IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11621 of 2023

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Sincon Infrastructure Pvt. Ltd. a registered company having its registered place of business at UF-126, Majestic Plaza, West Boring Canal Road, Patna-800001 through one of its directors namely Tarun Kumar male aged about 40 years, son of Kartik Kumar, resident of House No. -153A, Road No. 08, Patliputra Colony, Boring Road, Patna, Bihar-800013.

... ... Petitioner/s

Versus

1. The Union of India through the Principal Chief Commissioner of Central GST and CX, Central Revenue Building, Bir Chand Patel Path, Patna.
2. The Assistant Commissioner of Central Tax, Audit Circle, Patna.
3. The Superintendent (Group-06), Central Tax, Audit Circle, Patna.
4. The Assistant Commissioner CGST and Central Excise, Patna Central Division, Chandrapura Palace, Opposite Dadimaa Temple, Bank Road, Gandhi Maidan, Patna-800001.

... ... Respondent/s

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Central Goods and Services Tax, 2017 (hereinafter The Act) : S.74(1) S.74(5) read with Rule 142, S.88B S.168 (1)

***Appeal** – recovery of tax - petitioner an assessee under the Central Goods and Services Tax, 2017 and is aggrieved with the peremptory recovery sought as against two objections raised on audit, relating to interest payable for the assessment years 2017 -2018 and 2018- 2019, while the other seven objections raised on audit are the subject of a demand notice was issued u/s 74 (5) read with Rule 142 of the Act dated 30/12/2022 – Later a notice u/s 74(1) was issued dated 18/7/2023 regarding the seven objections other than the two for which the demand was raised – the question of interest though automatic under the Act depends upon the factual situation of when the tax became due and when*

the payment of tax was made and under what mode – In goods and services regime, the levy of interest would depend upon whether the debit has been made from Electronic Credit Ledger or the Electronic Cash Ledge.

Contention regarding Proper officer having acted on the dictates of the Monitoring Committee , S.2 (16) is pointed out to indicate the Central Board of Indirect Taxes and Customs constituted under the CGST Act. S.168 (1) is pointed out, wherein power has been conferred on the Board to issue instructions or directions - it is based on such power conferred which the administrative officers of the department is obliged to follow, the Proper Officer proceeded for recovery .

The rule specifies the manner of calculating interest on delayed payment of tax – belated interest were filed and the Proper Officer issued a demand computing the interest to be remitted on the taxes accompanying the returns .

The learned single judge after considering the facts re framed the questions as to whether the credit due to assessee if paid by way of adjustment can still be termed as belated or delayed – the availability of ITC according to the learned Single Judge ran counter to the concept of deprival since, the credit in Electronic Credit Ledger of the assessee to its supplier and is remitted by the supplier to the coffers of the state – the tax paid by the supplier of the assessee was always available with the State for its use and hence, the mere book adjustment made by way of remittance at the time of filing return, even if belated, would not enable State to mulct the liability – on the interpretation placed by various provisions under various provisions under the Act, we are persuaded to reject the claim of the petitioner – on furnishing of delayed returns, interest liability would be automatic whether made from Electronic Credit Ledger as per provisions of S.50 (1) - it also mandated that on delay occasioned the assessee has to pay the interest by himself which is a statutory compulsion independent of any order or demand made under the Act – the audit report speaks of non payment of the amount of interest – peremptory order of recovery was passed by the Proper Officer – the order specifically speaks of a personal hearing afforded at Monitoring Committee Meeting having rejected submissions made and required the assessee to make the deposit of interest amounts into the government account under the proper head of CGST/SGST interest – we are clear in our minds that no such dictate can be given by Monitoring Committee and there is no provision for such hierarchical decision to be

made binding on Proper Officer – insofar as the levy to assessment year 2017- 18 the petitioner can have no dispute since obviously the debit was made from the Electronic Cash Ledger – even with respect to a debit made from an Electronic Credit Ledger if there is a delay in furnishing of returns, which also presupposes a delay in payment of amounts due under the Act to the coffers of the government, there is an interest liability cast on assessee the input tax entitled to assessee for previous year which has not been refunded or returns, for one reason or the other – Single Judge noticed the contention of the assessee and framed a question as to whether interest would be at all available in the Electronic Credit Ledger would be set off against output tax only on the furnishing of returns for tax period when debit is made from Credit Ledger – on the above reasoning we are of the opinion that even for the year 2018-19 a remand would be useless formality – writ petition dismissed –parties to suffer respective cost.

