

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P (T) No. 177 of 2021

With

W.P (T) No. 1261 of 2020

With

W.P (T) No. 161 of 2021

M/s Narsingh Ispat Limited through its Director Sri Ajay Kumar Singh

--- --- Petitioner [All cases]

Versus

1. Union of India through the Secretary, Ministry of Finance, (Department of Revenue), New Delhi
2. The Special Secretary & Member, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes and Customs, New Delhi
3. The Principal Commissioner of Central Tax, Goods & Services Tax & Central Excise, Ranchi Commissionerate, Ranchi, Jharkhand
4. The Deputy Commissioner of State Tax & GST, Jamshedpur
5. The Secretary cum Commissioner of State Taxes, Ranchi

--- --- Respondents [All Cases]

CORAM: **Hon'ble Mr. Justice Aparesh Kumar Singh**

Hon'ble Mr. Justice Deepak Roshan

For the Petitioner: M/s K. Kurmi, N.K. Pasari, Sidhi Jalan, Advocates

For the Resp.-CGST: M/s Amit Kumar, Ashish Kr. Shekhar, Advocates

For the Resp.-State: Mr. Sachin Kumar, A.A.G-II

Mr. Ashok Kr. Yadav, G.A-I

Mr. P.A.S. Pati, G.A-II

For the Resp.-Union of India: M/s Prabhat Kr. Sinha, Vibha Bakshi, CGC

13 / 22.03.2022 Heard learned counsel for the parties.

2. Initially, W.P (T) No. 1261/2020 was preferred by the petitioner. Vide order dated 04.01.2021, petitioner was allowed liberty to assail the respective demands for the Financial Years 2018-19 and 2019-20 in separate writ petitions as the consequential relief relating to challenge of the demand notices relating to Financial Years 2017-18, 2018-19 and 2019-20 had been combined in W.P(T) No. 1261/2020. Subject matter in W.P (T) No. 177//2021 relates to the tax period for Financial Year 2018-19 and the subject matter in W.P (T) No. 161/2021 is in respect of tax period for the Financial Year 2019-20, while W.P (T) No. 1261/2020 is now confined to the Financial Year 2017-18.

3. In all the three writ petitions, primarily challenge was to the Circular bearing F. No. CBEC-20/16/07/2020-GST dated 10.02.2020 (Annexure-1) issued by the Central Board of Indirect Taxes and Customs ('CBIC' in short) which prescribes that interest payable on delayed payment of taxes can be recovered under the provisions of Section 79 read with Section 75(12) of CGST Act. It was pointed out that the petitioner has been asked to pay the amount of

interest applicable over the taxes in full, failing which he would face proceeding under section 73(1) of CGST Act. However, at the time of final hearing of this case, learned counsel for the petitioner has abandoned such prayer as it has become redundant in view of the provisions of Section 50(1) of CGST Act, 2017 under which a proviso has been inserted by Gazette Notification dated 02.11.2021 of Government of Jharkhand clarifying that interest is to be paid on the net tax liability i.e. amount of tax paid by debiting Electronic Cash Ledger. The second prayer in all the writ petitions is also common as it relates to quashing of Garnishee notice issued in Form GST DRC-13 for three different financial years aforesaid of the same date 26.02.2020 in the respective writ petition. However, during course of final hearing, learned counsel for petitioner has submitted that this issue has also become infructuous in view of the statement made by the Respondents in their counter affidavit that after receiving mail from M/s Rungta Mines Limited, Respondent authorities have withdrawn GST DRC-13 issued by them. The challenge in the respective writ petitions are now confined to the prayer (c) and (d) of Para-1 inter-alia for quashing of the Summary of the Order dated 26.02.2020 issued in Form GST DRC-07 for the Financial Years July 2017 to March 2018 / 2018-19 and from April 2019 to December 2019 in the respective writ petitions. Petitioner has sought quashing of the demand notices issued in Form GST DRC-01 dated 28.01.2020 relating to the different tax periods in the respective writ petitions.

4. Learned counsel for the petitioner has, in support of the challenge, inter-alia made the following submissions:

(A) That the writ petitions under Article 226 / 227 of Constitution of India are maintainable as the present proceedings have been initiated without issuing a proper show cause notice. It is contended that no show cause notice under section 73 of 74 of the JGST Act, 2017 has been issued before passing the adjudication order in spite of clear mention in Form GST DRC-01 dated 28.01.2020. In support of the submission, petitioner has relied upon the following decision.

