

**HIGH COURT FOR THE STATE OF TELANGANA**

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**WRIT PETITION NO.23431 OF 2023**

Between :

M/s. Kesoram Industries Ltd.,  
Cement Division Unit, Basantnagar, Peddapalli,  
Telangana State, Represented by Sri Vaishnu Sankar  
Sankaramanchi, Manager, Legal Cement Division, Kesoram  
Industries Ltd.

...Petitioner

and

The Commissioner of Central Tax,  
Medchal, GST Commissionerate,  
Medchal, GST Bhavan, Redhills, Lakdikapul,  
Hyderabad and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 20.09.2023

**HONOURABLE SRI JUSTICE P. SAM KOSHY  
AND  
HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

1. Whether Reporters of Local Newspapers : No  
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**  
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No  
see the fair copy of the Judgment ?

**\* HONOURABLE SRI JUSTICE P. SAM KOSHY  
AND  
HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

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Telangana State, Represented by Sri Vaishnu Sankar  
Sankaramanchi, Manager, Legal Cement Division, Kesoram  
Industries Ltd.

...Petitioner

Vs.

\$ The Commissioner of Central Tax,  
Medchal, GST Commissionerate,  
Medchal, GST Bhavan, Redhills, Lakdikapul,  
Hyderabad and others.

.... Respondents

!Counsel for the Petitioner : Sri Srinivas Chatruvedula

Counsel for the Respondents : Sri Dominic Fernandes,  
learned senior standing  
counsel for respondents 1 to 4.

<Gist :

>Head Note:

? Cases referred:  
[2020(33) G.S.T.L.16(Jhar)]  
2020(36) G.S.T.L.343(Jhar)]  
W.A.Nos.2127 and 2151 of 2019  
2019 (28) G.S.T.L3 (Kar.)  
W.P.(C) 8317/2019 (Del.)  
1996 (88) E.L.T.12 (SC)

**HONOURABLE SRI JUSTICE P.SAM KOSHY  
AND  
HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

**WRIT PETITION NO.23431 OF 2023**

**ORDER:** *(per Hon'ble Sri Justice Laxmi Narayana Alishetty)*

The present writ petition has been filed declaring the garnishee proceedings in Form GST-DRC-13, to the Manager, HDFC Bank Limited, in C.No. V/30/04/2019-Pdpl-MNCL, dated 25.07.2023 in DIN NO.20230756YP0800222A74, by which respondent No.2 directed to pay a sum of Rs.1,28,97,344/- and in Form GST-DRC-13 to the Manager, AXIS Bank, in C.No.V/30/04/ 2019-Pdpl-MNCL, dated 28.07.2023 in DIN No.2023756YP080062196C, by which respondent No.2 directed to pay a sum of Rs.1,28,97,344/-, as being arbitrary, illegal and violation of the fundamental rights of the petitioner.

2. The brief facts leading to filing of present writ petition are as under:

3. The petitioner is a Public Limited Company and is engaged in manufacture and supply of Cement under the brand name of Birla Shakti Cement. The petitioner was regular in payment of GST, however, owing to financial crisis, there was a delay in payment of GST. The Respondent No.3 issued letter dated 19.06.2023 to the petitioner demanding payment of interest of Rs.1,28,97,355/- on

account of delayed payment of tax from July, 2017 to January, 2023 along with calculation indicating month wise interest payable on delay in filing of GSTR 3B return. The petitioner was informed to reconcile the interest and pay the same within 07 days of receipt of letter to avoid recovery under section 79 of the CGST Act, 2017.

3. That due to financial crisis, there was a delay in payment of tax dues, however, the petitioner paid the dues along with interest @18% for the delayed period in accordance with section 50 of the GST Act basing on its own calculations. That in response to notice dated 19.06.2023 of the Department, the petitioner submitted letter dated 28.06.2023 seeking three months time for payment of interest in view of severe financial crisis which resulted in late payment of GST and finally requested the authorities not to take any coercive action.

4. In response to the said letter, the petitioner addressed a letter, dated 28.06.2023 informing responding that interest aggregating to Rs.13,07,942/- was paid and further stated that due to severe financial crisis, there was delay in payment of interest, however petitioner sought three months for payment of interest and further, requested to respondent No.3 not to take any coercive steps. The petitioner addressed another letter, dated 25.07.2023 to the respondent No.3 disputing the interest liability

arrived at by the respondents and further requested the authority to demand interest from due date of filing of GSTR 3B Return till the date of deposit of GST to Electronic Cash Ledger till the issue is decided by Hon'ble High Court. However, without considering the letters dated 28.06.2023 and 25.07.2023 and without providing any opportunity respondent No.2 issued impugned garnishee proceedings dated 25.07.2023 and 28.07.2023 under section 79(1) (C) of CGST Act, 2017 high handedly contrary to provisions of GST Act and principles of natural justice.

