www.taxguru.in

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 3517 of 2019

Mahadeo Construction Co.
at Chhatarpur, Palamau through its
partner Anil Kumar Singh. …… Petitioner

Versus

1. The Union of India
   through the Commissioner, Central Goods &
   Services Tax, Central Revenue Building, Ranchi.
2. Assistant Commissioner,
   Central Goods & Services Tax and
   Central Excise, Ranchi North Division, Ranchi.
3. Superintendent,
   Central Goods & Services Tax and Central Excise,
   Daltonganj Range, Daltonganj, Palamau. …… Respondents

PRESENT

HON'BLE MR. JUSTICE H. C. MISHRA

HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Mr. Sumeet Gadodia, Advocate
Mrs. Shilpi John, Advocate
Mr. Ranjeet Kushwaha, Advocate

For the Respondents : Mr. Ratnesh Kumar, Advocate
Mr. Amit Kumar, Advocate.

JUDGEMENT

CAV on: 02/03/2020 **Pronounced on: 21/04/2020**

Per Deepak Roshan, J:- The issues involved in the present writ application are of seminal importance, namely—

(i) 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 assesse raising dispute towards liability of interest?

(ii) Whether recovery proceedings u/s 79 of the CGST Act can be initiated for recovery of interest u/s 50 of the said Act without initiation and completion of the adjudication proceedings under the Act?

2. The facts of the present writ application lie in a very narrow compass. The petitioner, being a partnership firm, was registered under the provisions of the CGST Act. Under Section 39 of the CGST Act, provisions have been incorporated for furnishing of monthly return by a registered person on or before 20th day of the month succeeding such calendar month in which

returns were to be filed. Said returns are known as 'GSTR-3 Return'. However, it is an admitted fact that due to the Nationwide problem in GSTN Portal, said GSTR-3 Return, which is an auto populated return on the basis of details of inward and outward supply, is not being generated, due to which, by way of stop-gap arrangement, provisions have been incorporated for filing GSTR-3B Return in terms of Rule 61(5) read with Rule 61(6) of the Central Goods and Services Tax Rules, 2017 (for short 'CGST Rules').

3. Further, under Section 39(7) of the CGST Act, it is provided, *inter alia*, that a registered person, who is required to furnish his return under sub-section (1) of Section 39, would be liable to pay to the Government the tax due as per such return not later than the last date on which the dealer is required to furnish such return. A conjoint reading of Section 39(1) read with Section 39(7) of the CGST Act would reveal that a dealer was liable to pay tax within 20th day of the succeeding month for which said dealer was liable to file GSTR-3 Return. However, since the very onset of implementation of GST regime, filing of monthly return u/s 39, being GSTR-3, was suspended and continues to be suspended till today, and, return in GSTR-3B is required to be filed by registered person.

4. From time to time, due date for filing such return in GSTR-3B has been extended by respondent-Authorities.

5. It is the case of the petitioner that in GSTN Portal, due date for filing of GSTR 3B Return for the month of February, 2018 and March, 2018 was reflecting as 31st March 2019 and the petitioner 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 and in the said background, the petitioner filed its monthly return for the month of February, 2018 and March, 2018 within the due date as reflected in GSTN Portal, as would be evident from Annexure-4 of the writ application. The petitioner was served with a letter dated 8th March, 2019 issued by Superintendent of Goods and Services Tax and Central Excise (Respondent No.3) directing the petitioner to make payment of interest amounting to Rs.19,59,721/- on the ground of delay in filing of GSTR-3B Return for the months of February and March, 2018. The said letter contained in Annexure-7 is impugned in the present

writ application. The respondent-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 petitioner's Banker. Said initiation of garnishee proceedings under Section 79 of the CGST Act is also impugned in the present writ application.

6. Mr. Sumeet Gadodia, learned counsel appearing for the petitioner has vehemently submitted that the impugned letter dated 08.03.2019 issued by respondent No.3 demanding interest amount of Rs.19,59,721/- on the alleged ground of delay in submitting GSTR-3B Return for the months of February and March, 2018, is not sustainable in the eyes of law, as the said amount of interest has been determined without initiating any adjudication process under Sections 73 or 74 of the CGST Act. It is the specific case of the petitioner that the petitioner is not liable to pay interest as there has been no delay on its part in furnishing of GSTR-3B Return and, consequentially, there is no delay on its part in depositing the tax with the respondent-Authority, as in GSTN Portal, due date for furnishing of return for the months of February and March, 2018 was shown as 31st March, 2019.