- i. **Magadh Sugar & Energy Ltd. Versus State of Bihar & others [2021 SCC Online SC 801]**
- ii. **Mahadeo Construction Co. Versus Union of India [2020 (36) G.S.T.L 343 (Jhar.).]**
- iii. **Godavari Commodities Ltd. Versus Union of India [2020 (33) G.S.T.L 16 (Jhar.)]**

(B) That, Interest under section 50(1) of the Act cannot be demanded for delay in filing monthly return in Form GSTR-3B, but for the delay in payment of the taxes. Section 50 deals with the liability to pay interest on “unpaid” tax when a person “fails to pay” tax. It does not speak anything when a person has paid tax in accordance with Section 49. Proviso to Section 50(1) cannot travel beyond or be inconsistent with or make addition to the main provision. It must be limited to the subject matter of enacting clause. Proviso to Section 50(1) merely says that the Input Tax Credit (ITC) is as good as tax paid, hence, no interest is payable thereon. It does not say anything about payment from Electronic Credit Ledger as Section 50(1) deals with cases of unpaid or failure to pay tax only. The word ‘debiting’ under section 50(1) is used for apportionment of an amount on which interest is payable if not paid in accordance with Section 49. This expression ‘debiting’ has to be read in the context of the word ‘fails to pay’ and ‘unpaid’ in sub-Section (1) and (2) of Section 50. In the instant case, by the impugned summary of the order issued in Form GST DRC-07 and impugned demand notice issued in Form GST DRC-01A, interest is demanded for the number of days delay in filing GSTR-3B instead of number of days of delay in payment of tax which is wholly illegal and without authority of law. It is submitted that for delayed filing of GSTR-3B, late fee at best can be demanded which is already discharged by the petitioner. Interest under section 50(1) is compensatory in nature. Therefore, once the amount is deposited / credited in Electronic Cash Ledger in accordance with Section 49 particularly Explanation thereto, money goes to the Government Exchequer and therefore, no interest for the period thereafter can be demanded. For enjoying the amount credited in the Electronic Cash Ledger, Government need not to wait till filing of return or appropriation of the tax. If the money is being enjoyed by the Government, the amount cannot be said to be ‘unpaid’ or ‘fails to pay’ so as to attract Section 50(1). When a person had paid tax in accordance with Section 49, no interest is attracted since the amount is already paid. Interest can be demanded for the amount withheld as it is always compensatory in nature. It is the legislative policy of the Act. The intention of the legislature can be gathered from the language used in the statute as what has been said and also what has not been said, as per the ratio in the case of **Commissioner of Income Tax, Kerala Versus Tara Agencies, (2007) 6 SCC 429**. Petitioner has also relied upon the case of **Collector of Central Excise, Pune and others versus Dai Ichi Karkaria Ltd. and other [(1999) 112 ELT 353 (SC), para-18]** wherein it has been held that credit of CENVAT is as good

as tax paid to the Government. Same analogy will apply to Electronic Cash Ledger because new Proviso does not expand the main enactment. For the purposes of this Section, date of credit in Electronic Cash Ledger is relevant and for the purposes of Section 9(1), date of filing return is relevant. Therefore, once the amount is deposited in the Electronic Cash Ledger within 20th of the next month, any delay in filing GSTR-3B would not attract interest. It is submitted that TDS deducted under Section 51 and TCS collected under section 52 of JGST Act are taxes credited into the Electronic Cash Ledger. The advance deposit in the Electronic Cash Ledger, TDS and TCS go to the common pool and are in the nature of advance tax. Therefore, while interpreting the provisions of Section 50, intention of the legislature can be gathered from the scope of the Act and other provisions of Section 9, 39, 49, 50, 51, 52, 54 and Rule 61. Learned counsel for the petitioner has relied upon the case of **Manik Lal Majumdar and others versus Gauranga Chandra Dey and others [(2005) 2 SCC 400]**. Learned counsel for the petitioner has also drawn attention to Section 54(12) of the Act which provides that if the amount in Electronic Cash Ledger is not refunded within the specified time by the Government, the registered person would be entitled to interest at the rate not exceeding 6% which shows that money goes into the coffers of the Government. Compensatory interest therefore cannot be demanded. For any delay in filing return, late fee can be levied under section 47 of the Act, but interest on delayed filing of return cannot be levied as it would be contrary to the concept of interest in taxing statute. It is further submitted that as per section 39 (1) of CGST Act / JGST Act read with Rule 61, the tax for a month is to be paid by 20th of the following month along with monthly return in GSTR-3B. If tax is deposited into the Electronic Cash Ledger in accordance with Section 49 before 20th of the next month, interest cannot be demanded therein. Interest can be demanded only for the period of delay thereafter. Date of filing return or delay in filing return is irrelevant for the purposes of Section 50. Date of filing return is relevant for Section 9 which creates levy of tax, whereas for the purpose of demanding interest, Section 50 is relevant which provides for interest only on 'unpaid' amount. For the purpose of Section 50(1), mere credit in the credit / cash ledger is sufficient to stop running of interest. Therefore, levy under section 9 should not be confused with levy under Section 50. It is an independent charging provision. Learned counsel for the petitioner further submits that the Apex Court in the case of **J.K. Synthetics Limited versus Commercial Taxes Officer (1994) 4 SCC 276** at para-6 held that the interest

