

## Interest liability, disputed by taxpayer, cannot be raised without initiating adjudication proceedings - Jharkhand HC

7 September 2022



## Summary

The Jharkhand High Court (HC) relied on its judgment in the case of Mahadeo Construction Co., wherein it had been held that if any assessee disputes the interest liability, then the Revenue will have to follow the procedure specified for adjudication proceedings. In the present case, the Revenue negated the objections filed by the petitioner towards the liability of interest and adjusted the interest amount from the refund sanctioned to the petitioner. However, the respondents have not followed the specified procedure for the realisation of interest. Therefore, the HC quashed the impugned order and directed the officer to initiate fresh proceedings.

## Facts of the case

- The petitioner<sup>1</sup> filed form GST TRAN-1 to claim transitional credit of input tax credit (ITC) and inadvertently claimed the same amount in form GSTR-3B filed for July 2017 due to inadequate knowledge of the GST<sup>2</sup> laws. The petitioner submitted that the credit availed in form GSTR-3B was unutilised. The error was subsequently rectified by reversing the credit of SGST in return filed for July 2018.
- The department sought clarification for reversal of credit and asked for payment of interest thereon.
- The petitioner, in the meantime, had applied for a refund of the excess amount lying in the electronic cash ledger. The authority allowed the refund after adjustment of the amount including the interest liability. The petitioner had filed an appeal against the adjustment of refund, which was dismissed.
- The petitioner had filed a detailed objection to the impugned letter of the respondent. The respondent did not accept the request of the petitioner and asked to pay the remaining amount of

interest after adjustment of the refund amount.

- The petitioner submitted that interest could not be levied if the ITC had not been availed twice. Further, the respondent should have followed the procedure prescribed for the realisation of interest.
- The Revenue contended that it is an established law, and that ignorance of the law cannot be an excuse for non-compliance with legal provisions. The petitioner tried to put their failure on the online portal, which is not correct and tenable. Therefore, the authority has correctly issued the letter to deposit the interest on the wrong availment of ITC.
- Accordingly, the issue before the HC is whether interest<sup>3</sup> can be imposed without initiating any adjudication proceeding<sup>4</sup> towards the liability of interest.

## Jharkhand HC observations and ruling<sup>5</sup>

- **Interest liability, disputed by the taxpayer, cannot be raised without initiating adjudication proceedings:** The HC relied on its judgment in the case of Mahadeo Construction Co. and noted

<sup>1</sup> Bluestar Malleable Private Limited

<sup>2</sup> Goods and services tax

<sup>3</sup> under Section 50 of the JGST Act

<sup>4</sup> either under Section 73 or 74 of the JGST Act

<sup>5</sup> WP(T) No. 2043 of 2020 with W.P.(T) No. 2051 of 2020, Order dated 18 August 2022

that if any assessee disputes the liability of interest<sup>6</sup>, then the revenue will have to follow the specified procedure. However, in the present case, the respondents have not followed the procedure. Thus, the HC quashed the impugned order wherein the objection filed by the petitioner was negated. Further, the matter is remitted back to initiate fresh proceedings towards interest and issue of fresh refund order in accordance with law.

### Our comments

Earlier in case of Mahadeo Construction Co.<sup>7</sup>, the Jharkhand HC had held that interest liability is not automatic and same is required to be calculated and intimated to the assessee. If an assessee disputes the interest liability, the assessing officer needs to initiate proceedings for adjudication of interest liability. Similarly, in case of LC Infra Projects Private Limited<sup>8</sup>, the Karnataka HC had held that show cause notice is required to be issued to the assessee before recovery of interest. However, both these decisions have been challenged before the Apex Court<sup>9</sup> and the matter is listed for hearing on 23 September 2022.

A similar view has been taken in the case of R K Transport Private Limited<sup>10</sup> and in the case of M/s Narsingh Ispat Limited<sup>11</sup>. Similarly, in the case of M/s Daejung Moparts Private Limited<sup>12</sup>, the Madras HC had held that quantification of interest liability could not be done unilaterally, especially where assessee disputes the period or quantum of tax demand. Further, the quantification of liability shall have to be made by doing the arithmetic exercise after considering the assessee's objections.

The present ruling is also in line with the above ruling and shall set precedence in similar matters. However, the Apex Court's decision needs to be considered.

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<sup>6</sup> under Section 50 of the JGST Act

<sup>7</sup> W. P. (T) No. 3517 of 2019

<sup>8</sup> Writ Appeal No. 188 of 2020 (T-RES)

<sup>9</sup> SLP(C) No. 6977 of 2021 and 8370 of 2021

<sup>10</sup> W.P.(T) No. 1404 of 2020, Order dated 16 Feb 2022

<sup>11</sup> W.P (T) No. 177 of 2021 with W.P (T) No. 1261 of 2020 with W.P (T) No. 161 of 2021

<sup>12</sup> W.A.No.2171 of 2019

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