7. It has been further argued by Mr. Gadodia that if the amount of interest is not admitted by an assesse, the same requires determination through an adjudication process to be initiated as per the detailed provisions contained under Section 73 of the CGST Act.

8. It has been further submitted by the learned counsel for the petitioner that not only that respondent-Authorities, without initiating adjudication process, have straightaway demanded interest from the petitioner, but they have, in a most arbitrary and illegal manner, by adopting extra legal steps, initiated garnishee proceedings under Section 79 of the CGST Act for recovery of the amount of interest. It has been contended that provisions of Section 79 of the CGST Act 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". It has been submitted that the words "any amount payable" is to be interpreted in the context in which it has been used and the amount payable (unless admitted) can only be determined by initiating adjudication process as provided under Section 73 or 74 of the CGST Act. It is the

specific case of the petitioner that since the petitioner has not admitted its liability of interest, the said interest liability to be classified as an amount payable under the Act and/or Rules, necessarily requires adjudication process and, in absence thereof, initiation of garnishee proceedings is not sustainable in the eyes of law and even amounts to taking extra legal steps for recovery of the amount from an assessee.

9. Per contra, Mr. Ratnesh Kumar, learned counsel for the respondent 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.

10. It has been further submitted by learned counsel of the respondent that it is an admitted case of default in filing self-assessed monthly statement/ return within the statutory period and payment of admitted self-assessed tax, which consequentially attracts payment of interest under Section 50 of the CGST Act. In other words, it has been contended that payment of interest as envisaged under Section 50 of the Act is automatic and is to be paid by the defaulter at his own without initiating any adjudication process under Section 73 or 74 of the CGST Act. Further, while referring to Section 73 or 74 of the CGST Act, it has been contended that said Sections are not applicable in the instant case, as it relates only to demand and recovery of tax not paid or short paid either on account of fraud or willful misstatement or suppression of facts, or otherwise. It has been further contended by the respondents that due date as reflected in GSTN Portal as "31st March, 2019" for furnishing of GSTR-3B monthly return for the months of February and March, 2018 was reflecting owning to the fact that Central Government, through Central Board of Indirect Taxes and Customs, vide Notification No. 76/2018-Central Tax dated 31st December, 2018 (Annexure -3 series) 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. Learned counsel for the revenue, in support of his contention that liability for payment of interest is automatic and does not require any adjudication process, has relied upon the following two decisions, namely;--

(1) 2004 (5) SCC 472 (U.P. Cooperative Cane Unions Federations –Vs- West U.P. Sugar Mills Association & ors.)

(2) 2010 (2) SCC 672 (Commissioner of Central Excise –Vs- International Auto Limited)

11. Mr. Ratnesh Kumar, learned counsel for the revenue further, while justifying the action of initiation of garnishee proceedings under Section 79 of the CGST Act, contended that since the liability for payment of interest is automatic on delayed payment of tax, the amount of interest is an amount payable under the Act or the Rules and since the assessee, despite notices being issued to it, has failed to discharge the said liability, it was well within the competence of the respondent-Authorities to initiate garnishee proceedings under Section 79 of the CGST Act by attaching Bank account of the petitioner.

12. We have heard the parties and have given our conscious consideration to the issue involved in the instant writ application, which according to us, is of seminal importance owing to the fact that CGST Act is a new enactment and the question raised herein will have bearing upon large number of assesses.

13. Before adverting to the issues involved in the instant writ application, we may like to refer an earlier order dated 24.07.2019 passed by this Court in the instant writ petition, wherein we have noted that the screen shots of the G.S.T.N Portal showing the due date for furnishing monthly returns for February and March 2018, as 31st March 2019, as contained in Annexures 4 and 4/1 to the writ application, were not denied by learned counsel for C.G.S.T. It is an admitted position that on GSTN Portal for the months of February and March, 2018, due date for filing return was reflecting as 31st March, 2019. Although it was contended that said due date has been

reflected on GSTN Portal only because a waiver of Late Fee was notified by the Central Government for delay in filing the Return for the said month up to 31st March,2019, and the due date for filing such return was not extended up to 31st March, 2019. Be that as it may, the fact remains that on GSTN Portal, due date for filing monthly return for February and March, 2018 was reflected as 31st March, 2019 and, admittedly, the Petitioner filed its returns for the said months much prior to the said date. After noticing the said fact, this Court, vide order dated 24.07.2019, stayed the operation of the garnishee notice contained in the Order dated 22.05.2019 (Annexure-10 of the Supplementary Affidavit) and directed the respondents to file their counter affidavit.

