

GUJARAT HIGH COURT

No.- R/SPECIAL CIVIL APPLICATION NO. 21534 of 2019

**Rajkamal Builder Infrastructure Private Limited Through Director
Mahendra H Patel-Appellant**

Versus

Union of India-Respondent

**HONOURABLE MR. JUSTICE J.B.PARDIWALA and HONOURABLE
MR. JUSTICE ILESH J. VORA**

Date of order: 23/03/2021

Appearance:

Mr. Avinash Poddar for the Petitioner 1

Mr Trupesh Kathiriya, AGP for the Respondent 3,4

Mr Ankit Shah for the Respondent 1

Mr Utkarsh R Sharma for the Respondent 2,5

In Favour of assessee

Issue Involved: By this writ application the writ applicant has prayed for the following reliefs:

“a) to issue order or direction holding the Form GST DRC-01 issued to the petitioner as without authority of law and liable to be quashed.

b) To issue direction holding the interest on delayed payment of tax to be charged on gross liability is ultra vires and de hors to section 50 of the CGST Act

c) Pending admission, hearing and till final disposal of this petition, Your Lordships may be pleased to direct the respondent.

1. From resorting to any coercive measure against the petitioner.
2. To stay the proceedings of Form GST DRC-01.

Held that: The court held that there are two questions fall for the consideration of this Court:

[i] Whether interest under [Section 50](#) of the Central Goods and Service Tax Act, 2017 is to be levied on the net tax liability or on the gross tax liability?

Citation no. 2021 (3) GSTPanacea 31 HC Gujarat
 [ii] Whether issuance of [DRC-01](#) under [Section 50](#) of the CGST Act, 2017 is legal and proper?

The Honorable High Court held 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 i.e Interest under Section 50 of the CGST Act, 2017 can only be levied on the net tax liability and not on the gross tax liability The impugned order issued in GST [DRC-01](#) is ordered to be quashed and set aside. The court reserve the liberty for the respondents to initiate fresh proceedings against the writ applicant in accordance with law.

JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:

“a) to issue writ of or in the nature of a mandamus or any other appropriate writ, order or direction holding the Form GST [DRC-01](#) issued to the petitioner as without authority of law and liable to be quashed.

b) To issue writ of or in the nature of a mandamus or any other appropriate writ, order or direction holding the interest on delayed payment of tax to be charged on gross liability is ultravires and de hors to [section 50](#) of the CGST Act, CGST Act and / or ultra vires to the constitution of India.

c) Pending admission, hearing and till final disposal of this petition, Your Lordships may be pleased to direct the respondent.

1. From resorting to any coercive measure against the petitioner.
2. To stay the proceedings of Form GST [DRC-01](#).

d) To issue order/s, direction/s, writ/s or any other relief/s as this Honourable Court deems fit and proper in the facts and circumstances of the case and in the interest of justice.

e) To award costs of and incidental to this application be paid by the respondent.”

2. A Coordinate Bench of this Court passed the following order dated 5th December 2019 at the time of issuance of the notice:

“1. The learned advocate for the petitioner has tendered draft amendment. The amendment is allowed in terms of the draft. The same shall be carried out forthwith.

2. Mr. Avinash Poddar, learned advocate for the petitioner, invited the attention of the court to the impugned show cause notice dated 19.07.2019 issued in Form GST [DRC-01](#) under [Rule 142\(1\)](#) of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as “the Rules”) to point out that the notice has been issued in relation to [section 50](#) of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as “the Act”). Reference was made to [rule 142](#) of the

Citation no. 2021 (3) GSTPanacea 31 HC Gujarat
 Rules to point out that the same nowhere contemplates issuance of notice thereunder in respect of [section 50](#) of the Act. It was submitted that therefore, the impugned show cause notice has been issued without any authority of law.

3. Having regard to the submissions advanced by the learned advocate for the petitioner, issue Notice, returnable on 26.12.2019. By way of ad-interim relief, further proceedings pursuant to the impugned notice dated 19.07.2019 (Annexure D to the petition) are hereby stayed. Direct service is permitted.”

