

GST : Where assessee for period from July, 2017 to November, 2018 was unable to pay entire tax due on due date and Competent Authority issued on assessee a notice under section 50 calling upon it to pay interest on delayed payment of tax and further issued a notice under section 79 on assessee's bank asking it to make payment in pursuance of aforesaid demand, if assessee would make payment of admitted liability on or before 20-6-2019, notice issued on assessee's bank will stand set aside

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[2019] 107 taxmann.com 406 (Madras)

HIGH COURT OF MADRAS

Dongsung Automotive (P.) Ltd.

v.

Superintendent of Central Taxes*

M. SUNDAR, J.

W.P. NO. 15624 OF 2019

W.M.P. NOS. 15518,15520 AND 15523 OF 2019

JUNE 13, 2019

Section [79](#), read with section [50](#), of the Central Goods and Services Tax Act, 2017/ Section [79](#), read with section [50](#), of the Tamil Nadu Goods and Services Tax Act, 2017 - Demands and recovery - Modes of recovery - Period July, 2017 to November, 2018 - For period from July, 2017 to November, 2018, assessee was unable to pay entire tax due on due date - Competent Authority vide communication dated 22-5-2019 directed assessee for payment of interest under section 50 on delayed payment of tax - He also vide communication dated 23-5-2019 under section 79 called upon assessee's bank to make payment in pursuance of aforesaid demand - Assessee gave an undertaking before High Court that it would pay admitted liability to department on or before 20-6-2019 - Whether on payment of aforesaid amount on or before 20-6-2019, impugned communication dated 23-5-2019 from Competent Authority to assessee's bank deserved to be set aside - Held, yes [Para 16] [In favour of assessee]

(NR)

FACTS

- For the period from July, 2017 to November, 2018, the assessee was unable to pay entire tax due on the due date.
- The Competent Authority *vide* communication dated 14-3-2019 directed the assessee for payment of interest under section 50 amounting to Rs. 1.70 crores on the delayed payment of tax for the period from July, 2017 to November, 2018.
- The assessee *vide* letter dated 29-3-2019 informed the Competent Authority that it could not pay the cash component within the due date owing to one of the customers delaying payment on a regular basis. Besides it was contended that the input tax credit for every month was nearly 73 per cent and it had adjusted the same against total GST payable and worked out the interest on the balance cash component.

- Thereafter the Competent Authority *vide* communication dated 22-5-2019 called upon the assessee to pay Rs. 1.09 crores. He also *vide* communication dated 23-5-2019 under section 79 called upon the assessee's bank to make payment in pursuance of the aforesaid demand.
- On writ petition filed by assessee:

HELD

- The assessee submits that if the revenue is called upon to send a communication explaining the reduction in the sum from Rs. 1.70 crores to Rs. 1.09 crores as well as the issue as to whether interest is payable on input tax credit, it will avail a statutory appellate remedy against such an order. In this regard, the assessee drew the attention of the Court to section 107 and submitted that if the revenue is called upon to send a reply explaining the aforesaid two aspects and if it is not in favour of the assessee, it will avail alternate remedy under section 107. [Para 15]
- In the light of the aforesaid, the following order is passed:
 - (a) The assessee undertakes to pay the admitted liability to the department within one week from today, *i.e.*, on or before 20-6-2019.
 - (b) On payment of aforesaid amount on or before 20-6-2019, the impugned communication dated 23-5-2019 from the Competent Authority to the bank will stand set aside.
 - (c) If the aforesaid payment is not made on or before 20-6-2019, the writ petition will stand dismissed and the impugned order will continue to operate without any reference to the Court.
 - (d) On payment of aforesaid amount on or before 20-6-2019 by the assessee, impugned communication from the Competent Authority to the bank *inter alia* under section 79 will stand set aside and the Competent Authority shall consider all the points raised in assessee's reply dated 29-3-2019, pass an order in a manner known to law and communicate the same to the assessee under due acknowledgement within one week therefrom.
 - (e) If the decision taken by the Competent Authority is in favour of the assessee, it is the end of the matter. If that not be so, the assessee shall avail alternate remedy of preferring a statutory appeal to the Appellate Authority under section 107. [Para 16]

CASES REFERRED TO

Megha Engineering & Infrastructures Ltd. v. CCT [\[2019\] 104 taxmann.com 393/73 GST 787 \(Telangana\)](#) (para 12).