5. The petitioner received a letter dated 07.08.2023 from HDFC Bank Limited, on 10.08.2023 informing the petitioner about issuance of impugned garnishee proceedings, dated 25.07.2023 and in compliance of the bank placed the petitioner's account under "No Debit" status. Similarly, the petitioner received a call from Axis Bank on 10.08.2023 informing the petitioner about impugned garnishee proceedings, dated 28.07.2023 and that the petitioner petitioner's account has been placed under "No Debit" status.

6. Heard Sri Srinivas Chatruvedula, learned counsel for the petitioner and Sri Dominic Fernandes, learned senior Standing Counsel for the respondent Nos. 1 to 4.

7. Learned counsel for the petitioner submitted that the impugned garnishee proceedings were issued though the interest liability in question was disputed by the petitioner and further, the same was issued without issuing any notice to the petitioner under section 73 of the CGST Act, 2017 and without affording an opportunity of personal hearing to the petitioner. He further submitted that the impugned garnishee proceedings are bad in law and the same were issued without conducting requisite proceedings under section 73 of the CGST Act, 2017 and further, both the garnishee proceedings in Form DRC-13 were not issued to the petitioner.

8. He further submitted that the garnishee proceedings are against provisions of Section 79(1)(c) of CGST Act, 2017 read with Rule 145(1) of CGST Rules, 2017 and also Section 50(1) of the CGST Act, 2017. That no late fees is prescribed under section 47(2) of the CGST Act, 2017 and therefore, the garnishee proceedings for demand of Late Fees Under Section 47(2) of the CGST Act, 2017 is perverse, arbitrary, *void abinitio* and liable to be set-aside. He further submitted that Section 79 of the CGST Act,2017 pertains to Recovery of Tax and is applicable only in cases wherein, any amount is payable by an assessee to the Government under any of

the provisions of this Act or the rules made there under and the same is not paid.

9. He further submitted that as per Rule 145 of CGST Rules, 2017, the proper officer may serve upon a person referred to in clause(c) of sub-section (1) of section 79, a notice in FORM GST DRC-13 directing him to deposit the amount specified in the notice. Therefore, for a demand to attain the status of money becoming due to the department for issuance of Form DRC-13, there has to invariably an order of the proper officer, issued under the provisions of Section 73 or 74 of the CGST Act, 2017, as the case may be, unless such liability in question is accepted by the assessee himself.

10. The respondent Authorities failed to appreciate that the provisions of Section 79 are not invocable in respect of demands which are in dispute and not subjected to the process of adjudication, as contemplated under Section 73 or 74 of the CGST Act, 2017, as the case may be. That, in the instant case, it is an undisputed fact that the petitioner, vide its letter dated 25.07.2023 had communicated to respondent No.3 that, they are seriously disputing the interest liability figure calculated by the respondents, for reasons explained in the said letter.

11. Therefore, it is prerequisite that any disputed liability, has to undergo the process contemplated by the provisions of Section 73 or 74 of the CGST Act, 2017 as the case may be and cannot be enforced directly through Section 79(1)(c) of CGST Act, 2017 read with Rules, 2017.

12. It is relevant to reproduce Section 50 (1), 73(1), and 79(1)(c)(i) are as under:-

**“Sec.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 there under, 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 recommendation of the Council.*

**Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful-misstatement or suppression of facts.**

*(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 utilised 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 there under.*



**Sec. 79. Recovery of tax”-**

*(1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made there under is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—*

**(a) & (b) xxx**

*(c) (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;”*

13. Learned counsel for the petitioner has relied upon following judgments:

**i. Godavari Commodities Ltd. vs Union of India and Ors<sup>1</sup>**

**ii. Mahadeo Constructions Co vs Assistant Commissioner<sup>2</sup>**

**iii Assistant Commissioner of CGST & Central Excise and Others vs Daejung Moparts Pvt. Ltd. and Ors<sup>3</sup>**

**iv. LC Infra Projects Pvt. Ltd. vs. The Union of India & Ors<sup>4</sup>**

**v. Vision Distribution Pvt. Ltd. v. Commissioner<sup>5</sup>**

**vi. Pratibha Processors v. Union of India**

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<sup>1</sup> [2020(33) G.S.T.L.16(Jhar)]

<sup>2</sup> 2020(36) G.S.T.L.343(Jhar)]

<sup>3</sup> W.A.Nos.2127 and 2151 of 2019

<sup>4</sup> 2019 (28) G.S.T.L3 (Kar.)