3 We have heard Dr. Avinash Poddar, the learned counsel appearing for the writ applicant, Mr. Utkarsh Sharma, the learned Standing Counsel appearing for the Union of India and Mr. Trupesh Kathiriya, the learned A.G.P. appearing for the State respondent.

4 Two questions fall for the consideration of this Court:

[i] Whether interest under [Section 50](#) of the Central Goods and Service Tax Act, 2017 (for short, “the CGST Act, 2017”) is to be levied on the net tax liability or on the gross tax liability?

[ii] Whether issuance of [DRC-01](#) under [Section 50](#) of the CGST Act, 2017 is legal and proper?

5. The following amendment has been proposed in [Section 50](#) of the CGST Act, 2017 vide clause 103 of the Finance Bill, 2021.

“103. 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, namely:

“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.”

6. Thus, from the above, it is clear that the interest under [Section 50](#) of the CGST Act, 2017 can only be levied on the net tax liability and not on the gross tax liability. In such circumstances, the demand raised by the respondent is not in accordance with law.

7. So far as the second question is concerned, it appears that the respondent No.3 has issued Form GST [DRC-01](#) under [Section 50](#) of the CGST Act, 2017. [Section 50](#) of the CGST Act, 2017 reads thus:

“50. Interest on delayed payment of 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.

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.

(2) The interest under sub section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub section (10) of [section 42](#) or undue or excess reduction in output tax liability under sub -section (10) of [section 43](#), shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty -four per cent., as may be notified by the Government on the recommendations of the Council.”

8. [Rule 142\(1\)\(a\)](#) of the Central Goods and Service Tax Rules, 2017 (for short, “the CGST Rules, 2017”) reads thus:

“142. Notice and order for demand of amounts payable under the Act. (1) The proper officer shall serve, along with the

(a) notice issued under [section 52](#) or section 73 or section 74 or section 76 or [section 122](#) or [section 123](#) or [section 124](#) or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01.”

9. Thus, the plain reading of the aforesaid rules indicates that Form GST DRC 01 can be served by the proper officer along with the notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 and that too, electronically as a summary of notice.

10. We do not find reference of any notice under [Section 50](#) so far as [Rule 142\(1\)\(a\)](#) of the CGST Rules is concerned. In such circumstances, DRC 01 could not have been issued for the purpose of recovery of the amount towards interest on delayed payment of tax.

11. The aforesaid leads us to consider the question that if the amount towards interest on delayed payment of tax is to be recovered, then what is the Form in which the notice is to be issued?

12. In the aforesaid context, we may refer to [Section 75\(12\)](#) of the Act. It reads thus:

“75. General provisions relating to determination of tax.

... ..

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self- assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.”

13. Thus, the aforesaid provisions make it abundantly clear that notwithstanding anything contained in [Section 73](#) or [Section 74](#), if there is any amount of interest payable on tax and which had remained unpaid, the same has to be recovered under the provisions of [Section 79](#).

14. [Section 79](#) is with respect to recovery of tax. Section 79 provides for the modes of recovery.

15. We shall now look into [Rule 142](#) of the CGST Rules. Rule 142(5) reads as under:

“142. Notice and order for demand of amounts payable under the Act.

... ..

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.”

16. [Rule 142](#) makes it clear that the order referred in sub rule (5) shall be treated as the notice for recovery.

17. From the aforesaid, we have reached to the conclusion that the notice should have been issued in Form GST [DRC-07](#). The Notice should specify the amount of tax, interest and penalty payable by the person chargeable with tax.

18. In view of the aforesaid, the Form GST DRC 01 could be said to have been issued without any authority of law.

19. In the result, this writ application succeeds and is hereby allowed. The impugned order issued in GST [DRC-01](#) is hereby ordered to be quashed and set aside. We reserve the liberty for the respondents to initiate fresh proceedings against the writ applicant in accordance with law.

20. With the above, this writ application stands disposed of.