under the taxing statute are compensatory in nature. The machinery provision must be so construed as would effectuate the object and purpose of the statute and not defeat the same. Petitioner has also placed reliance upon the case of **Union of India through Director of Income Tax versus Tata Chemicals Limited (2014) 6 SCC 335**.

(C) That, substitution of GSTR-3B for filing return with effect from 01.07.2017 by Rule 61(5) does not make levy of interest retrospective. The substitution of return in GSTR-3B in place of GSTR-3 under Section 39(1) of JGST Act, 2017 read with Rule 61(5) of JGST Rules, 2017 with retrospective effect from 01.07.2017 vide Notification No. 49/2019-Ct dated 09.10.2019 by the Central Government and Notification No. 49/2019-State Tax dated 27.12.2019 does not make levy of interest retrospective. The liability towards interest is substantive and therefore, cannot apply retrospectively. Levy of interest under a taxing statute is substantive and not procedural. Proviso to Section 50(1) provides for payment of interest on tax which is not discharged as per return filed in GSTR-3 under Section 39(1) read with Rule 61(1) prior to retrospective amendment as above and not as per return in GSTR-3B under Rule 61(5). Return in Form GSTR-3B was initially brought into operation by way of insertion of Rule 61 of CGST (Fourth Amendment) Rules, 2017 vide Notification No. 10/2017 dated 28.06.2017 issued by the Central Government with effect from 01.07.2017 as a mere stopgap measure in lieu of return in Form GSTR-3 as prescribed under Section 39(1) of the Act read with Rule 61(1) of the Rules. Subsequently, vide Notification No. 17/2017-CT dated 27.07.2017, the Central Government amended sub-Rule (5) of Rule 61, whereby the words 'in lieu of GSTR-3' was omitted, meaning thereby that the return in GSTR-3B is not a return in lieu of return in Form GSTR-3. Similar amendment in Rule 61(5) was made in the JGST Rules, 2017 vide Notification dated 29.06.2017 and 31.07.2017 issued by the State Government under section 164 of JGST Act, 2017. Now, with retrospective effect from 01.07.2017, the Central Government vide Notification dated 09.10.2019, has substituted and prescribed the return in Form GSTR-3B under section 39(1) of the Act read with Rule 61(5) in place of return in Form GSTR-3 under Rule 61(1). A similar retrospective substitution has been made by the State Government in Rule 61(5) of JGST Rules, 2017 with effect from 01.07.2017 by Notification dated 27.12.2019. Therefore, proviso to Section 50 of the Act cannot be read in the context of Section 39(1) of JGST Act, 2017/ Rule 61(5) of JGST Rules, 2017 so as to create interest on tax paid as per return in Form GSTR-3B in place of return in Form GSTR-3.

Therefore, the impugned demand notice dated 28.01.2020 and the impugned Summary of the Order dated 26.02.2020 issued in Form GST DRC- 07 are without jurisdiction and authority of law. An amount of Rs. 33,06,435/- collected from the petitioner by the Respondent is without authority of law and contrary to the mandate of Article 265 of Constitution of India.