Referred:

- *M/s India Yamaha Motor Pvt. Ltd.*
- *M/s Refex Industries Ltd*
- *M/s RSB Transmission (India) Ltd*

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11621 of 2023

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... ... Petitioner/s

Versus

1. The Union of India through the Principal Chief Commissioner of Central GST and CX, Central Revenue Building, Bir Chand Patel Path, Patna.
2. The Assistant Commissioner of Central Tax, Audit Circle, Patna.
3. The Superintendent (Group-06), Central Tax, Audit Circle, Patna.
4. The Assistant Commissioner CGST and Central Excise, Patna Central Division, Chandrapura Palace, Opposite Dadimaa Temple, Bank Road, Gandhi Maidan, Patna-800001.

... ... Respondent/s

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Appearance :
(In Civil Writ Jurisdiction Case No. 11621 of 2023)

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate
		Mr. Atal Bihari Pandey, Advocate
		Mr. Alok Kumar Jha, Advocate
		Mr. Mukund Kumar, Advocate
		Mr. Akash Kumar, Advocate
		Mr. Aditya Raman, Advocate
For the Respondent/s	:	Dr. Krishna Nandan Singh (ASG)
		Mr. Anshuman Singh Sr. SC, CGST&CX
		Mr. Devansh Shankar Singh JC to ASG
		Mr. Shivaditya Dhari Sinha JC to ASG

(In Civil Writ Jurisdiction Case No. 3592 of 2023)

For the Petitioner/s	:	Mr.Ranjeet Kumar, Advocate
For the Respondent/s	:	Dr. Krishna Nandan Singh (ASG)
		Mr. Anshuman Singh Sr. SC, CGST&CX
		Mr. Devansh Shankar Singh JC to ASG
		Mr. Shivaditya Dhari Sinha JC to ASG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

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(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 19-04-2024

The petitioner an assessee under the Central Goods and Services Tax Act, 2017 (for brevity, the Act) is aggrieved with the peremptory recovery sought as against two objections raised on audit, relating to interest payable for the assessment years 2017-18 and 2018-19, while the other seven objections raised on audit are the subject of a notice issued under Section 74 of the Act.

2. Sri Gautam Kejriwal, the learned counsel for the petitioner argued that the audit report dated 26.08.2022 (Annexure-P/3) raised nine objections, all of which were replied to by Annexure-P/4 dated 12.09.2022. The Proper Officer after considering the reply invoked Section 74 read with Section 65 (7) of the Act and issued a notice with respect to the seven of the nine objections raised on audit. As far as two objections relatable to the interest payable for the two assessment years, straight away a demand notice was issued under Section 74(5) read with Rule 142 of the Act by Annexure-P/7, dated 30.12.2022. Later a notice under Section 74(1) was issued as Annexure-P/9 dated

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18.07.2023, regarding the seven objections other than the two for which a demand was raised. The petitioner is aggrieved with the peremptory demand made and the recovery proceeded with, when the objections against the said demand on interest also ought to have been considered by the Proper Officer. It is pointed out that the Proper Officer even as per the demand notice has acted on the dictates of the Monitoring Committee.

3. The question of interest though automatic under the Act depends upon the factual situation of when the tax became due and when the payment of tax was made and under what mode. In the goods and services tax regime, the levy of interest would depend upon whether the debit has been made from the Electronic Credit Ledger or the Electronic Cash Ledger. It is the submission of the learned counsel for the petitioner that even as per the audit report as seen at Annexure- P/3, for the financial year 2018-19, the GST liabilities were offset from the Electronic Credit Ledger. The audit report notices that Section 51 of the Act requires payment of interest, if delay is occasioned and hence, the liability mulcted on the petitioner. However, it is

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pointed out that the proviso to Section 50(1) clearly imposes an interest liability only when the tax payment is made by a debit to the Electronic Cash Ledger. As far as the Electronic Credit Ledger is concerned it is the input tax credited to the assessee's account, which is the tax made on his purchases remitted to the government by the assessee's suppliers. This amount is already in the coffers of the government and the set off towards output tax is only a book adjustment, which would absolve the assessee from the interest liability. The learned counsel for the petitioner relied on a decision of the learned Single Judge produced as Annexure-P/11 of the High Court of Judicature at Madras in ***M.s. Refex Industries Ltd. vs. The Assistant Commissioner of CGST & Central Excise in W.P. Nos. 23360 and 23361 of 2019*** decided on 06.01.2020. The specific proviso under Section 50(1) has been relied on to find that this was introduced to correct an anomaly in Section 50(1) and required a levy of interest only on that part of the tax which is paid in cash.

