

Recently Hon'ble Jharkhand High Court has given a ruling in the matter of "**Mahadeo Construction Co. Vs Union of India (Jharkhand High Court)**" holding that interest liability under section 50 is although automatic, but it's computation and demand can be raised only after initiation of Adjudication proceedings under Section 73 or 74 in case the assessee disputes the demand of interest. We have analysed the aforesaid ruling and its impact on the interest demand notices being sent by the department to various assesses in this update.

A. FACTS OF THE CASE

The petitioner, being a partnership firm, was registered under the provisions of the CGST Act. The assessee reasonably believed that due date of filing of GSTR-3B Return for the months of February and March, 2018 has been extended up to 31st March, 2019 because of the reason the same is reflecting on GSTN Portal and in this background, the assessee filed its monthly return for the months of February, 2018 and March, 2018 within the due date as reflected in GSTN Portal and paid the tax amount without paying any interest under section 50.

The assessee was served with a letter issued by Superintendent of Goods and Services Tax and Central Excise directing him to make payment of interest on the ground of delay in filing of GSTR-3B Return for the months of February and March 2018.

The Authorities further exercised powers under Section 79 of the CGST Act by initiating garnishee proceedings for recovery of aforesaid amount of interest by issuing notice to the assessee's Banker.

B. ISSUE INVOLVED

Following issues were involved before the Hon'ble High Court-

1. Whether interest liability under Section 50 of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act') can be determined without initiating any adjudication process either u/s 73 or 74 of the CGST Act in the event of an assessee raising dispute towards liability of interest?
2. Whether garnishee proceedings under Section 79 of the CGST Act can be initiated for recovery of interest without adjudicating the liability of interest, when the same is admittedly disputed by the assessee?

C. ARGUMENTS OF THE ASSESSEE

The Assessee through his learned counsel argued that there is no delay in furnishing of GSTR-3B return and consequently there is no delay on its part in depositing the tax with department, as in GSTB portal, due date of furnishing of return for the months of February and March 2018 was shown as 31st March, 2019. The impugned letter demanding interest amounting to INR 19,59,721 is not sustainable in the eyes of law, as the amount of interest has been determined without initiating any adjudication process under section 73 and 74 of the CGST Act, 2017.

It was further submitted that department has demanded interest in a most arbitrary and illegal manner by initiating garnishee proceedings under section 79 of the CGST Act without initiating adjudication process under section 73 and 74 of the CGST Act. It was contended that provision of section 79 can be adopted only when “any amount payable by a person to the Government under the provisions of the Act and the Rules is not paid”.

D. ARGUMENTS OF THE GST DEPARTMENT

The Department submitted that the present dispute pertains to recovery of interest not on the ground of delay in filing of GSTR-3B Return, but on the ground of delayed payment of tax beyond the stipulated date as prescribed under Section 39(1) read with Section 39(7) of the CGST Act. It is the case of the revenue that once there is a delay in payment of tax, the liability to pay **interest on the same becomes automatic**, for which no separate proceedings is required to be initiated for determining such interest liability.

Further, it was contended by the respondents that due date was reflected in GSTN Portal as “31st March, 2019” for furnishing of GSTR-3B monthly return for the months of February and March, 2018. It was owing to the fact that Central Board of Indirect Taxes and Customs, vide Notification No. 76/2018-Central Tax dated 31st December, 2018 has waived the levy of late fee for furnishing returns for the months of July, 2017 to September, 2018, if the said returns were furnished between the period 22nd December, 2018 to 31st March, 2019, and the said **Notification cannot be interpreted to mean that the last date of filing of GSTR-3B Return** has been extended up to 31st March, 2019.

E. HIGH COURT RULING

Hon’ble Jharkhand HC observed following:

- That on a conjoint reading of the Section 73(1) read with Section 73(7), it would be evident that even in a case where an assessee files his return as per his own ascertainment, pays the tax and even pays interest, but if the said amount paid by the assessee is falling short of the amount actually payable, the Proper Officer is required to initiate proceedings under Section 73(1) for recovery of the said amount of tax and interest.
- That though the liability of interest is automatic, but the same is required to be adjudicated in the event an assessee disputes the computation or very levability of interest, by initiation of adjudication proceedings under Section 73 or 74 of the CGST Act.

- That till such adjudication is completed by the Proper Officer, the amount of interest cannot be termed as an “*amount payable*” under the Act or the Rules. Thus, no garnishee proceedings under Section 79 of the CGST Act can be initiated for recovery of interest without adjudicating the liability of interest amount.

Accordingly, the impugned order dated 08.03.2019 is hereby quashed/set aside and, further, garnishee notice contained in the Order dated 22.05.2019 issued under Section 79 of the CGST Act to the Banker of the petitioner for recovery of interest amount of Rs.19,59,721/- is also, hereby, quashed/set aside.

F. OUR COMMENTS

Hon’ble Jharkhand High Court order would bring reprieve to large number of taxpayers in cases where delay has occurred in filing the GSTR-3B and in making the tax payments in the initial period of GST implementation. There are so many MSME taxpayers who due to various reasons were not able to do the compliance in the initial period and the GST department has sent system generated notices raising interest demand without granting opportunity of being heard. GST department should follow the process mandated by law of initiating adjudication proceedings under Section 73 or 74 of the CGST Act in all the cases where assessee disagrees with levy of interest.

Contact Us:

Delhi
A-15, Second Floor, Hauz Khas, New Delhi - 110016
(India)
Ph: +91,011 41655801, 41655802
Fax: +91 11 26567540

Bangalore
No 605, Second Floor, 62nd Cross, 5th Block, Rajajinagar,
Bangalore Karnataka - 560010 (India)
Ph: +91 80 42064178

Pune
Flat No- 2A, Gangotri Complex,
Near Geeta Society, Camp, Pune 411001 (India)
Ph: +91 020 30492191

E-mail:- snr@snr.company
[Click here](#) to unsubscribe for SNR Flash

For private circulation only among clients and associates <http://www.snr.company/>