(D) According to the petitioner, the State Government without prescribing the manner of calculation of interest under section 50(2) of JGST Act, 2017 by framing rules under Section 2(87), cannot demand interest as it is illegal. In absence of computation provision, levy of interest cannot be enforced. Section 50(2) of JGST Act, 2017 provides for the manner of calculation of interest by rules to be framed by the State Government, which has not been done. Learned counsel for the petitioner has placed reliance upon the case of **C.I.T, Bangalore versus B.C. Srinivasa Setty [(1981) 2 SCC 460, para-10]**, wherein it has been held that the charging provision and computation provisions together constitute an integrated code. He has also referred to the case of **Commissioner of C. Ex. & Cus., Kerala versus Larsen & Tourbro Ltd [2015 (39) S.T.R 913 (S.C)]**.

(E) Petitioner has also taken a plea that there is no substantive provision under the IGST Act, 2017 for levy of interest, hence by reference to Section 50(1) of CGST Act, 2017, no interest can be demanded. Learned counsel for the petitioner has relied upon the text book on the 'Principles of Statutory Interpretation' by Justice G.P. Singh to explain the real meaning and construction of a proviso. Referring to Chapter on Internal Aids to Construction, it is submitted that proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily, it is foreign to the proper function of proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment. When on a fair construction the principle provision is clear, a proviso cannot expand or limit it. It is further submitted by referring to the case of **Abdul Jabbar Butt versus State of Jammu & Kashmir [AIR 1957 SC 281, equivalent citation 1957 S.C.R. 51]**, referred to in the book, that it is fundamental rule of construction that proviso must be considered in relation to the principal matter to which it stands as a proviso. Since the natural presumption is that but for the proviso, the enacting part of the section would have included the subject matter of the proviso, the enacting part should be generally given such a construction which would make the exceptions carved out by the proviso necessary and a

construction which would make the exceptions unnecessary and redundant should be avoided.

5. Based on these submissions, learned counsel for the petitioner has prayed that the impugned notice issued in Form GST DRC-01A dated 28.01.2020 and Summary of the Order issued in Form GST DRC-07 dated 26.02.2020 be quashed.

6. Respondents have filed counter affidavit in the respective writ petitions and taken an objection to the maintainability of the writ petitions on the ground that the Act provides for an alternative remedy of statutory appeal under section 107 of JGST Act which the petitioner has not availed. Respondents have also taken a plea that interest can be recovered on delayed payment of tax under section 50 read with section 75(12) of JGST Act. It is submitted that conjoint reading of Section 50 and Section 75(12) of JGST Act, 2017 makes it clear that interest is payable by debiting Electronic Cash Ledger. Interest is to be calculated by the Assessee 'on its own' and interest is automatically payable at the time of filing return in Form GSTR-3B. Applicability of section 73 and 74 of the Act are specifically excluded. Proviso to Section 50 uses the word 'payable', which has been inserted with effect from 01.07.2017. The word 'payable' is of wide significance which means liable to be paid justly due, legally enforceable, etc. It is submitted that the scope of Section 50 is very limited in the sense that interest becomes payable once there is delay in making payment of the tax. By virtue of proviso to Section 50, interest becomes payable on the amount of tax paid by debiting the Electronic Cash Ledger. In this regard, learned counsel for the Respondents relied upon the judgment of Telegana High Court passed in Writ Petition No. 44517/2018 dated 18.04.2019 [**M/s Megha Engineering & Infrastructure Ltd. versus The Commissioner of Central Tax**]. The Hon'ble Court at para-39 has held that when the petitioner had filed returns belatedly for whatever reasons and payment of tax liability in cash or in the form of claim for ITC made beyond the prescribed period, the liability to pay interest under Section 50(1) arose automatically. Therefore, petitioner cannot escape the liability. It is contended that interest under Section 50(1) is not being demanded for the delay in filing return, as contended by the petitioner for which, late fee is prescribed under section 47, rather interest is being demanded in terms of Section 50 which clearly imposes liability on the registered person to pay interest on the amount of tax paid by debiting the Electronic Cash Ledger. The proviso to Section 50 is not under challenge. In reply to the contention relating to retrospective application of

