Interest on Delayed Payment of GST Arises by Operation of Law and Cannot be Waived by Courts

The Hon'ble Karnataka High Court in ***The Commissioner of Central Tax & Ors. v. M/s. Sadguru Infratech Pvt. Ltd. [Writ Appeal No. 1076 of 2023 (T-RES) dated June 10, 2026]*** set aside the order passed by the Learned Single Judge to the extent it issued blanket directions to the Revenue to waive interest, penalty, and the limitation for filing returns/revised returns in respect of delayed returns and payment of tax by a sub-contractor, and held that the liability to pay interest on delayed payment of tax under a fiscal statute arises by operation of law, leaving no discretion in the authority to waive or reduce it, where the statute makes no such provision.

Facts:

M/s. Sadguru Infratech Pvt. Ltd. (**"the Respondent"**) was registered under the Karnataka Value Added Tax Act, 2003 (**"the KVAT Act"**) and obtained registration under the Goods and Services Tax (**"GST"**) regime with effect from July 01, 2017.

The Karnataka Neeravari Nigam Limited (**"KNNL"**) floated a tender for the survey, investigation, design, supply, installation, testing and commissioning of a lift irrigation system and the construction of the canal distribution system for the Basaveshwar (Kempwad) Lift Irrigation Scheme, which was awarded to M/s. Gayatri-RNS-SIPL JV (**"the Main Contractor"**) vide agreement dated March 06, 2017, i.e., prior to the rollout of the GST regime. The Respondent, a constituent of the said joint venture, executed the works as a sub-contractor under a works contract dated June 24, 2017 entered into with the Main Contractor at the Schedule of Rates then prevailing under the VAT regime, which did not include the element of GST.

With the GST law coming into force on July 01, 2017, the works contract came to be subjected to GST at the rate of 18% (for the period from July 01, 2017 to August 21, 2017) and at 12%

thereafter, thereby resulting in an increase in the Respondent's tax liability. In the meanwhile, the Respondent filed its returns for the periods 2017-18, 2018-19 and 2019-20 belatedly, and as per the Revenue, the delay in payment of self-assessed tax occurred on as many as twenty-six occasions, ranging from one day to 338 days.

The Revenue issued a notice dated February 13, 2020 in Form GST ASMT-10 demanding interest on the delayed payment of tax under Section 50 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**), followed by a notice dated February 19, 2020, and thereafter initiated recovery proceedings by issuing a notice dated March 18, 2020 in Form GST DRC-13 under Section 79(1)(c) of the CGST Act to the Respondent's banker.

The Respondent challenged the said action by way of a writ petition, contending that the larger question of taxability of works contracts entered into prior to July 01, 2017 was pending consideration before the Hon'ble High Court. The Learned Single Judge, vide a common order dated April 11, 2023 (**"the Impugned Order"**), allowed the writ petition and, inter alia, (i) permitted the filing of returns/amended returns pursuant to the calculation of the differential tax, without insisting on interest or penalty or limitation, (ii) directed the GST authorities not to take precipitative action against the Respondent for a period of six months, and (iii) directed the concerned employer to pay/reimburse the differential tax amount in case the revised GST-inclusive work value for the balance work, completed or to be completed after July 01, 2017, is more than the original agreement work value.

Aggrieved by the Impugned Order, the Revenue filed the present writ appeal, confining its challenge to the directions issued to the tax authorities, contending that the levy of interest under Section 50 of the CGST Act is mandatory and admits of no discretion to waive or reduce the levy, and that there is no provision under the GST law enabling the filing or amendment of returns in the manner directed.

Issue:

Whether the Learned Single Judge could have issued directions to the tax authorities to permit the filing of returns/revised returns while waiving interest, penalty, and limitation under the GST Acts, and to refrain from taking precipitative action against the Assessee?

Held:

The Hon'ble Karnataka High Court in ***Writ Appeal No. 1076 of 2023 (T-RES)*** held as under:

- **Observed that**, the dispute as to whether the Respondent would be entitled to reimbursement of the incremental tax paid or payable on account of the levy of GST is strictly a matter between the contracting parties, i.e., the Respondent and the Main Contractor, and the contract between the said parties would not alter the statutory scheme for the levy of GST. The liability to pay GST, whether under the CGST Act, the SGST Act or the IGST Act, is required to be determined strictly in accordance with the provisions of the relevant statute, and the question of the levy of GST, assessment, recovery, and enforcement is a matter of statutory prescription.