14. At this stage, we may indicate here that this Court is not expressing any opinion as to whether the petitioner was liable to pay interest or not, which, in the opinion of the Court, is required to be adjudicated first by the Revenue Authorities. However, the aforesaid facts are noted by us in our Judgment for the limited purpose to indicate that there was a dispute between the Assessee-Petitioner and the Revenue regarding liability of interest for alleged delayed filing of monthly return for the months of February and March, 2018 and, consequentially, alleged delay in payment of tax.

15. In the backdrop of the aforesaid fact, we proceed to decide the main issues involved for adjudication in the instant writ application, which have already been delineated hereinabove. For the purpose of adjudicating the said issues, it would be relevant to quote some of the provisions of the CGST Act, which are as under:-

Section -39

"39. Furnishing of returns

(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form, manner and within such time as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed:

PROVIDED that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall furnish return for every quarter or part thereof, subject to such conditions and safeguards as may be specified therein."

Section 39(7)

(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

PROVIDED that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall pay to the Government the tax due or part thereof as per the return on or before the last date on which he is required to furnish such return, subject to such conditions and safeguards as may be specified therein."

Section 50

"50. Interest on delayed payment of tax

(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 (1) 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."

Section 73

"73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts.

(1) Where it appears to the proper officer that <u>any tax has not been paid or short paid</u> or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason,

other than the reason of fraud or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable

under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent of tax or ten thousand rupees, whichever is higher, due from such person and issue and order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax."

(Emphasis Supplied)

16. A bare reading of the provisions of Section 39(1) read with Section 39(7) of the CGST Act would reveal that a dealer is liable to pay tax within 20th day of the succeeding month for which the dealer was liable to file his monthly return.

17. Further, Section 50 of the Act contains provisions relating to Levy of Interest on delayed payment of tax. A reading of sub-section (2) of Section 50 itself would reveal that interest payable under sub-section (1) of Section 50 is required to be calculated in such manner, as may be prescribed.

18. However, the important issue for consideration in the instant writ application is the interpretation of the provisions of Section 73 of the Act. A bare reading of Section 73(1) of the Act reveals that where it appears to the Proper Officer that any tax has not been paid or short paid" the Proper Officer shall serve notice on the person chargeable with tax, "which has not been so paid" or "which has been short paid" requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under Section 50 of the Act and a penalty leviable under the provisions of the Act and Rules. Thus, a bare reading of Section

73(1) would reveal that if tax has not been paid or has been short paid, a notice is required to be served by the Proper Officer on the assesse not only requiring him to show cause as to why tax be not recovered from it, but also specifying in the notice the interest payable under Section 50 also to be recovered along with penalty. Thus, if there is a short payment of tax or non-payment of tax, a notice is required to be issued even for recovery of interest under Section 50 of the CGST Act.

19. The question would, therefore, arise that if an assesse, who has already paid tax, but has paid the same after some delay, would fall within the expression **"tax not being paid or short paid"**. The aforesaid issue has already been answered by this Court in the case of **Godavari Commodities Ltd. Vs. Union of India and ors.**, reported in *2019 SCC Online Jhar 1839*, as under:-

> *"8. A plain reading of this provision shows that this provision shall be fully applicable in cases where the tax was not paid for any reason other than fraud. In the present case, though it is submitted by learned counsel for CGST that since the tax was paid, fact remains that the tax was not paid by the petitioner Company in the Government account within the due date, and accordingly, it is a case of tax not being paid, within the period prescribed, or when due. In that view of the matter, we are unable to accept the contention of learned counsel for CGST that no show-cause notice was required to be given in this case. Even otherwise, if any penal action is taken against the petitioner, irrespective of the fact whether there is provision under the Act or not, the minimum requirement is that the principles of natural justice must be followed. In the present case admittedly, prior to the issuance of letter dated 6.2.2019, no show-cause notice or an opportunity of being heard was given to the petitioner and no adjudication order was passed."*