GSTR-3B with effect from 01.07.2017 by substituting Rule 61(5), it is contended that it does not make levy of interest retrospective. Section 50 was there in the statute book since inception. By virtue of Section 50(1), interest was payable on the gross tax liability. Now, proviso inserted to Section 50 has clarified the situation by limiting the interest liability on that portion of the tax which is paid by debiting the Electronic Cash Ledger. The interest liability has not been given retrospective effect, rather the scope of liability has been limited with retrospective effect. Therefore, argument of learned counsel for the petitioner based on return in Form GSTR-3B / GSTR-3 with reference to Rule 39(1) read with Rule 61(5) is misplaced and not tenable. Petitioner had filed its return for the month of July 2017 on 07.09.2017 in Form GSTR-3B. Similarly, the return for the month of April 2018 has been filed on 19.06.2018 in Form GSTR-B and interest was paid on his own account. Petitioner was aware that he had to pay interest for delayed payment of tax. In answer to the contention relating to absence of rules framed under section 50(2) of JGST Rules, it is submitted that as per Section 50(2), interest is payable from the day succeeding the day on which such tax was due to be paid. Sub-section 50(1) provides the rate of interest for delayed payment of tax. Therefore, the substantive provision of the Act regarding interest is workable even without framing rules. He has placed reliance in the case of **Jantia Hill Truck Owner Association versus Shailang Area Coal Dealer and Truck Owner Association and others [(2009) 8 SCC 492]** wherein it has been held that if the statute requires certain things to be done subject to the rule and if action is taken in relation to those things without framing rules, the action of the authority without framing the rules would not render that action invalid. Respondents have also answered the contention relating to the absence of substantive provisions under the IGST Act, 2017 by referring to Section 20 of IGST Act, 2017 which provides that subject to the provisions of this Act and the rules made thereunder, the provisions of CGST Act including the provisions relating to imposition of interest and penalty shall mutatis mutandis apply, so far as may be, in relation to the integrated tax as they apply in relation to the central tax as if they are enacted under this Act. It is contended that Form GST DRC-01A was issued giving opportunity to the petitioner to make payment of the balance outstanding interest liability and such notice has been issued by the competent authority in order to comply the principles of natural justice. Therefore, contention of the petitioner that no notice has been issued before imposing the liability of interest,

is without any basis. Learned counsel for the State has referred to the provisions of Rule 61(1) and (2) and also Rule 87 and 88.

Discussion:

7. We have considered the submissions of learned counsel for the parties in the light of materials placed from the record. Writ petitions as stands now are confined to the challenge to the impugned demand notice in Form GST DRC-01A dated 28.01.2020 pertaining to the Financial Years 2017-18, 2018-19 and 2019-20 in the respective writ petitions. Petitioner has also sought quashing of the Summary of the Order issued in Form GST DRC-07 dated 26.02.2020 in the respective writ petitions. Petitioner has also raised a contention that interest under section 50(1) is not leviable on the taxes paid. It cannot be demanded for any delay in filing monthly return in Form GSTR-3B once the amount is deposited / credited in Electronic Cash Ledger in accordance with Section 49. Interest under section 50(1) being compensatory in nature, it can be demanded for the amount withheld by the registered person or if the amount remains unpaid or the registered persons fails to pay the tax. Since the charge of the interest has been disputed by the petitioner, the same can only be levied after an adjudication proceeding under section 73 or 74 of the Act after proper show-cause notice and opportunity to reply. In this regard, learned counsel for the petitioner has relied upon the case of **Mahadeo Construction Co. (Supra)** decided by a Coordinate Bench of this Court, of which one of us (Deepak Roshan, J) was a Member.

8. Following questions emerge for consideration in these writ petitions from the pleadings on record and the submissions of the parties.

(i) Whether writ petition is maintainable?

(ii) Whether liability of interest under section 50 of JGST Act, 2017 can be raised without initiating any adjudication process under section 73/74 of the Act in the event Assessee raising dispute towards the liability of interest. An incidental question also arises, whether recovery proceeding under section 79 of the Act can be initiated for recovery of interest under section 50 of the Act without conclusion of adjudication proceeding under the Act. For answer to the first question, it is necessary to refer to the relevant provisions of JGST Act, 2017 and the decisions on the point. Section 50 and 73 of JGST Act, 2017 are quoted hereunder:

“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.

Provided that the interest on tax payable in respect of suppliers made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.

(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 (10) 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.”

“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 any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, 8 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 subsection (10) for issuance of order.

(3) Where a notice has been issued for any period under subsection (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 9 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 subsection (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.”

