

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3<sup>RD</sup> DAY OF MARCH 2020

PRESENT

THE HON'BLE MR. ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

**WRIT APPEAL NO.188 OF 2020 (T-RES)**

**BETWEEN:**

1. THE UNION OF INDIA  
MINISTRY OF FINANCE  
HAVING OFFICE AT JEEVAN DEEP BUILDING,  
PARLIAMENT STREET, NEW DELHI-110 001.  
REP. BY ITS SECRETARY
2. THE STATE OF KARNATAKA  
DEPARTMENT OF FINANCE  
VIDHANA SOUDHA,  
BENGALURU-560 001.  
REP. BY ITS SECRETARY
3. THE SUPERINTENDENT  
OFFICE OF CENTRAL G.S.T  
MADIKERI RANGE, BLOCK NO.18/1,  
MAIN TEMPLE ROAD, MADIKERI,  
KODAGU DISTRICT-571 201.

...APPELLANTS

(BY SRI. NEERALGI JEEVANBABU JAGADISH, ADVOCATE)

**AND:**

M/S. LC INFRA PROJECTS PVT., LTD.,  
(FORMERLY KNOWN AS LAXMI CONSTRUCTIONS)  
HAVING OFFICE AT NO.409, ISCON ELEGANCE,

NR. JAIN TEMPLE, PRAHLADNAGAR CROSS ROAD,  
S.G.HIGHWAY, AHMEDABAD – 380 015.  
REP. BY ITS CHIEF FINANCIAL OFFICER  
MR. NITESH AVADHIYA

...RESPONDENT

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE ORDER PASSED BY THE LEARNED SINGLE JUDGE IN WRIT PETITION No.28876 OF 2019 DATED 22.07.2019 AND ETC.

THIS WRIT APPEAL COMING ON FOR ORDERS THIS DAY, **CHIEF JUSTICE** DELIVERED THE FOLLOWING:

**JUDGMENT**

Heard learned counsel appearing for the appellant.

2. We have permitted the learned counsel for the appellant to argue on the footing that the case is made out for condonation of delay.

3. Before the learned Single Judge, the challenge was two fold. Firstly, to the notice of demand dated 4<sup>th</sup> March 2019 (Annexure-J to the writ petition) by which a demand for interest in accordance with sub section (1) of Section 50 of Central Goods and Service Tax Act 2017 (for short 'GST Act') was made.

4. On the basis of the said demand, consequential action was taken by the tax authorities on 7<sup>th</sup> March 2019 (Annexure-L) by which the account of the respondent-assessee was attached on account of non payment of interest. This is the second challenge in the writ petition.

5. Perusal of the impugned order shows that the learned counsel appearing for the appellant accepted before the learned Single Judge that no notice as contemplated under Section 73 of the GST Act was issued to the respondent-assessee before quantifying interest amount and attaching Bank account of the respondent-assessee. In paragraph 6, the learned Single Judge has held that issuance of a show Cause Notice is sine qua non to proceed with the recovery of interest payable under Section 50 of the GST Act and penalty leviable under the provisions of the GST Act and the Rules. It is further held that interest payable under Section 50 of the GST Act has been determined by the third respondent – Authority without issuing a show Cause Notice which is in breach of the principles of natural justice. Therefore, both the orders at Annexures - J and L were quashed by the learned Single

Judge by the impugned order with liberty to the third respondent to proceed in accordance with law.

6. The learned counsel appearing for the appellant invited our attention to sub section (1) of Section 50 of the GST Act and the impugned demand vide Annexure-J. He would urge that the demand of interest is on account belated payment of tax based on the self-assessment. He would, therefore, submit that as the tax was payable as per the self-assessment made by the assessee, it was not necessary to issue a show cause notice to the respondent-assessee as the demand was only as regards to payment of interest under Sub Section (1) of Section 50 of the GST Act. His second submission is that as the demand was not for a tax and only for interest, a notice under Sub Section (1) of Section 73 of the GST Act was not all necessary. He submitted that as a consequence of failure to pay interest, consequential action of attachment of the bank account has been taken. His submission is that Annexure-J could not have been held to be illegal on the ground of breach of the principles of natural justice.

7. We have given careful consideration to the submissions.

8. Sub section (1) of Section 50 reads thus :

“50. (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.”

Further, sub section (1) to sub section (3) of Section 73 of the GST reads thus :

*“73. (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 utilized 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.*

*(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.*

*(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax."*

9. Under sub section (1) of Section 50 of the GST Act, interest can be demanded if an assessee fails to pay the tax or any part thereof within the specified period.

10. On the factual aspect, whether there was a failure on the part of the assessee to pay the tax or any part thereof within the period prescribed, the assessee is entitled to be heard as he could always point out on the basis of the material on record produced that there was no delay in payment of tax.

11. On plain reading of sub section (1) of Section 73 of the GST Act, it is applicable when any tax has not been paid or short paid. It contemplates that a show Cause Notice is to be issued to the assessee calling upon 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 of the GST Act.

12. Assuming that sub section (1) of Section 73 is not applicable, in our view, before penalizing the assessee by making him pay interest, the principles of natural justice ought to be complied with before making a demand for interest under sub section (1) of Section 50 of the GST Act. Consequence of demanding interest and non-payment thereof is very drastic.

13. Therefore, the learned Single Judge rightly held in paragraph 6 of the impugned judgment that issuance of show

Cause Notice is sine qua non to proceed with the recovery of interest payable in accordance with sub section (1) of Section 50 of the GST Act.

14. The impugned demand has been set aside only on the ground of the breach of the principles of natural justice by granting liberty to the respondents to initiate action in accordance with law obviously for recovery of interest.

15. Though a perusal of paragraph 4 of the impugned order shows that the same is based on concession made by the learned counsel for the appellant, in paragraph 6 the learned Single Judge has laid down the law.

16. For the reasons which we have recorded earlier, we concur with the ultimate view taken by the learned Single Judge that before recovery interest payable in accordance with Section 50 of the GST Act, a show Cause Notice is required to be issued to the assessee. Hence, no case for interference is made out. The appeal is accordingly dismissed. Interim applications do not survive.



Further, we make it clear that as far as Annexure-K is concerned, as the main demand for interest has been set aside, Annexure-K, which is the order of attachment, also will have to be set aside. We make it clear that we have not gone into the question whether the principles of natural justice are required to be complied with before taking action in accordance with Rule 145 of the Rules framed under the GST Act.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**

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