4. The learned Additional Solicitor General, Dr. K.N Singh, however, pointed out that proviso to Section

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50(1) only enables levy of interest when the debit is made from a cash ledger and it does not prohibit interest levy when the debit is made from a credit ledger. Whether it be from the credit ledger or the cash ledger there can be payment of tax only when the return is filed and if there is delay; Section 50(1) clearly mulcts liability of interest on the assessee, who committed such delay.

5. Insofar as the contention regarding the Proper Officer having acted on the dictates of the Monitoring Committee, Section 2(16) is pointed out to indicate the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963, is the Board with respect to the CGST Act. Section 168(1) is pointed out, wherein power has been conferred on the Board to issue instructions or directions. It is based on such power conferred; which the administrative officers of the department are obliged to follow, that the Proper Officer proceeded for recovery. It is pointed out that Rule 88B of the CGST Rules, 2017 specifies the manner of calculating interest on delayed payment of tax, wherein sub-rule (1) is a verbatim reproduction of the proviso to Section 50.

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Sub-rule (2) of Rule 88B specifies the levy of interest in accordance with sub-section (1) to Section 50. The learned ASG specifically points out that the very same Single Judge of the High Court of Madras, who delivered Annexure-P/11 decision, has held otherwise in ***M/s. India Yamaha Motor Pvt. Ltd. v. the Commissioner of CGST & Central Excise; W.P. No. 19044 of 2019 and W.M.P. No. 18404 of 2019*** dated 29.08.2022. Therein, after noticing the earlier cited judgment and the proviso to Section 50 (1) the argument of the assessee therein, that no interest need be levied on the balance lying to its credit in the Electronic Cash Ledger and Electronic Credit Ledger was negatived. Reliance is also placed on a Division Bench judgment of the High Court of Jharkhand at Ranchi in ***M/s RSB Transmissions (India) Limited vs. The UOI & Ors. in W.P (T) No. 23 of 2022.*** The recovery has to be sustained is the contention raised by the learned ASG.

6. We will first look at the decisions before considering the law applicable to the facts arising in the instant case. Annexure-P/11 decision relates to an assessee under the CGST Act wherein, belated returns were filed and

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the Proper Officer issued a demand computing the interest to be remitted on the taxes accompanying the returns. The assessee objected to the same on the ground that they have sufficient input tax credit (for brevity, ITC) and thus interest cannot be demanded. The Court framed the issue as to whether interest would be at all payable on the component of ITC, that was admittedly available with the department throughout; which had been adjusted towards the tax demands for the period August 2017 to March 2018. The learned Single Judge after considering the facts reframed the question as to whether the credit due to an assessee, if paid by way of adjustment can still be termed belated or delayed. It was held that the term 'delayed' connotes a situation of deprival, which contemplates the State being deprived of the amounts representing tax component, till the time the return is filed, accompanied with remittance of tax. The availability of ITC according to the learned Single Judge ran counter to the concept of deprival since, the credit in the Electronic Credit Ledger of the assessee is the tax paid by the assessee to its supplier and remitted by that supplier to the coffers of the State. The reasoning seems to

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be that the tax paid by the supplier of the assessee was always available with the State for its use and hence, the mere book adjustment by way of remittance at the time of filing of a return, even if belated, would not enable the State to mulct the liability of interest on such adjustments made from the credit ledger. The proviso introduced under Section 50(1) was specifically noticed finding it to have clarified an anomaly and provided for a liability to interest only on payments made from the cash ledger.