Rule 142 (1) & (2) of JGST Rules, 2017 is also quoted hereunder:

CHAPTER XVIII DEMANDS AND RECOVERY

“**142. Notice and order for demand of amounts payable under the Act.**-(1) The proper officer shall serve, along with the –

(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02, specifying therein the details of the amount payable.

[(1A) The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A** of **FORM GST DRC-01A**.]

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act [whether on his own ascertainment or, as communicated by the proper officer under sub rule (1A),] he shall inform the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC-04**.

[(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in **Part B** of **FORM GST DRC-01A**.]"

9. Adverting to the facts of the case, we deem it proper to extract the intimation issued upon the petitioner in Form GST DRC-01 of the tax ascertained as being payable under section 73 (5) / 74(5) in terms of Rule 142(1A) of JGST Rules. Text and date of the notice is common in all the three writ petitions except the amount of interest demanded. One such intimation at Annexure-4 of W.P (T) No. 161/2021 is extracted hereunder:

“FORM GST DRC-01A
Intimation of tax ascertained as being payable under section 73(5)/74(5)
[See Rule 142 (1A)]
Part A

No: 3174

Date: 28.01.2020

Case ID No.

To

GSTIN :- 20AACCN0208J1Z4

Name :- M/S NARSINGH ISPAT LTD.

Address :- KHUNTI, CHOWKA KANDRA ROAD, 832404

Sub: Case Proceeding Reference No... Intimation of liability under section 73(5)/section 74(5) –

Reg.

Please refer to the above proceedings. In this regard, the amount of interest payable by you under section 73(5) / 74(5) with reference to the said case as ascertained by the undersigned in terms of the available information, as is given below:

Act	Period	Tax	Interest		
CGST	2019-20	00.00	29,36,819.13		
SGST/UTGST Act	2019-20	00.00	29,36,819.13		
IGST Act	2019-20	00.00	27,50,978.88		
Cess	2019-20	00.00	00.00		
Total		00.00	86,24,617.15		

The grounds and quantification are attached / given below:

You have filed GSTR-3B after due date, but you have not paid Interest U/S 50 of SGST Act, 2017 on Tax/Cess Paid in Cash because it was not system calculated.

You are hereby advised to pay the amount of tax as ascertained above alongwith the amount of applicable interest in full by **05.02.2020**, failing which Show Cause Notice will be issued under section 73(1).

You are hereby advised to pay the amount of tax as ascertained above alongwith the amount of applicable interest and penalty under section 74(5) failing which Show Cause Notice will be issued under section 74 (1). N.A

In case you wish to file any submissions against the above ascertainment, the same may be furnished by 05.02.2020 in Part-B of this Form.

Signature
DCST
ADITYAPUR CIRCLE, JAMSHEDPUR”

10. As per the intimation under DRC-01A, petitioner has been advised to pay the amount of applicable interest in full by 05.02.2020, failing which show-cause notice will be issued under section 73(1). It further states that in case the Assessee wishes to file any submission against the above ascertainment, the same should be furnished by 05.02.2020 in Part-B of this Form. According to the petitioner, it furnished a reply on 03.02.2020 which is enclosed as Annexure-B to the counter affidavit in W.P (T) No. 161/2021. It took the plea that for the subject period they have discharged output tax liability from the Electronic Credit Ledger and Electronic Cash Ledger amounting to Rs. 29,71,71,253/- . According to them, Taxing statute being substantive in nature and not procedural, interest on delayed payment cannot be levied. They inter-alia took a number of pleas as to the chargeability of interest including absence of any charging provision under the IGST Act, 2017. They further submitted that the demand of interest is illegal, arbitrary and without authority of law and contrary to the law settled by the Apex Court. They prayed for dropping of the demand of interest.

11. It is not in dispute that no notice under section 73(1) of JGST Act, 2017 was issued thereafter before Summary of the Order was issued on the GST portal in GST DRC-07 on 26.02.2020 (Annexure-3) showing the payable interest under IGST, CGST and JGST as Rs. 94,31,520.24 relating to different tax periods. Tax periods in the respective writ petitions are common except the amount of interest levied. One such Summary of the order contained in Form GST DRC-07 dated 26.02.2020 in W.P (T) No. 161/2021 is extracted hereunder:

“FORM GST DRC-07
[See rule 100(1), 100(2), 100(3) & 142(5)]
Summary of the order

Reference No. ZA200220001484K

Date: 26/02/2020

To,

GSTN/ID: 20AACCN0208J1Z4

Name: NARSINGH ISPAT LIMITED

Address: CHOWKA KANDRA ROAD, KHUNTI, Seraikela-Kharsawan, Jharkhand-832404

1. Details of the order –

(a) Order no. INTEREST/3392/03

(b) Order date: 25/02/2020

(c) Financial year: 2019-2020

(d) Tax period: Apr 2019-Dec 2019

2. Issues involved – Interest U/S 50(1) of SGST-2017 has been imposed due to late filing of GSTR-3B and not depositing due interest “on his own”.

