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Interest Liability on Delayed Payment of GST Arises by Operation of Law and Cannot be Waived or Reduced by the Court

The Hon'ble Karnataka High Court in ***The Commissioner of Central Tax & Ors. v. Sadguru Infratech Pvt. Ltd. [Writ Appeal No. 1076 of 2023 dated June 10, 2026]***, set aside the Single Judge's order to the extent it issued blanket directions to the Revenue to waive penalty, interest, or 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 the same, where the statute makes no such provision.

Facts:

M/s Sadguru Infratech Pvt. Ltd. (**"the Respondent"** or **"the Assessee"**) is a sub-contractor and a constituent of M/s Gayatri-RNS-SIPL JV (**"the main contractor"**). The main contractor was awarded a tender by Karnataka Neeravari Nigam Limited (**"KNNL"**) vide agreement dated March 06, 2017 for survey, investigation, design, supply, installation, testing and commissioning of a lift irrigation system, and construction of the canal distribution system, including aqueducts, for the Basaveshwar (Kempwad) Lift Irrigation Scheme in Athani Taluk, Belagavi District.

The Respondent 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 (**"SR"**) then prevailing under the VAT regime, which did not include the element of GST.

Consequent to the rollout of the GST regime with effect from 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, resulting in an increase in the Respondent's tax liability. The Respondent filed its GST returns for the periods 2017-18, 2018-19 and 2019-20 belatedly, with

delays in payment of self-assessed tax occurring on as many as twenty-six occasions, ranging from one day to 338 days.

The Revenue issued 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. Thereafter, recovery proceedings were initiated 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.

Aggrieved, the Respondent filed W.P. No. 10163/2020 before the Hon'ble Karnataka High Court contending that the larger question of taxability of works contracts entered into prior to July 01, 2017 was pending consideration. The Learned Single Judge, *vide* order dated April 11, 2023 [common order in ***Sri. Chandrashekaraiah & Ors. v. The State of Karnataka, W.P. No. 9721/2019 and connected matters***], allowed the writ petition and *inter alia* (i) permitted filing of returns/amended returns based on a prescribed differential-tax calculation; (ii) waived interest, penalty, or limitation under the GST Acts; (iii) restrained the Revenue from taking precipitative action against the Assessee for a period of six months; and (iv) directed the concerned employer to reimburse the Assessee the differential tax amount in case the revised GST-inclusive work value for the Balance Work exceeded the original agreement value.

Being aggrieved, the Revenue filed the present Writ Appeal before the Division Bench of the Hon'ble Karnataka High Court.

Issue:

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

Held:

The Hon'ble Karnataka High Court in ***Writ Appeal No. 1076 of 2023*** 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, *viz.*, the Respondent and the main contractor, and the contract between such parties (or the contract between the main contractor and KNNL) would not alter the statutory scheme for levy of GST.

- **Noted that,** the liability of the Respondent to pay GST (whether under the CGST Act, 2017, the State Goods and Services Tax Act, 2017 or the Integrated Goods and Services Tax Act, 2017) 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.

- **Relied on** the judgment of the Hon'ble Supreme Court in *Pratibha Processors v. Union of India* [(1996) 11 SCC 101] and reaffirmed 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 the same, where 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. The blanket directions to waive 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.

- **Directed that,** the direction issued to the respondents 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.

- **Accordingly,** the impugned order dated April 11, 2023 of the Learned Single Judge, insofar as it relates to *W.P. No. 10163/2020*, was set aside and the appeal was disposed of in the aforesaid terms.

Our Comments:

Section 50 of the CGST Act, 2017 governs the levy of interest on delayed payment of tax. Section 50(1) provides that every person who is liable to pay tax in accordance with the provisions of the CGST 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 18%, as may be notified by the Government on the recommendations of the Council. The proviso (substituted retrospectively with effect from July 01, 2017 by the Finance Act, 2021) further clarifies that interest on the 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) shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.

