
(2019) 12 JH CK 0041

In the Jharkhand High Court

Case No : Writ Petition (T) No.1786 of 2019

Godavari Commodities Ltd

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Central Goods & Service Tax Act, 2017 — Section 50(1), 73(1)

Citation : (2019) 12 JH CK 0041

Hon'ble Judges : H. C. Mishra, J;Deepak Roshan, J

Bench : Divison Bench

Advocate : Sumeet Gadodia, Ratnesh Kumar

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the CGST.
2. The petitioner is aggrieved by the letter of intimation for payment of interest on delayed payment of GST, dated 6.2.2019, issued by the respondent No.3, Superintendent of CGST & CX Range-I, Ranchi, as contained in Annexure-3 to the writ application, whereby the liability of amount of Rs.11,58,643/- has been imposed upon the petitioner, as short paid interest for not depositing the tax within time.
3. By the said letter, the petitioner was asked to make the payment of the aforesaid amount in the Government account and submit the payment details within three days of the receipt of the letter. Admittedly, pursuant to the issuance of this demand, the bank account of the petitioner Company was freezed and upon the payment of the aforesaid amount, the account has now been defreezed.
4. Learned counsel or the petitioner submits that the impugned action of the respondent authority is absolutely illegal and is in teeth of the Section 73(1) of CGST Act, which requires a show-cause notice to be given to the petitioner before issuing any such letter. Learned counsel submits that since admittedly no show-cause notice was given to the petitioner prior to issuance of the letter

contained in Annexure-3 to the writ application, all the subsequent actions are illegal and cannot be sustained in the eyes of law.

5. Learned counsel for the CGST, on the other hand, has opposed the prayer and submitted that since admitted tax and some interest had been paid by the petitioner, this matter only relates to interest short paid, and Section 73(1) of the CGST Act shall not be applicable in the present case. It is pointed out by learned counsel for the CGST that the petitioner Company had credited the amount of tax and interest thereon in their electronic cash ledger beyond the prescribed date of payment, but the actual payment in the Government account was made even later, and the interest has been paid by the petitioner Company, only till the date and the amount was credited in their electronic cash ledger. Learned counsel for the CGST accordingly, submits that Section 73(1) of the CGST Act shall not come in play in the present case and accordingly no show-cause was required to be given to the petitioner before issuance of the demand, as contained in Annexure-3, and the proceedings subsequent thereto.

6. Learned counsel for the CGST also referred to Section 50(1) of the CGST Act, which relates to Interest on delayed payment on tax, which reads as follows:-

"50. Interest on delayed payment on 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."

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.

8. In the present case, admittedly amount of Rs.11,58,643/-, i.e., the amount of short paid interest has already been realised from the petitioner, after freezing the bank account of the petitioner, and after the payment of the said amount, the bank account has also been defreezed.

9. In the aforesaid backdrop, for the purpose of this case, we treat the letter dated 6.2.2019, as contained in Annexure-3, to be a show-cause notice issued under Section 73(1) of the CGST Act. The petitioner shall be given an opportunity of being heard by the adjudicating authority, who shall give a hearing to the petitioner, whether the petitioner was liable to pay the short paid interest amount or not. In case, upon adjudication, it is found that the petitioner was not liable to make the payment of interest short paid, the said amount shall be refunded to the petitioner with statutory interest thereon.

10. The adjudicating authority shall pass the reasoned order within a period three months from the date of communication of this order.

11. This application is accordingly disposed of, with the directions as above.