20. This Court, while interpreting the term "tax not paid" has held that if a tax has not been paid within the prescribed period, the same would fall with the expression "tax not paid" as mentioned under Section 73 of the CGST Act. The aforesaid interpretation further finds support from other sub-sections of Section 73, particularly sub-sections (5), (6) and (7) of Section 73. A bare reading of the aforesaid sub-sections (5), (6) and (7) of Section 73 would reveal that a person chargeable with tax, if before service of notice pays the amount of tax along with interest payable thereon under Section 50 of the Act on the basis of his own ascertainment, then the Assessing Officer,

if satisfied that correct tax along with interest has been paid by the said assesse, shall not issue any notice under Section 73(1) of the Act. However, Section 73(7) of the Act provides that if an assesse, who has itself on his own ascertainment, deposited the tax along with interest, but if in the opinion of the Proper Officer, the amount paid on own ascertainment falls short of the amount actually payable, then a notice would be issued by the said Proper Officer under Section 73 (1) of the Act for recovery of the actual amount payable. Thus, from a conjoint reading of the aforesaid provisions, it would be evident that even in a case where an assesse files his return as per his own ascertainment, pays the tax and even pays interest, but if the said amount paid by the assesse 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. The natural corollary of the above interpretation is that if an assesse has allegedly delayed in filing his return, but discharges the liability of only tax on his own ascertainment and does not discharge the liability of interest, the only recourse available to the Proper Officer would be to initiate proceedings under Section 73(1) of the CGST Act for recovery of the amount of "short paid" or "not paid" interest on the tax amount.

21. It is not a true that liability of interest under Section 50 of the CGST Act is automatic, but the said amount of interest is required to be calculated and intimated to an assesse. If an assesse disputes the liability of interest i.e. either disputes its calculation or even the leviability of interest, then the only option left for the Assessing Officer is to initiate proceedings either under Section 73 or 74 of the Act for adjudication of the liability of interest. Recently, the Hon'ble Madras High Court, in its decision dated 19th December, 2019 rendered in Writ Appeals in the case of ***The Assistant Commissioner of CGST & Central Excise and others Vs. Daejung Moparts Pvt. Ltd. and ors***, has taken similar view. The said Writ Appeals were initially decided by a Two Judges Bench of the Hon'ble Madras High Court and divergent views were taken by the Hon'ble Judges on the issue of initiation of adjudication proceedings before imposing liability of interest under Section 50 of the Act. The matter was, thus, referred to learned Third

Judge, which was decided vide Judgment dated 19th December 2019 in the following terms:-

> *"27. A careful perusal of the above said provision would show that every person who is liable to pay tax, but fails to pay the same or any part thereof within the period prescribed shall, on his own, pay interest at such rate not exceeding 18% for the period for which the tax or any part thereof remains unpaid. Thus, sub clause (1) of Section 50 clearly mandates the assesse to pay the interest on his own for the period for which the tax or any part thereof remains unpaid. The liability to pay interest is evidently fastened on the assesse and the same has to be discharged on his own. Thus, there cannot be any two view on the liability to pay interest under Section 50(1) of the said Act. In other words, such liability is undoubtedly an automatic liability fastened on the assesse to pay on his own for the period for which tax or any part thereof remains unpaid.*
>
> *28. Sub-section (2) of Section 50 contemplates that the interest under Sub-section (1) shall be calculated in such manner as prescribed from the day succeeding the day on which such tax was due to be paid. Sub-section (3) of Section 50 further contemplates that a taxable person who makes an undue or excess claim of input tax credit under Section 42(10) or undue or excess reduction in output tax liability under Section 43 (10) shall have to pay interest on undue or excess claim or such undue or excess reduction, at the rate not exceeding 24 percent.*
>
> *29. A careful perusal of sub Sections (2) and (3) of Section 50 thus would show that though the liability to pay interest under Section 50 is an automatic liability, still the quantification of such liability, certainly, cannot be by way of an unilateral action, more particularly, when the assesse disputes with regard to the period for which the tax alleged to have not been paid or quantum of tax allegedly remains unpaid. Likewise, whether an undue or excess claim of input tax credit or reduction in output tax liability was made, is also a question of fact which needs to be considered and decided after hearing the objections of the assesse, if any. Therefore, in my considered view, though the liability fastened on the assesse to pay interest is an automatic liability, quantification of such liability certainly needs an arithmetic exercise after considering the objections if any, raised by the assesse. It is to be noted that the term "automatic" does not mean or to be construed as excluding "the arithmetic exercise". In other words, though liability to pay interest arises under Section 50 of the said Act, it does not mean that fixing the quantum of such liability can be unilateral, especially, when the assesse disputes the quantum as well as the period of liability. Therefore, in my considered view, though the liability of interest under section 50 is automatic, quantification of such liability shall have to be made by doing the arithmetic exercise, after considering the objections of the assessee. Thus I answer the first issue accordingly.*
>
> *Xxx xxx xxx*