3. Description of goods / services-

Sr. No.	HSN	Description
1.	72011000	PIG IRON AND SPIEGELEISEN IN PIGS, BLOCKS OR OTHER

		PRIMARY FORMS-NON-ALLOY PIG IRON CONTAINING BY WEIGHT 0.5% OR LESS OF PHOSPHORUS.
2.	72041000	FERROUS WASTE AND SCRAP; REMELTING SCRAP INGOTS OF IRON OR STEEL – WASTE AND SCRAP OF CAST IRON

4. Section of GST Act under which demand is created: Others

5. Details of demand

Sr. No.	Tax rate (%)	Turnover	Place of Supply	Act	Tax/ Cess	Interest	Penalty	Others	Total
1.	0	0.00	Jharkhand	IGST	0.00	3,070,101.58	0.00	0.00	3,070,101.58
2.	0	0.00	Jharkhand	CGST	0.00	3,180,709.33	0.00	0.00	3,180,709.33
3.	0	0.00	Jharkhand	SGST	0.00	3,180,709.33	0.00	0.00	3,180,709.33

Signature:

Name: Mithilesh Prasad

Designation: Deputy Commissioner

Adityapur

Jurisdiction:

Adityapur: Jamshedpur: Jharkhand"

12. A perusal of Rule 142 (1A), quoted above, shows that the proper officer may, before service of notice to the person chargeable with tax, interest and penalty under sub-section (1) of Section 73 or sub-Section (1) of Section 74 or sub-section (2) of Section 76, as the case may be, communicate the details of such tax, interest and penalty, as ascertained by the State Officer in Part-A of Form GST DRC-01. Sub-rule (2A) provides that where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in Part-B of Form GST DRC-01A. In the present case, the Proper Officer has issued the statement in Form GST DRC-01A upon the petitioner intimating him to pay the amount of tax ascertained along with the amount of applicable interest in full by 05.02.2020, failing which show-cause notice will be issued under section 73(1). Petitioner instead of making the payment, filed a reply before the proper officer which has been enclosed and acknowledged by the Respondent in their counter affidavit also. However, no show-cause notice under section 73(1) was issued thereafter. Instead, the Summary of the Order was issued in Form GST DRC-07 on 26.02.2020 indicating the amount of interest payable by the petitioner in terms of the adjudication order dated 26.02.2020 for the tax period in question. Therefore, it is clear that though the petitioner did not pay the amount of tax and interest intimated to him in Form GST DRC-01A and instead submitted his reply thereto, the Respondent despite the stipulation contained in Form GST DRC-01 failed to issue any show-cause notice upon him under section 73(1) of JGST Act, 2017. When the petitioner had disputed the demand of interest intimated to him, the adjudication order could not have been passed without proper show-cause notice. Thus, Respondents have failed to follow the principles of natural justice and the

procedure prescribed under section 73(1) of JGST Act before issuing the Summary of the Order in Form GST DRC-07. The writ petition is therefore, maintainable under Article 226 of Constitution of India on the proposition well settled by the Apex Court. [See: **Magadh Sugar & Energy Ltd. versus State of Bihar & others, 2021 SCC OnLine SC 801**], para-25 thereof is quoted hereunder:

“25. While a High Court would normally not exercise its writ Jurisdiction under Article 226 of the Constitution If an effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallized by this Court In *Whirpool Corporation v. Registrar of Trademarks, Mumbai and Harbanslal Sahni v. Indian Oil Corporation Ltd.* Recently, in *Radha Krishan Industries v. State of Himachal Pradesh* a two judge Bench of this Court of which one of us was a part of (Justice DY Chandrachud) has summarized the principles governing the exercise of writ jurisdiction by the High Court In the presence of an alternate remedy. This Court has observed:

“28. The principles of law which emerge are that:

- (i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;
- (ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;
- (iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) **the order or proceedings are wholly without jurisdiction**; or (d) the vires of a legislation is challenged;
- (iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;
- (v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and
- (vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ

jurisdiction, such a view would not readily be interfered with.”