7. The very same learned Single Judge, in ***M/s. India Yamaha Motor Pvt. Ltd*** (supra) took a contrary stand after noticing the earlier decision and the proviso to Section 50 (1). The facts therein, indicate that there was a return filed for the month of July 2017, which was not properly submitted and the process was aborted. The output tax liability had been remitted in full into the cash ledger even prior to the filing of the return. The petitioner had been constantly trying to correct the error which resulted in the monthly returns being delayed thus prompting the Proper Officer to levy interest on the delayed payments. By an interim order the Commissioner was directed to hear the

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petitioner and pass orders. The Commissioner's order was extracted in the decision which indicates that the assessee's claim was that there was eligible ITC in the Electronic Credit Ledger and sufficient cash balance in the Electronic Cash Ledger. The deposit of cash to the Electronic Cash Ledger since was before the due date of filing of returns for the period from July 2017 to October 2017, there could be no liability to interest was the contention.

8. The Commissioner found that unless the assessee files the returns and a debit entry towards tax liability is made from the electronic credit and cash ledgers, in respect of the tax liability for the relevant tax period, it cannot be considered as a payment of tax, duly made under the Act. The learned Single Judge noticed Section 50(1) and its proviso and held that it would be risky from the point of revenue to merely presume that the availability of electronic credit should be assumed to be utilization; insulating the assessee from the levy of interest. It was held that unless an assessee actually files a return and debits the respective registers, the authorities cannot be expected to assume that available credit will be set off against tax liability. The first

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case dealt with was a debit from the Electronic Credit Ledger and the second case from the Electronic Cash Ledger. We need not dwell too much on the apparent conflict in view, since the decisions do not have the sheen of a binding precedent.

9. ***M/s RSB Transmissions (India) Limited*** (supra) again raised a question as to whether, the amount deposited as tax through valid challans by a registered person into the government exchequer, prior to the filing of GSTR-3B returns, could be treated as discharge of the tax liability and whether there could be interest levied, deeming such delayed filing of returns to be a circumstance which attracts Section 50 of the GST Act. Therein, the period was between July 2017 to 2019 and the amount of tax had already been deposited in the Electronic Cash Ledger, even prior to the filing of the return. We have to immediately notice that the facts indicate a circumstance clearly covered under the proviso to Section 50(1). The learned Division Bench found that the Electronic Cash Ledger is an account of tax ledger *(sic)* maintained with the department reflecting online deposits; made from accounts maintained by the assessee

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with banks, from which payments can be made as tax. The mere deposit of an amount in an Electronic Cash Ledger does not make it a tax deposit or payment to a government account. After extracting the various provisions especially Section 49 it was found that Explanation to sub-section (11) deems the date of deposit in the Electronic Cash Ledger to be a mere deposit which does not amount to payment of the tax liability. Only when the Electronic Cash Ledger is debited towards payment of tax, interest or penalty or any other dues under the Act, the money gets transferred to the State for utilization. It was also found that the scheme of the Act is that no person can make payment of tax prior to filing of the returns though the deposit may be made or lying, in the Electronic Cash Ledger. The tax liability, it was categorically held, gets discharged only upon filing of the GSTR-3B return, the last date of which is the 20th of the succeeding month on which the tax is due. A return could be filed even prior to the last date and such tax liability can be discharged on its filing but a mere deposit in the cash ledger on any date prior to filing of GSTR-3B return does not amount to payment of tax due, into the State exchequer.

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10. We bow in approval, to the proposition as laid down by the Division Bench of the High Court of Jharkhand at Ranchi, even though this too does not have the sheen of a precedent. We are of the opinion that this applies squarely to the Electronic Credit Ledger also; which we would demonstrate from the various provisions under the Act. As far as the two conflicting decisions of the learned Single Judge we agree with the later decision in ***M/s. India Yamaha Motor Pvt. Ltd*** (supra) and would demonstrate as to how, the proposition as laid down in the first decision would be contrary to the scheme and provisions of the GST Act.

11. Section 50(1) and its proviso cannot be interpreted in isolation. Section 39 has the nominal heading of '*Furnishing of returns'* and the returns are to be furnished for every calendar month or part thereof electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars; in such form and manner as prescribed. Sub-sections (2) to (5) of Section 39 refers to the different assessees and the different manner of tax

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remittances which is not relevant for our purpose; nor is sub-section (6), which speaks of extension of timing for furnishing of returns by the Commissioner. Sub-section (7) requires every registered person, who is required to furnish a return under sub-section (1) to pay to the government the tax due as per such return not later than the last date on which he is required to furnish such return. Hence, the payment of tax has to be made along with the furnishing of the return on the last date or any date prior to that.