- **Noted that**, relying upon the judgment of the Hon'ble Supreme Court in ***Pratibha Processors v. Union of India [(1996) 11 SCC 101],*** it is well settled that the liability to pay interest on delayed payment of tax under a fiscal statute arises by operation of law, leaving no discretion in the authority to waive or reduce it, if the statute makes no such provision.

- **Held that**, the directions in the Impugned Order waiving interest, penalty, and limitation, and permitting the filing or amendment of returns in a manner not contemplated by the statute, cannot be sustained. Consequently, the directions permitting the filing of any revised returns contrary to the provisions of the statute, as also the blanket directions to waive the penalty, interest under the GST Acts or the limitation for filing returns/revised returns, are unsustainable.

- **Further held that**, the controversy as to which party is required to bear the incremental tax burden arising on account of the change in the tax regime is, in essence, one between the contracting parties, and in the context of such a dispute, no directions could be issued to the tax authorities regarding the levy, assessment, and collection of tax, penalty, or interest. Accordingly, the direction to reimburse the tax is required to be construed as a direction only to the concerned party with whom the Respondent had entered into the contract, and not to the tax authorities.

- **Hence**, the Impugned Order, insofar as it related to the Respondent's writ petition, was set aside and the appeal was disposed of in the aforesaid terms.

Our Comments:

Section 50 of the CGST Act governs "Interest on delayed payment of tax". Section 50(1) of the CGST Act provides that every person who is liable to pay tax, but fails to pay the tax or any part thereof within the prescribed period, shall, for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding 18%, as may be notified by the Government on the recommendations of the GST Council. Further, the proviso to Section 50(1) of the CGST Act, substituted retrospectively with effect from July 01, 2017 vide Section 112 of the Finance Act, 2021, provides that where the returns are furnished belatedly (other than where such returns are furnished after commencement of proceedings under Section 73 or Section 74 of the CGST Act), interest shall be payable only on that portion of the tax which is paid by debiting the electronic cash ledger, i.e., on the net cash tax liability.

The language of Section 50(1) of the CGST Act, which uses the expression "shall… pay, on his own", makes the levy of interest automatic and mandatory, leaving no discretion with the tax authorities to waive or reduce the same in the absence of any enabling statutory provision. The Hon'ble Supreme Court in ***Pratibha Processors v. Union of India [(1996) 11 SCC 101]*** explained that interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it was due and payable, and the levy of interest is geared to the actual amount of tax withheld and the extent of delay in paying such tax.

On similar lines, the Hon'ble Supreme Court in ***India Carbon Ltd. v. State of Assam [(1997) 6 SCC 479]*** held that interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf, thereby underscoring that both the levy and the waiver of interest are creatures of the statute alone. Further, in ***Commissioner of Income Tax v. Anjum M.H. Ghaswala [(2002) 1 SCC 633]***, the Constitution Bench of the Hon'ble Supreme Court held that even the Settlement Commission has no power to reduce or waive interest which is statutorily and mandatorily payable, except to the extent of granting relief under the circulars issued in that behalf. The consistent judicial view, therefore, is that statutory interest cannot be waived by any authority or Court in exercise of equitable jurisdiction, where the statute itself does not contemplate such waiver.

It is also apposite to note the judgment of the Hon'ble Madras High Court in ***Refex Industries Ltd. v. Assistant Commissioner of CGST & Central Excise [2020 (2) TMI 794]***, wherein it was held that interest under Section 50 of the CGST Act is applicable only on the tax paid through the electronic cash ledger and not on the portion discharged by way of available Input Tax Credit, which position now stands statutorily fortified by the retrospective substitution of the proviso to Section 50(1) of the CGST Act. However, the mandatory character of the levy on the net cash liability remains undiluted.

The present ruling assumes significance for the construction and infrastructure sector, wherein a large number of works contracts executed prior to July 01, 2017 witnessed an increased tax incidence upon transition from the VAT/Service Tax regime to the GST regime. The Hon'ble High Court has drawn a clear line of demarcation: the claim for reimbursement of the differential/incremental GST is purely a contractual matter to be pursued against the employer/main contractor, whereas the statutory obligations of timely filing of returns and payment of tax, along with interest under Section 50 of the CGST Act and late fee under Section

47 of the CGST Act, operate independently of such contractual disputes. Accordingly, the pendency of a dispute with the employer regarding the GST burden cannot be a ground to defer payment of self-assessed tax or to seek waiver of interest, penalty, or limitation, and taxpayers would be well-advised to discharge their statutory liabilities within the prescribed timelines while independently pursuing their contractual remedies for reimbursement.

CLICK HERE FOR OFFICIAL JUDGMENT COPY

(Author can be reached at info@a2ztaxcorp.com)