dhanbad
4. Goods and Services Tax Council, through its Secretary, New Delhi...Respondents
With
W. P. (T) No. 1911 of 2020

M/s. BGR Mining & Infra Limited, Dhanbad Petitioner
Versus
1. The State of Jharkhand, through the Secretary-cum-
Commissioner, State Tax Department, Ranchi
2. Joint Commissioner of State Tax (Appeal), Dhanband

2.

Division, Dhanbad		
3. Deputy Commissioner of State Tax, Dhanbad Circle, Dhanbad	....	Respondents
With		
W. P. (T) No. 1912 of 2020		
M/s. BGR Mining & Infra Limited, Dhanbad	....	Petitioner
Versus		
1. The State of Jharkhand, through the Secretary-cum- Commissioner, State Tax Department, Ranchi		
2. Joint Commissioner of State Tax (Appeal), Dhanband Division, Dhanbad		
3. Deputy Commissioner of State Tax, Dhanbad Circle, Dhanbad	...	Respondents
With		
W. P. (T) No. 1913 of 2020		
M/s. BGR Mining & Infra Limited, Dhanbad	....	Petitioner
Versus		
1. The State of Jharkhand, through the Secretary-cum- Commissioner, State Tax Department, Ranchi		
2. Joint Commissioner of State Tax (Appeal), Dhanband Division, Dhanbad		
3. Deputy Commissioner of State Tax, Dhanbad Circle, Dhanbad	...	Respondents
With		
W. P. (T) No. 1914 of 2020		
M/s. BGR Mining & Infra Limited, Dhanbad	....	Petitioner
Versus		
1. The State of Jharkhand, through the Secretary-cum- Commissioner, State Tax Department, Ranchi		
2. Joint Commissioner of State Tax (Appeal), Dhanband Division, Dhanbad		
3. Deputy Commissioner of State Tax, Dhanbad Circle, Dhanbad	...	Respondents
With		
W. P. (T) No. 1915 of 2020		
M/s. BGR Mining & Infra Limited, Dhanbad	....	Petitioner
Versus		
1. The State of Jharkhand, through the Secretary-cum- Commissioner, State Tax Department, Ranchi		
2. Joint Commissioner of State Tax (Appeal), Dhanband Division, Dhanbad		
3. Deputy Commissioner of State Tax, Dhanbad Circle, Dhanbad	...	Respondents
With		
W. P. (T) No. 1921 of 2020		
M/s. BGR Mining & Infra Limited, Dhanbad	....	Petitioner
Versus		
1. The State of Jharkhand, through the Secretary-cum- Commissioner, State Tax Department, Ranchi		

2. Joint Commissioner of State Tax (Appeal), Dhanband
Division, Dhanbad
3. Deputy Commissioner of State Tax, Dhanbad
Circle, Dhanbad ... Respondents

CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh
Hon'ble Mrs. Justice Anubha Rawat Choudhary

Through Video Conferencing

For the Petitioner : M/s. Sumeet Gadodia, Ranjeet Kushwaha, Advocates
For the Respondent-State : Mrs. Darshana Poddar Mishra, A.A.G-I
Mr. Salona Mittal, A.C to G.A.-I
(in W.P(T) Nos. 1911/20 & W.P(T) No. 1913/20)
: Ms. Surabhi, A.C to A.A.G-II
(in W.P(T) Nos. 1908/20, W.P(T) No. 1909/20, W.P(T)
No. 1912/20 & W.P(T) No. 1914/20)
: Mr. Navneet Toppo, A.C to S.C-V (W.P(T) No. 1910/20
: Mr. P.A.S.Pati, S.C-IV(W.P(T) No. 1914/20 &
W.P(T) No. 1915/20)

04/21.01.2021 Heard learned counsel for the petitioner and learned counsel for the respondents.

In all these writ petitions, common appellate order dated 20th March, 2020 bearing Memo No. 4263 passed by the respondent, Joint Commissioner of State Tax (Appeal), Dhanband Division, Dhanbad in Appeal Case Nos. DH/GST-02/2019-20 (W. P (T) No. 1914 of 2020); DH/GST-03/2019-20 (W. P (T) No. 1909 of 2020); DH/GST-04/2019-20 (W. P (T) No. 1910 of 2020); DH/GST-05/2019-20 (W. P (T) No. 1913 of 2020); DH/GST-06/2019-20 (W. P (T) No. 1911 of 2020); DH/GST-07/2019-20 (W. P (T) No. 1907 of 2020); DH/GST-08/2019-20 (W. P (T) No. 1915 of 2020); DH/GST-09/2019-20 (W. P (T) No. 1921 of 2020); DH/GST-10/2019-20 (W. P (T) No. 1912 of 2020); DH/GST-11/2019-20 (W. P (T) No. 1908 of 2020) are under challenge relating to different periods from April, 2018 to January, 2019, whereby the appeal filed by the petitioner against the adjudication order levying interest upon the petitioner under Section 50 of Goods and Services Tax Act, 2017 on Gross Tax Liability has been dismissed. The total interest liability imposed by the adjudication order as upheld in appeal and furnished in the form of a chart in the impugned order for the period April, 2018 to January, 2019 amounts to Rs. 1,10,02,192/-. Petitioner has made a categorical statement in the respective writ petitions that he has discharged its interest liability on net tax liability i.e., interest on tax paid through an electronic tax ledger.