31. It is to be noted at this juncture that in both the writ petitions, the respective writ petitioners are not disputing their liability to pay the interest on the delayed payment of tax. On the other hand, they are disputing the quantum of interest claimed by the Revenue by contending that the interest liability was worked out on the entire tax liability instead of restricting the liability to the extent of tax unpaid. It is further seen that the writ petitioners have placed some worksheets, wherein they have claimed some ITC credit for every month as well. Their grievance before the Writ Court was that the impugned bank attachment ought not to have been resorted to without determining the actual quantum of liability.

32. Therefore, it is evident that the dispute between the parties to the litigation is not with regard to the very liability to pay interest itself but only on the quantum of such liability. In order to decide and determine such quantum, the objections raised by each petitioners shall have to be, certainly, considered. Undoubtedly unilateral quantification of interest liability cannot be justified especially when the assesse has something to say on such quantum. The Writ Court, thus, in the above line, has disposed the writ petitions, that too, on a condition that the petitioner in each case should pay the admitted liability of interest.

33. A careful perusal of the direction issued by the Writ Court does not indicate anywhere as to how the Revenue is prejudiced by the said order, especially when the Revenue is given liberty to pass an order in a manner known to law and communicate the same to the petitioners, after considering their objections. Thus, I find that the Writ Appeals preferred against the said orders of the Writ Court, as observed by Dr. Vineet Kothari, J, are wholly unnecessary. Therefore, I am in agreement with the view expressed by Dr. Vineet Kothari, J., as I find that entertaining the writ appeal is not warranted, since the Writ Court has not determined the interest liability of each petitioners against the interest of the Revenue in any manner and on the other hand, it only remitted the matter back to the concerned Officer to determine the quantum of such liability. Thus, the second question with regard to the maintainability of the writ appeals is answered accordingly."

22. The next issue for adjudication in the instant writ application is as to 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 assesse. Section 79 of the CGST Act empowers the authorities to initiate garnishee proceedings for recovery of tax where "any amount payable by a person to the Government under any of the provisions of the Act and Rules made thereunder is not paid". Since in the preceding paragraphs of our Judgment, we have already held that though the liability of interest is automatic, but the same is required

to be adjudicated in the event an assesse disputes the computation or very leviability of interest, by initiation of adjudication proceedings under Section 73 or 74 of the CGST Act, in our opinion, 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, without initiation of any adjudication proceedings, no recovery proceeding under Section 79 of the Act can be initiated for recovery of the interest amount.

23. Accordingly, the impugned order dated 08.03.2019 issued by Respondent No.3 (Superintendent, Daltonganj Range) (as contained in Annexure-7) is hereby quashed/set aside and, further, garnishee notice contained in the Order dated 22.05.2019 (Annexure-10 of the Supplementary Affidavit) 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.

24. It shall be open for the respondent Authorities to initiate appropriate adjudication proceeding either under Section 73 or 74 of the CGST Act (as the case may be) against the petitioner-assessee and determine the liability of interest, if any, in accordance with law after giving due opportunity of hearing to the petitioner.

25. Accordingly, the writ application is allowed. However, no order as to costs.

(Deepak Roshan, J.)

H.C. Mishra, J:- I agree

(H.C. Mishra, J.)

High Court of Jharkhand, Ranchi
Dated:21/04/2020
NAFR/Pramanik