12. Section 41 deals with availing of input tax credit and as per sub-section (1) subject to such conditions and restrictions prescribed, every registered person is entitled to avail the credit of eligible input tax, as self-assessed in his return and such amount shall be credited to his Electronic Credit Ledger. Hence, the credit to the Electronic Credit Ledger occurs only on the self-assessment, which, as contemplated in the statute occurs, only on furnishing a return. The mere fact that the supplier of the assessee remitted tax to the government; which the assessee has paid on purchase, would not by that alone create a credit in the Electronic Credit Ledger. The credit of input tax is

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occasioned in the Electronic Credit Ledger only when the return is filed and the eligible input tax is claimed in the returns so filed; which is the self-assessment made by the assessee.

13. Now, we look at what an Electronic Cash Ledger and Electronic Credit Ledger are; which are defined under sub-sections (43) and (46) of Section 2 as the ledger referred to respectively in sub-section (1) and (2) of Section 49. Section 49 has the nominal heading of *'Payment of tax penalty and other amounts'*. Sub-section (1) defines an Electronic Cash Ledger as a ledger available to the assessee, to credit by way of internet banking or by way of credit or debit cards or NEFT or RTGS or by such other mode, subject to conditions and restrictions as may be prescribed. As held by the Division Bench of the High Court of Jharkhand the Electronic Cash Ledger is an account maintained by the assessee with the department and the credits made to itself is not necessarily payment of tax. The Electronic Cash Ledger is akin to a current account maintained by a legal entity with a Bank; where no interest is accrued with only the restriction that the debits made,

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have to be as against payment of tax, interest, penalty or any other dues under the GST Act. Section 49(1) read with the provisions of Section 39 as spoken of by us hereinabove, would indicate that the payment of tax occurs only on the furnishing of returns, which payment is by way of a debit made from the cash ledger.

14. Now, we look at the Electronic Credit Ledger as spoken of in sub-section (2) of Section 49, which specifically indicates that input tax credit is one credited to the assessee's Electronic Credit Ledger on a self-assessment made in the return of a registered person. This again indicates that only when a return is filed, the input tax credit accrues to the benefit of the assessee and not when the tax paid by an assessee as a purchaser, to its supplier, is remitted by the supplier to the State. The remittance by the supplier definitely goes to the coffers of the government but it transforms itself into a credit in favour of the purchaser, as an input tax credit, only when the purchaser furnishes a return in accordance with Section 39 and makes a self-assessment in the return by claiming the input tax credit.

15. It is with these provisions in mind that we have

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to look at Section 50. Section 50 has the nominal heading of *'Interest on delayed payment of tax'*. Sub-section (1) prescribes that every person liable to pay tax under the Act and the Rules, but fails to pay it to the Government within the period prescribed, for the period of delay, would be liable to pay by himself interest at such rate not exceeding 18 percent as notified by the Government on the recommendations of the Council. Hence, when a delay occurs in payment of tax there is a liability on the assessee from the registered person to pay on its own and satisfy the interest liability for the period of delay. Insofar as the Electronic Cash Ledger is concerned we have seen that the payment of tax, interest penalty or any other dues is occasioned only when the return is furnished; by reason of which a debit is facilitated from the credit in the Electronic Cash Ledger which is then transferred to the coffers of the State. This is *dehors* the time at which the assessee made an electronic cash transfer, enhancing the credit in the Electronic Cash Ledger.

16. As far as the input tax credit is concerned the credit itself occurs only when the return is furnished,

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claiming the input tax credit. The set off as against the output tax is also occasioned only when such set off is claimed in the return as against the output tax from the Electronic Credit Ledger. Hence, whether it be the Electronic Credit Ledger or Electronic Cash Ledger interest is payable on the delay occasioned in payment of tax; which payment is occasioned only on the furnishing of the return and the simultaneous debit made from either of these ledgers; Cash Ledger or Credit Ledger. The payment of tax and furnishing of return have to occur simultaneously and none can separate one from the other.