S. Muthuvenkataraman *for the Petitioner.* **V. Sundareswaran**, Sr. Panel Counsel *for the Respondent.*

ORDER

1. Mr. Muthuvenkataraman, learned counsel on record for writ petitioner is before this Court and Mr. V. Sundareswaran, learned senior panel counsel (GST), who had accepted notice on behalf of respondents 1 and 2 yesterday, is before this Court.

2. To be noted, the third respondent is Indian Overseas Bank and considering the nature of the matter, the third respondent is only in the nature of a Garnishee. Therefore, it will suffice if the order (which this Court shall now be passing in this writ petition) is communicated to the third respondent by the Registry. In other words, third respondent is only a formal party and is not an adversary in this lis.

3. In the aforesaid backdrop, with the consent of aforesaid learned counsel on both sides, the main writ petition itself is taken up, heard out and disposed of.

4. To be noted, this writ petition is listed in the motion list today after Revenue counsel accepted notice yesterday. Revenue counsel, who accepted notice yesterday, obtained instructions and made submissions today.

5. Short facts shorn off needless particulars and details are as follows:

- (a) the writ petitioner is registered qua 'Goods and Services Tax' ('GST' for brevity) and writ petitioner is engaged in the business of manufacturing automotive parts, namely pressing and welding components;
- (b) Therefore, 'The Central Goods and Services Act, 2017 (Act 32 of 2018)', hereinafter 'CGST' for brevity is the statute out of which the instant writ petition arises;
- (c) The writ petitioner is taking 'Input Tax Credit' (ITC) as and when applicable based on the invoices and other documents as described under law; d
- (d) The writ petitioner is also filing returns on a monthly basis;
- (e) It is the writ petitioner's case that it is entitled and eligible to utilize input tax credit availed towards the tax and writ petitioner is liable to pay output tax liability;
- (f) It is not in dispute that the writ petitioner was unable to pay their entire taxes due in cash on the due date and therefore, the writ petitioner became liable to pay interest.

6. In the aforesaid scenario, writ petitioner was visited with a communication dated 14. 03. 2019 being communication No. 50 of 2019 from the first respondent. This communication refers to Section 50 of CGST Act and directs payment of interest at the rate of 18% per annum on delayed payment of tax for the period from July 2017 to November 2018. To be noted, this period, if stated with specificity, would essentially mean 01.07.2017 to 30.11.2018. Though the financial year is from April of previous calendar year to March of next calendar year, in the instant case, GST regime kicked in only on 01.07.2017 and therefore, the period is stated with specificity as above.

7. To this, the writ petitioner responded vide letter dated 29.03.2019 *inter alia* contending that the writ petitioner could not pay the cash component within the due date owing to one of their customers delaying payment on a regular basis. Besides, it was contended that ITC credit for every month is nearly 73% and writ petitioner has adjusted the same against total GST payable and worked out the interest on the balance cash component. To be noted, a work sheet/computation was annexed to this communication dated 29.03.2019.

8. To put in simple terms, the pointed question that emerges is 'whether the writ petitioner is liable to pay interest for ITC also?'

9. Be that as it may, post 29.03.2019 communication from the writ petitioner, Office of the Superintendent of Central Tax sent a communication calling upon the writ petitioner to pay Rs. 1,00,91,755/-. This was followed by a communication dated 23.05.2019 bearing reference C. No.

IV/16/30/2019-Tech-III from the second respondent to the third respondent banker *inter alia* calling upon the third respondent bank to make payment in pursuance of the aforesaid demand.

10. It is not in dispute that the third respondent bank is writ petitioner's banker and writ petitioner's bank account is with the third respondent bank. To be noted, this communication dated 23.05.2019 bearing reference C. No. IV/16/30/2019-Tech-III (hereinafter be referred to as 'impugned communication') is *inter alia* under Section 79 of Central Goods and Services Tax Act' ('CGST Act' for brevity).