The judgment squarely reaffirms the settled position of law that interest under a fiscal statute is compensatory in nature and is a creature of statute. Where the statute mandates the levy of interest on delayed payment of tax, the authority has no discretion to waive or reduce the same in the absence of any enabling provision. Equally, a writ court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, cannot direct the tax authorities to waive what is otherwise a statutory liability. The Court has rightly drawn a clear line between matters of contractual reimbursement of incremental tax (which remain strictly

inter se the contracting parties) and matters of statutory levy, assessment and collection of tax, penalty and interest (which are governed solely by the provisions of the GST law).

The Hon'ble Supreme Court in ***Pratibha Processors v. Union of India [(1996) 11 SCC 101],*** relied upon by the Hon'ble Karnataka High Court, has unequivocally held that interest is a statutory liability that flows automatically by operation of law upon default, and the same cannot be waived or reduced unless the statute specifically permits.

Further, the Hon'ble Supreme Court in ***Commissioner of Central Excise, Pune v. SKF India Ltd. [(2009) 13 SCC 461]*** has held that interest on delayed payment of duty/tax is in the nature of a quasi-punishment for unauthorised retention of money belonging to the exchequer, and is leviable automatically as a matter of statutory consequence. Similarly, in *Union of India v. Bharat Forge Ltd*. the apex Court reiterated that interest follows the tax obligation as a matter of statutory mandate and cannot be defeated on grounds of *bona fide* belief, pendency of related litigation, or hardship.

On a *pari materia* note, the Hon'ble Madras High Court in ***M/s Refex Industries Ltd. v. Assistant Commissioner of CGST & Central Excise [W.P. Nos. 23360 & 23361 of 2019 dated January 06, 2020]*** dealt with the scope of Section 50 of the CGST Act and held that interest is compensatory and is leviable only on the net cash tax liability (i.e., the portion paid through the electronic cash ledger) and not on the gross tax liability — a position now legislatively codified through the proviso to Section 50(1). While the present judgment of the Hon'ble Karnataka High Court does not deal with the quantum aspect, the cardinal principle reaffirmed is that the *levy* of interest itself cannot be waived by a judicial order in the absence of a statutory enabling provision.

It is also pertinent to note that the legislature itself has, from time to time, provided statutory mechanisms for relief from interest and penalty. Notably, Section 128A of the CGST Act, 2017 (inserted *vide* the Finance (No. 2) Act, 2024 and brought into force with effect from November 01, 2024) read with Rule 164 of the CGST Rules, 2017 and Notification No. 21/2024-Central Tax

dated October 08, 2024, provides for waiver of interest and penalty in respect of demand notices/orders issued under Section 73 for the period from July 01, 2017 to March 31, 2020, subject to payment of the full amount of tax and fulfilment of other prescribed conditions on or before the notified date. Such a statutory amnesty mechanism is the only permissible route for waiver of interest under the GST law. In the absence of such statutory backing, neither the tax authorities nor the constitutional courts can grant such waiver.

The judgment also serves as a significant precedent on the recurring issue of incremental tax burden on works contracts entered into during the pre-GST regime but executed (in whole or in part) post the rollout of GST. The Hon'ble Karnataka High Court has clarified that any relief on this count can only flow as between the contractor and the employer/principal contractor through contractual remedies (such as price-variation clauses, supplementary agreements, or claims under *change in law* provisions), and any judicial direction in that regard is to be read as binding only on the contracting parties — and *not* as a relaxation of the statutory liability cast under the GST Acts.

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In conspectus, taxpayers and contractors are well advised to ensure timely discharge of GST liabilities and timely filing of returns, since neither the pendency of inter-party contractual disputes, nor the pendency of related writ proceedings, nor the absence of price escalation in the underlying contract, can operate as a shield against statutory levy of interest, penalty or limitation under the GST Acts. Where relief is genuinely warranted, the appropriate course is to invoke the available statutory amnesty mechanisms or pursue contractual remedies against the counterparty, rather than seek a judicial waiver of statutory dues.

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