

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.13696 of 2020

Date of Decision: April 22nd, 2021

M/s Bala Ji Manpower Services, Faridabad

..... PETITIONER(S)

VERSUS

Union of India & others

..... RESPONDENT(S)

...

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

...

PRESENT: - Mr. Mukul Singla, Advocate, for the petitioner.

Mr. Tejinder Joshi, Advocate, for the respondents.

[The aforesaid presence has been recorded through video conferencing since the proceedings were conducted in virtual court.]

सत्यमेव जयते

Sant Parkash, J

This writ petition has been preferred under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing/modification of order dated 06.08.2020 (Annexure P-7) passed by Settlement Commission, to the extent of demand of interest in accordance with Notification No.13/2016-ST dated 01.03.2016.

The petitioner-Firm is engaged in rendering services of 'supply of manpower'. The respondents initiated an investigation against the petitioner alleging for not disclosing correct value of services rendered by it

and collected various documents including balance sheet, Form – 26AS and recorded different statements of proprietor of the petitioner-firm. On the basis of comparison of balance sheets for the years 2011-12 to 2014-15, Form – 26AS with periodical ST-3 returns, respondents found a shortfall in value declared in ST-3 returns which resulted into short payment of service tax to the tune of ₹ 72,65,808. Accordingly, respondents served upon the petitioner a show cause notice dated 24.10.2016 raising demand of ₹ 72,65,808/- alongwith interest and penalty for the period 2010-11 to 2014-15. On 21.03.2017, the petitioner filed an application before Customs & Central Excise Settlement Commission, New Delhi to settle its duty liability, which was disposed of vide order dated 28.12.2017 (Annexure P-1) by the Settlement Commission holding that benefit of cum-tax benefit on the basis of sample invoices could not be allowed.

The petitioner preferred Civil Writ Petition No.1502 of 2018. This Court vide order dated 03.10.2019 (Annexure P-2) modified the order of Settlement Commission and directed the respondents to calculate liability of the petitioner after granting benefit of cum-tax value, whereafter the respondents recalculated the service tax payable after granting the benefit of cum-tax value to be ₹ 55,70,843/- which had already been deposited by the petitioner between 22.08.2016 to 07.01.2017. The respondents relying upon Notification No.13/2016-ST dated 01.03.2016 (Annexure P-5) recalculated the interest liability of petitioner to the tune of ₹ 48,33,258/- at the rate of 24%, instead of ₹ 24,94,048/- as calculated by the petitioner. The petitioner filed written submissions dated 24.07.2010 (Annexure P-6) before the Settlement Commission pointing out the discrepancies in the interest calculation made by respondent No.2. The

petitioner pleaded that interest has been charged @ 24% relying upon the aforesaid notification whereas interest should have been calculated @ 15% as the petitioner did not specifically collect the tax from the service recipients. Thereafter, vide order dated 06.08.2020 (Annexure P-7), respondents settled the service tax liability at ₹ 55,70,843/-, rejecting the contentions of petitioner with regard to rate of interest to be charged.

Pursuant to notice of motion, reply dated 12.01.2021 has been filed on behalf of respondent No.2 submitting therein that pursuant to order dated 03.10.2019 passed by this Court, the liability was to be calculated within two months of receipt of order by granting benefit of cum-tax value. The Central Government vide Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 (No.38 of 2020) dated 29.09.2020 has extended the time limit upto 31.12.2020. The answering respondent vide letter dated 14.07.2020 informed the petitioner about the calculation of interest liability and asked it to deposit the same. As per Rule 6(1) of Service Tax Rules, 1994, the payment of service tax in case of individuals or proprietary concerns and partnership firm, service tax is to be paid on quarterly basis. The due date for payment of service tax is 5th of the month immediately following the respective quarter. For this purpose, quarters are: April to June, July to September, October to December and January to March. For the last quarter i.e. January to March, payment is required to be made by 31st of March itself. As per Rule 7 of Rules ibid, every assessee shall submit a half yearly return in Form 'ST-3' or 'ST-3A' or 'ST3C'. The petitioner did not submit the date of completion of service, raising of invoice and receipt of payments from service recipients which would have helped in ascertaining quarterly tax liability. Had the petitioner

provided the tax liability per quarter alongwith the documentary evidence, then respondents would have calculated the interest accordingly.

Learned counsel for the petitioner has submitted that Clause 1 of the notification provides that interest rate @ 24% shall be charged if a person has specifically collected service tax and still not deposited with the Government but interest would be charged @ 15% in any other case. The petitioner, in the invoices issued during the period in question, did not collect any amount specifically mentioning it as service tax. The respondents have calculated the interest liability by dividing the total tax liability for a particular financial year equally between four quarters which is not justified and against the provisions of law. The interest should be calculated as per the actual service tax liability for a particular quarter.

Per contra, learned counsel for respondent No.2, on the basis of reply, has contended that no fault can be found with impugned order which has been passed in consonance with the settled proposition of law. In the case of a person who collects any amount as service tax but fails to pay the amount so collected to the credit of the central government, on or before the date on which such payment is due, the central government may, by notification in the official gazette, specify such other rate of interest, as it may deem necessary. The interest rate prevailing on the date of payment of service tax by the petitioner is as per Notification No.13/2016-ST dated 01.03.2016 which was in force during the period of payment of service tax. The petitioner made delayed payment, as such, rate of interest applicable on the delayed payment of service tax would be as per the notification i.e. 24%.

We have heard learned counsel for the parties and perused the record.

The only question that requires adjudication is at what rate petitioner is liable to pay interest i.e. 15% or 24%.

Admittedly, the petitioner firm started its service after completing registration formalities in July, 2011 and the respondents have calculated the interest liability from the first quarter of Financial Year 2011-12. If the petitioner firm has started its services in July 2011, there cannot be any demand for the first quarter of 2011-12. As per the contention of respondents, petitioner made delayed payment of service tax between August, 2016 and February, 2017, i.e. the time when aforesaid notification was in force i.e. 14.05.2016.

For proper adjudication of the matter in controversy, the table fixing the rate of simple interest as per Notification dated 01.03.2016 needs to be gone into, which reads as under:-

Sr. No.	Situation	Rate of simple interest
1	Collection of any amount as service tax but failing to pay the amount so collected to the credit of the Central Government on or before the date on which such payment becomes due.	24 per cent
2	Other than in situations covered under serial number 1 above.	15 per cent

It is clear from the above reproduction that the notification fixed the rate of simple interest @ 24% in case where any amount is specifically collected as service tax and still not deposited with the Central Government on or before the date on which such payment became due whereas rate of 15% is fixed for any other situation. In the case in hand, it is the specific stand of petitioner that it did not specifically collect the tax from the service recipients. The respondents have quantified interest 24% per annum on the basis of Notification dated 01.03.2016 presuming that the

petitioner has specifically collected some amount as service tax and still not deposited with Central Government, whereas the petitioner, in the invoices issued during the period in question did not collect any amount specifically mentioning it as service tax. The grant of benefit of cum-tax value vide order dated 03.10.2019 passed by this Court in CWP No.1502 of 2018, further supports the case of the petitioner. In this view of the matter, we are of the considered view that action of the respondents to charge interest @ 24% in accordance with Notification dated 01.03.2016 is arbitrary and not sustainable in the eyes of law.

In view of the aforesaid discussion, we modify the impugned order to the extent of charging interest @ 15%.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

April 22nd, 2021
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No