17. ***M.s. Refex Industries Ltd.*** (supra) found the debit from the Credit Ledger attracting no levy of interest, erroneously relying on the concept of deprival to be the basis of finding delay; which observation we make with all the respect at our command. The reasoning was that the aspect of deprival would be absent insofar as the amounts in the Electronic Credit Ledger being always available with the Government. Our finding is more in consonance with the judgment of the very same learned Single judge in ***M/s. India Yamaha Motor Pvt. Ltd*** (supra) wherein the

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Commissioner's order, upheld in the decision, more or less follows our interpretation. The learned Single Judge correctly held that "*unless an assessee actually files a return and debits the respective registers, the authorities cannot be expected to assume that available credits will be set off against tax liability"* (sic-para-16)

18. As we observed we also perfectly agree with the Division Bench of the High Court of Jharkhand and would only add that the reasoning for sustaining a levy of interest, to be related to a debit under the Electronic Cash Ledger, by filing of returns, equally applies to the debit under an Electronic Credit Ledger; more so since the credit in the Electronic Credit Ledger also is occasioned only when the returns filed for the tax period, claims the input tax paid.

19. Now, we come to the effect of the introduction of the proviso to Section 50(1). The proviso mandates that the interest on tax payable in respect of supplies made, during a tax period and declared in the return for that period, which returns is furnished after the due date under Section 39, shall be payable on that portion of tax, which is paid by debiting the Electronic Cash Ledger; except when

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proceedings under Section 73 or 74 in respect of the said period is commenced.

20. The primary fallacy in the argument of the petitioner is the interpretation placed on the proviso fully absolving a debit from the Electronic Credit Ledger from the liability of interest. At the risk of repetition, the input tax credit and the resultant payment of tax from the Electronic Credit Ledger occurs only when a return is furnished. If there is a delay in furnishing of returns then obviously there is a delay in the input tax credit coming into the Electronic Credit Ledger and a resultant payment being made to the Government as tax, interest, penalty or other amounts due under the Act. The anomaly sought to be rectified is not of prohibiting a levy of interest in the context of a delayed return filed, when the payment of amounts due under the Act is made from the Electronic Credit Ledger. The anomaly sought to be rectified is insofar as the assessee claiming the deposit in the cash ledger to be, in payment of tax, interest, penalty or other amounts due under the Act. As we noticed, the deposit made into the cash ledger by an assessee does not necessarily deem it to be a

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payment of the dues under the Act from the date of deposit. The deposit is akin to a current account maintained, from which debits have to be made for the purpose of payment of tax, interest, penalty or other amounts due under the Act. Such debits would be made and a resultant payment to the coffers of the State, only when a return is furnished. The proviso to Section 50(1) intended dispelling of any notion that the amounts merely deposited in the Electronic Cash Ledger would be satisfaction of the dues under the Act as on the date of deposit. It was not intended to prohibit the levy for a debit made from the Electronic Cash Ledger; which also occurs and translates into a payment of dues under the Act only when the returns are furnished.

21. On the interpretation placed by us on the various provisions under the Act, which also is the proper understanding of the very scheme of the enactment, we are persuaded to reject the claim of the petitioner that the proviso of Section 50(1) mandates a levy of interest only when there is a delayed furnishing of return and debit made and payment effected from the Electronic Cash Ledger. As we found Section 50(1) specifically mulcts liability of

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interest on any delayed furnishing of return, since it is the furnishing of the return which results in payment of tax, interest, penalty or other amounts due under the Act as self-assessed in the return. Neither the deposit made in the cash ledger nor the remittances made on the tax paid on purchases, results in payment of the amounts due under the Act to the Government. Insofar as the payment of tax by the supplier on the purchases made by an assessee, even the credit of the input tax occurs in the Electronic Credit Ledger only when the return is furnished on self-assessment raising a claim for input tax.

22. With this interpretation we have to find that, on furnishing of delayed returns, interest liability would be automatic, whether the payment be made from the Electronic Credit Ledger or Electronic Cash Ledger as per the provisions of Section 50(1). It also mandates that on delay occasioned the assessee has to pay the interest, by himself; which is a statutory compulsion independent of any order or demand made under the Act. The proviso only dispels notion of any anomaly and further fortifies the scheme of the Act and enables mulcting of liability on a

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delayed payment made from the Electronic Cash Ledger; despite the cash ledger having such amounts deposited by way of online transactions even prior to the due date of filing of return.