13. The next question which falls for consideration is, whether liability of interest under section 50 of the Act could be raised without initiating any adjudication proceeding either under section 73 or 74 of JGST Act in the event Assessee raising a dispute towards liability of interest. In this regard, opinion of this Court rendered in the case of **Mahadeo Construction (Supra)** at para-21 of the judgment is extracted hereunder:

“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 assessee. If an assessee disputes the liability of interest i.e. either disputes its calculation or even the levability 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 12 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 assessee 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 assessee 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 assessee 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 assessee 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 assessee, if any. Therefore, in my considered view, though the liability fastened on the assessee 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 assessee. 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 assessee 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.

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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 assessee 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.”

14. It has been held that if an Assessee disputes the liability of interest i.e. either disputes its calculation or even the levability of interest, then the only option left for the Assessing Officer is to initiate proceeding either under Section 74 or 74 of the Act for adjudication of the liability of interest. In the present case, petitioner has disputed the interest liability by filing reply. Respondent had also indicated that in case petitioner fails to deposit the amount of tax and interest by 05.02.2020, show-cause notice under section 73(1) shall be issued. Respondent have themselves failed to follow the procedure stipulated under the Act as indicated by them in Form GST DRC-01A containing the intimation of the tax ascertained against the petitioner. Summary of the Order has been issued upon the petitioner in Form GST DRC-07 on his GSTN portal without following the principles of natural justice. In this regard, it is also pertinent to refer to the opinion of this Court in the case of **Godavari Commodities Ltd. (Supra)** at para-7, which is quoted hereunder:

“7. In order to appreciate the contention of learned counsel for the CGST, Section 73(1) of the CGST Act needs to be looked into, which reads as follows:-

“73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.- (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-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 utilised 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.”

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, Section 73 (1) of the Act shall not be attracted in the case of the petitioner, but the 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.”

15. We are thus satisfied that the Respondents have failed to follow the procedure prescribed in law before issuing Summary of the Order in Form GST DRC-07 holding the petitioner liable to pay interest under section 50(1) of the Act due to late filing of GSTR-3B and not depositing the due interest on its own. As such, writ petition succeeds only on the point of failure to follow the principles of natural justice and the procedure prescribed in law.

16. Petitioner has inter-alia taken a legal plea that the interest is not payable on late filing of GSTR-3B since the amount of tax has been deposited in the Electronic Cash Ledger in accordance with Section 49 of the Act. The Revenue has not denied the tax due and as such, interest under section 50(1) which is compensatory in nature cannot be realized from it. Interest can only be charged on the tax unpaid or if the Assessee fails to pay the same by the due date, as per Section 50(1) of the Act. Since there is no delay in payment of the tax, interest is not chargeable for late filing of GSTR-3B for which, a late fee has been prescribed under Section 47 of the Act which the petitioner had duly paid. Petitioner has also submitted that only the balance amount of tax which was paid through Electronic Cash Ledger after the due date, is liable to be charged for interest which the petitioner had also paid. However, since the proceedings have been held to be vitiated on failure to follow the principles of natural justice and the procedure prescribed under section 73(1) of JGST Act, 2017, we

consciously refrain from making any comments on the merits of this contention raised by the petitioner at this stage. The impugned Summary of the Order contained in Form GST DRC-07 dated 26.02.2020 in the respective writ petitions relating to different tax periods in question are accordingly quashed. Respondents are at liberty to issue proper show-cause notice in terms of Section 73(1) of JGST Act, 2017 with opportunity to the petitioner to file response thereto before passing any adjudication order. It is open to the petitioner to raise the question of leviability of interest on delayed filing of GSTR-3B relying upon its plea that the amount of tax has been duly deposited in the Electronic Cash Ledger by the due date. Needless to say, if such a plea is raised, the Adjudicating Authority shall consider it in accordance with law.

17. Writ petitions are allowed in the manner and to the extent indicated hereinabove. Since the writ petition has been decided only on the question of failure to follow the principles of natural justice, we do not consider it necessary to deal with the other authorities cited on behalf of the parties.

(Aparesh Kumar Singh, J)

(Deepak Roshan, J)

Ranjeet/