

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/SPECIAL CIVIL APPLICATION NO. 18198 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 4025 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 4487 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 5146 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 5247 of 2020
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In
R/SPECIAL CIVIL APPLICATION NO. 5247 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 5263 of 2020
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In
R/SPECIAL CIVIL APPLICATION NO. 5263 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 5266 of 2020
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In
R/SPECIAL CIVIL APPLICATION NO. 5266 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 5276 of 2020
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In
R/SPECIAL CIVIL APPLICATION NO. 5276 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 5788 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 5785 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 5879 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 5902 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 5903 of 2020**

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M/S SUMILON POLYSTER LIMITED
Versus
UNION OF INDIA

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Appearance:

MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1

IN SCA 18198/2019, 4025/2020,4487/2020,5146/2020, 5788/2020,
5785/2020 Mr. Trupesh Kathiriya, AGP

In SCA 5247/2020, 5263/2020, 5266/2020, 5276/2020 Mr. Kruitk Parikh, AGP
for the Respondent

MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 1,2,3,5

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CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 27/07/2022

COMMON ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Avinash Poddar for the petitioner, learned Assistant Government Pleader Mr. Trupesh Kathiriya for the respondent No.4-State and learned advocate Mr. Nikunt Raval for respondent Nos. 1,2,3 and 5.

2. In this group of petitions, the petitioners have challenged the action of the respondents-authorities levying interest on the delayed payment of tax as per section 50 of the Central Goods and Services Tax Act, 2017 ['CGST Act' for short] and

Gujarat Goods and Services Tax Act, 2017 ['GGST Act' for short] on the gross tax liability of the petitioners instead of net liability.

3. Respondent-Superintendent of Central Goods and Services Tax demanded interest on delayed payment of tax under the provisions of CGST Act and GGST Act by calculating the interest on the gross GST liability instead of net GST liability as per section 50(1) of the CGST Act.
4. Learned advocates for the respective petitioners submitted that as per the decision taken in the 31st GST Council Meeting held on 22.12.2018 at New Delhi, the interest shall be charged only on the net liability of the tax payer after taking into account the admissible credit i.e. the amount payable to electronic cash ledger.
5. According to the petitioners, as per section 49 of the CGST Act, the input tax credit as self-assessed in the return of registered person/assessee shall be credited to his electronic

credit ledger which may be used for payment towards tax, interest, penalty, fees or any other amount whereas the amount available in the electronic credit ledger may be used for payment towards output tax.

6. Learned advocate Mr. Avinash Poddar for the petitioner in Special Civil Application No. 18198 of 2019 and other learned advocates for the respective petitioners submitted that in view of the amendment brought by the Finance Act, 2021, section 50 of the CGST Act has been amended to take care of the grievances of the petitioners as per section 112 of the Finance Act, 2021.

5.1 Section 112 of the Finance Act, 2021 reads as under:

“112. In section 50 of the Central Goods and Services Tax Act, in sub-section (1), for the proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017.

“Provided that the interest on tax payable in respect of supplies 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 payable on that portion of the tax which is paid by debiting the electronic cash ledger.”

5.2 Referring to the above proviso it was submitted that as the insertion of the proviso to section 50(1) of the CGST Act w.e.f. 1st day of July,2017 provides for interest on tax payable in respect of supplies 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 of the said period shall be payable on the portion of the tax which is paid by debiting the electronic cash ledger. It was therefore submitted that in view of the above proviso, the grievance raised by the petitioner for levy of the interest on the net amount of the GST liability is taken care of.

5.3 It was submitted that the amendment of section 50 by the Finance Act, 2021 is notified by Notification No. 16 of 2021 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes and Customs to the effect that in exercise of powers conferred by sub-section (2) of section 1 of the Finance Act, 2021 [13 of 2021], the Central Government has appointed the 1st day of June, 2021 as the date on which, the provision of section 112 of the said Act shall come into force. In view of the Notification No. 16 of 2021, the proviso which is substituted vide sub-section 50(1) of the CGST Act w.e.f. 1st day of July, 2017, therefore, would take care of the issue raised in this group of petitions of charging interest on the net GST liability instead of gross GST liability as calculated by respondent No.3.

7. Learned advocate Mr. Nikunt Raval for the respondent-authorities also submitted that in view of the amendment of section 50(1) w.e.f. 1st day of July, 2017 by inserting the

aforesaid proviso would redress the grievance raised by the petitioners of charging the interest on the gross amount of GST liability.

8. In view of the above submissions, these petitions are disposed of as having become infructuous in view of the amendment of section 50(1) of the CGST Act by substituting the proviso w.e.f. 1st day of July,2017 as per section 112 of the Finance Act, 2021 which has been made effective vide Notification No. 16 of 2021 dated 01.06.2021. Respondents are directed to give effect to the aforesaid amendment within a period of twelve weeks from the date of receipt of this order. Interim relief granted earlier stands vacated. Notice is discharged.

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)

JYOTI V. JANI