23. We, on the said interpretation, look at the facts of the case. The audit report as was pointed out by the learned counsel for the petitioner at paragraph no. 1 speaks of non-payment of the amount of interest amounting to Rs. 82,57,170/- on delayed payment through DRC-3 in the financial years 2018-19. The taxpayer was found to have offset the GST liabilities only on 12.05.2020 when the last date of furnishing monthly returns was on the succeeding month. The offsetting of GST liabilities occurs only on furnishing of return and the credit to the input tax ledger also occurs only on such furnishing of returns. We specify that the input tax credit is claimed only for the assessment year 2018-19, which rider we make only for the purpose of the further clarification we would provide immediately after the narration of facts. Paragraph no. 2 of the audit report speaks of non-payment of interest amounting to Rs. 33,03,954/- on delayed cash payment through DRC-3 in the

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financial year 2017-18. Therein, the payment was made from the Electronic Cash Ledger offsetting the liabilities only on 30.01.2020; which is presumed to be the date of furnishing of return also. Insofar as the financial year 2017-18, there can be no dispute raised even on the arguments put forth by the petitioner that interest liability visits the assessee-petitioner; since the debit is from the Electronic Cash Ledger.

24. Now, we look at the peremptory order of recovery passed by the Proper Officer at Annexure-P/10 under Section 79. The amounts levied are that noticed in paragraph no. 1 and 2 as extracted hereinabove for the assessment year 2017-18 and 2018-19. The order specifically speaks of a personal hearing afforded at the Monitoring Committee Meeting (MCM) and the Committee having rejected the submissions made and required the assessee to make the deposit of the interest amounts into the government account under the proper head of CGST/SGST interest.

25. We are clear in our minds that there can be no such dictate given by the Monitoring Committee and there

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is no provision for such a hierarchical decision to be made binding on the Proper Officer. Section 2(16) specifies the Board under the Act to be that constituted under the Central Board of Revenues Act and Section 168 confers such Board, power to issue instructions or directions. It is the submission of the learned ASG that the Monitoring Committee is one constituted by the Board and the Proper Officers are obliged to follow the directions issued. The power conferred on the Board definitely empowers the Board to issue directions and instructions which the departmental officers are to scrupulously comply with; but not the Tribunals constituted under the Act and definitely not the Courts of law. However, the Board by the statutory power conferred to issue instructions and directions cannot constitute a body which could issue binding orders to the departmental officers on the principle of '*delegatus non potest delegari*'.

26. We have seen the counter affidavit filed by the respondents which has produced Annexure-R(A) being the directions of the Monitoring Committee Meeting which is Annexure-P/3 produced by the petitioner. The objections

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made under audit and the decisions of the Monitoring Committee does not oblige the Proper Officer to follow it verbatim and the Proper Officer is the person who has to consider the matter and arrive at a decision insofar as the final assessment is concerned as also process and effect recovery.

27. Be that as it may, insofar as the levy with respect to assessment year 2017-18, the petitioner can have no dispute since obviously the debit was made from the Electronic Cash Ledger. Hence, a remand made to the Proper Officer of the demand under Annexure-P/10, for the year 2017-18 would be a useless formality.

28. We have also found that even with respect to a debit made from an Electronic Credit Ledger if there is delay in furnishing of returns, which also presupposes a delay in payment of amounts due under the Act to the coffers of the Government, there is an interest liability cast on the assessee. There could be instances where there is credit in the Electronic Credit Ledger, of the input tax entitled to the assessee for the previous years; which has

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not been refunded or set off as against the earlier returns; for one reason or the other. One of which, could be no sales having been carried out in the earlier month thus creating no output tax liability on the assessee. In this context, we cannot but notice the judgment of ***M.s. Refex Industries Ltd.*** (supra) wherein the learned Single Judge noticed the contention of the assessee and framed a question as to whether interest would be at all payable on the component of ITC which was admittedly available with the department throughout the period of delay. The availability of input tax in the Electronic Credit Ledger would be inconsequential since the tax payment is only on furnishing of returns. The credit available in the Electronic Credit Ledger would be set off against output tax only on the furnishing of returns for the tax period, when debit is made from the Credit Ledger. On the above reasoning we are of the opinion that even for the year 2018-19 a remand would be an useless formality.

29. We dismiss the writ petition and leave the

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parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Harish Kumar, J):- I agree

(Harish Kumar, J)

Aditya Ranjan/-

AFR/NAFR	AFR
CAV DATE	08.04.2024.
Uploading Date	19.04.2024.
Transmission Date	

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