Learned counsel for the petitioner has referred to the communication dated 18th September, 2020 issued by the Central Board of Indirect Taxes and Customs on the subject recovery of interest on net tax liability with effect from 1st July, 2017. The relevant part of the instructions have been quoted in the previous order dated 16th December, 2020. The relevant extract of the order dated 16th December, 2020 is reproduced herein-below:

“The issue relating to interest for delay in payment of G.S.T. on the net cash tax liability w.e.f. 1st July 2017 was taken up in the 39th meeting of the G.S.T. Council as per the press release dated 14th March 2020 issued by the CBIC. Learned counsel submits that by a communication dated 18th September 2020 issued by the CBIC addressed to all the Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All), the Principal Director General / Director Generals (All) on the subject of administrative instructions for recovery of interest on net cash tax liability w.e.f. 1st July 2017, the following instructions have been issued :-

“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.”

In the present batch of cases, the appellate orders confirming the adjudication orders are under challenge. Learned counsel for the petitioner submits that insistence on recovery of interest on gross tax liability would be unfair and improper by the assessing officers in the light of the latest decision of the CBIC conveyed to all concerned. He has also referred to a decision of the Bombay High Court rendered in Writ Petition (ST.) No.826 of 2020 Royal Chins Private Limited Vs. Union of India & Ors. dated 8th October 2020 wherein the Hon’ble Court has disposed of the petition in terms of the stand taken by the respondents through the administrative instruction of the CBIC on the question of recovery of interest for the period 1st July 2017 to 31st August 2020 on the net cash liability. Similar decisions have been rendered by other High Courts such as Madras High Court.

Learned counsel for the State and the CGST Council are required to seek specific instructions on this issue and make their stand clear by the next date. Let these cases appear on 14th January 2021.”

Respondents had earlier filed a counter affidavit on 17th October, 2020, but after passing of the order dated 16th December 2020, a supplementary affidavit has been filed on 15th January, 2021. The relevant paragraph nos. 3 to 7 are quoted hereunder:

“3. That the present Supplementary Affidavit is being filed to bring on record certain administrative instructions related to Section 50 of the GST Act, 2017 issued by the Central Board of Indirect Taxes and Customs on 18.09.2020 as per the order dated 16.12.2020 issued by this Hon’ble Court.

4. That it is more humbly submitted that there is a directive in this Administrative Instructions to impose interest on late payment of tax from cash ledger under Section 50 of GST Act 2017 and interest is to be charged 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).

5. That a copy of these administrative instructions was given to the Joint Secretary GST Council Secretariat with a request to issue it to all the states for information and necessary action.

6. That it is most humbly stated that the Administrative Instructions have been issued by Government of India, Ministry of Finance Department of Revenue Central Board of Indirect Taxes and Customs, GST Policy Wing. Hence, no separate instruction regarding this has been issued by the Commercial Tax Department Jharkhand, Ranchi. But after issuance of the above administrative instructions by the Central Board of Indirect Taxes and Custom, the State authorities are also imposing interest on net Tax liability.

7. That it is also humbly submitted that the State Governments also participate in the meetings organized by the GST Council. The decisions taken by the GST Council are sent to the Law Commission. The law committee considers the legal and technical aspects of the decisions. After vetting it is sent back to the GST Council. Finally the GST Council approves the decisions. In this way, the procedure of amendment is completed. The amendments are issued in the form of circulars, instructions and notifications which also apply to the State Governments.” (**Underline added**).

Mrs. Darshana Poddar Mishra, learned A.A.G-I submits by referring to the supplementary counter affidavit that in line with the administration instructions of the CBIC, the State Authorities are also imposing interest on net tax liability. She submits that the writ petitions can be disposed of in view of the categorical statements made through supplementary counter affidavit.

Learned counsel for the petitioner submits that the appellate order if allowed to stand, may keep the liability alive in case the respondent chose to realize interest upon the gross tax liability in future. It is also pointed out by learned counsel for the petitioner that no amendment to that effect has been incorporated in Section 50 of JGST till date. He submits that amendment, if any, could also be clarificatory in nature as interest imposable under Section 50 could only be upon the net tax liability and not on gross tax liability.

We have considered the submission of learned counsel for the parties in respect of the issue of levy of interest under Section 50 of the Act on the gross tax liability as upheld in appeal by the Respondent Joint Commissioner of State Sales Tax (Appeal), Dhanbad Division. We have also taken note of the CBIC circular dated 18th September, 2020 quoted hereinabove. The Respondent-State by way of supplementary counter affidavit has made a categorical statement that after issuance

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of the above Administrative Instructions by CBIC, the State authorities are also imposing interest on Net Tax Liability. Having regard to the categorical stand of the respondent State, for the present, it appears to us that there is no purpose in keeping the writ petitions pending for decision on the challenge to the appellate order made herein on the grounds urged. However, liberty is reserved with the petitioner to approach the Court in case the respondent State chooses to realize interest on the gross tax liability for the subject period covered under the appellate order.

Accordingly, the writ petitions are disposed of in the aforesaid term.

Pending I.As seeking exemption from filing certified copy are closed.

(Aparesh Kumar Singh, J.)

(Anubha Rawat Choudhary, J.)

Jk