11. Learned counsel for writ petitioner submitted that the original payment was Rs. 1,70,71,048.31 and after writ petitioner's letter dated 29.03.2019, the Department had reduced it to Rs. 1,00,91,755 vide a communication to writ petitioner dated 22.05.2019, but no reasons whatsoever have been adduced therein as to how the sum originally demanded has been brought down. Responding to the above and advertng to the communication, learned Revenue counsel submitted that the communication dated 22.05.2019 is for the period from 01.07.2017 to 31.03.2018, whereas the original demand was for the period from 01.07.2017 to 30.11.2018 as mentioned supra. However, no reason has been articulated in this regard though there is a table in the communication dated 22.05.2019.

12. More importantly, no reason has been adduced as to why the demand is now for a shorter period. To be noted, the impugned letter to the bank i.e., third respondent, also specifies only the lesser figure referred to supra. In the aforesaid backdrop, learned Revenue counsel pressed into service an order made by a Hon'ble Division Bench of the High Court of Telangana at Hyderabad being in *Megha Engineering & Infrastructures Ltd. v. CCT* [\[2019\] 104 taxmann.com 393/73 GST 787](#).

13. Advertng to the aforesaid order, learned Revenue counsel contended that imposition of interest under Section 50 is automatic. Learned revenue counsel also drew the attention of this Court to subsection (12) of Section 75 of CGST Act and contended that in cases of selfassessed tax, the moment the amount of tax remains unpaid, levy of interest is automatic and the same has to be paid. A perusal of Section 75 of CGST Act reveals that there is a non-obstante clause therein, qua preceding sections 73 and 74 which deal with determination of short payment, non-payment etc. ,

14. However, the aforesaid communication dated 22.05.2019 from the Office of the Superintendent of Central Tax is the basis for the impugned communication, but the aforesaid communication does not spell out the basis on which the demand has been brought down from little over Rs. 1.70 crores to Rs. 1.09 Crores. More importantly, the communication does not say anything about whether the writ petitioner is liable to pay interest on ITC. Even if the submission of Revenue counsel that the communication dated 22.05.2019 pertains to a shorten period, the question as to whether the writ petitioner is liable to pay interest qua ITC has not been met though it has been specifically raised by the writ petitioner. Both sides submit that they are unable to say with certainty as to whether the aforementioned Megha Engineering & Infrastructure Ltd rendered by a Hon'ble Division Bench of High Court of Telangana has been carried to the Hon'ble Supreme Court. In the aforesaid circumstances, considering the factual matrix of this case, this Court deems it appropriate to leave open the question as to whether Megha Engineering & Infrastructure Ltd case would apply to instant case.

15. This is more so as learned counsel for writ petitioner submits that if the Department is called upon to send a communication explaining the reduction in the sum as well as the issue as to whether interest is payable on ITC, writ petitioner will avail a statutory appellate remedy against such an order. In this regard, learned counsel for writ petitioner drew the attention of this Court to Section 107 of CGST Act and submitted that if the respondents are called upon to send a reply explaining the aforesaid two aspects and if it is not in favour of the writ petitioner assessee, the writ petitioner assessee will avail alternate remedy under Section 107 of CGST act.

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

- (a) Writ petitioner undertakes to pay the admitted liability of Rs. 229,014,673/- (as admitted in petitioner's aforementioned letter dated 29.03.2019 to the Department within one week from today i. e., on or before 20.06.2019).
- (b) On payment of aforesaid amount on or before 20.06.2019, the impugned communication dated 23.05.2019 bearing reference C.No. IV/16/30/2019-Tech-III from the second respondent to the third respondent bank will stand set aside.
- (c) If the aforesaid payment is not made on or before 20.06.2019, this writ petition will stand dismissed and the impugned order will continue to operate without any reference to this Court.
- (d) On payment of aforesaid amount on or before 20.06.2019 by the writ petitioner, as mentioned supra, impugned communication from the second respondent to third respondent bank inter-alia under Section 79 of CGST Act will stand set aside and the second respondent shall consider all the points raised in writ petitioner's reply dated 29.03.2019, more particularly the annexed working sheet, pass an order in a manner known to law and communicate the same to the writ petitioner under due acknowledgement within one week therefrom.
- (e) If the decision taken by the second respondent is in favour of the writ petitioner, it is the end of the matter. If that not be so, as mentioned supra, writ petitioner shall avail alternate remedy of preferring a statutory appeal to the appellate Authority under Section 107 of CGST Act.

This writ is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

s.k. jain

*In favour of assessee.