IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 10277 of 2020

M/s. UTKAL AUTOMOBILES PVT. LTD. ... ***Petitioner***

M/s. Rudra Prasad Kar, Sriman Arpit Mohanty
and Bhabani Prasad Mohanty, Advocates

-versus-

The Union of India & Others ... ***Opposite Parties***

Sri Radheshyam Chimanka,
Senior Standing Counsel for
Central CT&GST and Customs

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)
11.07.2022

Order No.

03. **1.** This matter is taken up by virtual/physical mode.

2. Questioning the jurisdiction of the Assessing Authority in levying interest under Section 50 of the Central Goods and Services Tax Act, 2017 (in short 'CGST Act') on the gross GST liability before adjusting input tax credit available in the credit ledger *vide* Demand Information Notice DIN-20200262WJ00005DF3DE in Communication bearing C.No. GST/01/INTEREST/BBSR-IX/2020/64, dated 18th February, 2020 (Annexure-3) for belated payment of tax for the periods 2017-18, 2018-19 and 2019-20 (upto December, 2019), the petitioner has approached this Court invoking

Citation No. 2022 (7) GSTPanacea 228 HC Orissa

extraordinary jurisdiction under Article 226/227 of the Constitution of India with the following prayers:

"i) issue a writ in the nature of *certiorari* quashing the DIN dated 20.02.2020 levying interest by the opposite party No.4 under Annexure-3;

ii) issue a writ in the nature of *mandamus* or issue any appropriate writ declaring that the interest under Section 50(1) is to be levied on the payment of tax by electronic cash ledger and not electronic credit ledger;

iii) issue a writ in the nature of *mandamus* or issue any appropriate writ by holding that the proviso to Section 50(1) is clarificatory and retrospective in nature;

iv) issue a writ in the nature of *mandamus* restraining the opposite parties, more particularly the opposite party No.4 from enforcing the demand of interest as communicated by DIN dated 20.02.2020 under Annexure-3;

v) issue any such other writ(s) or pass such other order(s) as deemed just and proper in the interest of justice."

3. It is averred by the petitioner in the writ petition that it has filed its statutory returns in Form GSTR-3B for the periods from April, 2019 to December, 2019 and while filing returns through electronic mode, there was delay. Therefore, as required under Section 50 the CGST Act it calculated the interest component *on its*

own and paid. While making such payment of interest, it has taken into account net GST liability, *i.e.*, after adjusting the input tax credit available in its credit ledger. To demonstrate the petitioner has placed before this Court the fact that for the month of April, 2019, the petitioner had tax liability of Rs.11,97,33,567.16 and input tax credit available at electronic credit ledger was at Rs.8,11,42,936.00 and input tax credit available during the month was Rs.7,36,37,243.53. Accordingly, the petitioner made adjustment of tax liability of Rs.11,97,31,567.16 against input tax credit of Rs.15,47,80,179.53. Therefore, after filing of return, the balance input tax credit available stood at Rs.3,51,27,204.37. In the similar fashion the petitioner has discharged its interest liability. The grievance of the petitioner in the writ petition is that despite it discharged its interest liability in terms of Section 50(1) of the CGST Act, the opposite party No.4-Superintendent of GST&Central Excise, Bhubaneswar-IX Range issued Demand Information Notice dated 18.02.2020 calling upon the petitioner to pay interest for the tax periods relating to 2017-18, 2018-19 and 2019-20 (upto December, 2019).

4. The learned counsel for the Petitioner referring to Ground (F) of Paragraph 4 of the writ petition has submitted that even though proviso inserted in sub-section (1) of Section 50 of the CGST Act with effect from 01.08.2019 clearly provided that interest would be levied only on that part of the tax which is paid in cash, the assessing authority should not have been arbitrary in

exercise of power to issue Demand Information Notice dated 18.02.2020.

For better comprehension, proviso to sub-section (1) of Section 50 as inserted with effect from 01.08.2019 in consequence of minutes of 31st meeting of the GST Council held on 22nd December, 2018 is extracted hereunder:

> "*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 levied on that portion of the tax that is paid by debiting the electronic cash ledger.*"

It is further submitted by Mr. Rudra Prasad Kar, Advocate assisted by Sriman Arpit Mohanty, Advocate that the said proviso suffered "substitution" by virtue of the Finance Act, 2021 [Act No.13 of 2021] which would remove all the ambiguity. For benefit Section 112 of the Finance Act, 2021 relating to amendment of the Central Goods and Services Tax Act, 2017, is extracted hereunder:

> ***"****In Section 50 of the Central Goods and Services 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****, namely, :-*
>
> > ***'****Provided that the interest on tax payable in respect of supplies made during the 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.'*"
>
> *[Emphasis supplied]*

It is, therefore, submitted by the learned counsel for the petitioner that at any rate in view of substitution of proviso to sub-section (1) of Section 50 of the CGST Act, 2017, with retrospective effect from 01.07.2017 by virtue of the Finance Act, 2021, the Demand Information Notice dated 18.02.2020 cannot have legs to stand.

5. Mr. Kar also submitted that an identical issue came up for consideration by this Court in the matter of *Subash Kumar Sanjay Kumar Vs. The Union of India and others, WP(C) No. 10313 of 2020*. *Vide* order dated 23.12.2021, this Court has observed as follows:-

> "***2.*** *It is not in dispute that by virtue of amendment to the Central Goods and Services Tax Act, 2017 by the Finance Act, 2021, the levy of interest in terms of the impugned order 24th February, 2020 (Annexure-2) has been rendered unsustainable in law.*
>
> ***3.*** *In that view of the matter, the impugned notice on demand and recovery dated 24th February, 2020 (Annexure-2) is hereby set aside and the matter is remanded to the Superintendent, GST & Central Excise,*

Cuttack-VI Range, CDA (Opposite Party No. 4) for a fresh order in the light of the said amendment."

6. Mr. Radheshyam Chimanka, learned Senior Standing Counsel for Central GST does not object to aforesaid position.

7. Taking into consideration the conceded position, this Court is inclined to allow this writ petition by setting aside the Demand Information Notice DIN-20200262WJ00005DF3DE in Communication bearing C.No. GST/01/INTEREST/BBSR-IX/2020/64, dated 18th February, 2020 (Annexure-3) and remand the matter to the Superintendent, GST & Central Excise, Bhubaneswar-IX Range for reconsideration of the matter taking into consideration the amendment carried out by virtue of the Finance Act, 2021.

8. The writ petition is, accordingly, disposed of.

Issue urgent certified copy as per rules.

(Jaswant Singh)
Judge

(M.S.Raman)
Judge

Aks July 11, 2022 Cuttack