<sup>5</sup> W.P.(C) 8317/2019 (Del.)

6.1996 (88) E.L.T.12 (SC)

14. He further submitted that in the absence of the rules that were required to be made under Section 50(2), the respondents cannot resort to any un prescribed method of calculation on their own, as the same will not have the sanction of law.

15. He further submitted that the portal maintained by GST Authorities does not permit and accept if lesser amount than that of demand amount is paid by the assessee. In the present case, the petitioner is already maintained an account with the GST Authority on their portal and the amounts had already paid through their credit ledger, however owing to particular design of the portal, it will not accept unless the entire demand amount is paid. Further, the interest was calculated from the due date of filing of GSTR 3B return till actual date of filing of GSTR 3B return and not the date of deposit of GST to Electronic Cash Ledger by the petitioner. That when the remittances of tax liability was made from the bank account of the company, the said amount would automatically get debited to the company's bank account and gets transferred to electronic cash ledger of the company maintained at common GST Portal.

16. He further submitted that Sections 49(2), 49(3), 49(4), Section 39(7), 2(117) indicates that the Act permits furnishing of return without payment of full tax as self assessed as per the said return,

but, the return would be regarded as an invalid return. The said return would not be used for the purposes of matching of Input Tax Credit. Thus, although the law permits part payment of tax but no such facility has been made available on the common GST portal.

17. Learned counsel for the petitioner strenuously pointed out that garnishee notices were issued under Section 47(2) of GST Act in respect of late fee, which is impermissible under law.

18. *Per contra*, learned Standing Counsel for respondent Nos.1 to 4 submitted that petitioner's amounts are still lying in their account and were not transferred/credited to government. He further submitted that tax due amounts can be paid only through cash ledger and cannot be paid through credit ledger. Therefore, even if amounts are lying in the credit ledger account, the same does not amount to payment or transfer to the Department. Therefore, the contention of the petitioner that the amounts are lying with the Government is factually incorrect.

19. Learned Standing Counsel further submitted that the contention of the petitioner that the rules were not framed is factually incorrect, since rules were already framed from date of implementation of GST Act, 2017. He further submits that the

petitioner paid the tax with delay, thereby invited interest for the delayed period which is 18% per annum. As per the records of respondent authorities, the petitioner was due a sum of Rs.1,28,97,355/- and despite notice, the petitioner failed to pay tax as well as interest on delayed payments. Therefore, the respondent Authorities are justified in issuing garnishee proceedings to the petitioner's bankers under Section 79 of the CGST Act, 2017.

20. Learned Standing Counsel for respondents had referred to section 39, 50, 75(12) and Rules 61(2), 88(B) to impress upon this Bench that the respondent Authorities have duly followed the procedure as provided under GST Act before issuing garnishee proceedings. Section 39, 50, 75 (12) and Rules 61(2), 88(B) of GST Act are reads reproduced for ready reference:

***As per under Section 39 of the GST Act:*** Every registered person shall for every calendar month or a part thereof, furnished, a return electronically, inward supplies of goods or services or both, tax payable and tax paid on such other particulars, such form and manner and within such time as may prescribed.

***As per under Section 50:*** Every person who is liable to pay tax in accordance with the provisions of GST Act or the Rules made there under, but fails to pay the tax or any part thereof to the Government within prescribed period shall be liable to pay interest on the said amount at such rate not exceeding 18%.

***As per section 79 of GST Act :*** A proper Officer is empower to recover any amount payable by the person to the Government under any of the provisions of the GST Act.

***As per Rule 61(2) of GST Act*** Every registered person required to furnish return, under sub-rule (1) shall, subject to

*the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in Form GSTR-3B.*

21. By referring to above provisions of GST Act, learned standing counsel strenuously contended that it is duty of every registered person under GST Act to pay the tax dues within prescribed time. In case of delay, the registered person is further liable to pay interest in accordance with section 50 of the GST Act.

22. The learned standing counsel submitted that the judgments cited and relied upon by the petitioner are not applicable to the present case and are distinguishable on facts.

23. He finally submitted that the petitioner failed to make out any case warranting interference by this Court and the respondent authorities have duly followed the procedure as provided under CGST Act, 2017 in issuing garnishee proceedings to the bankers of the petitioner and there is no illegality or arbitrariness in the action of the respondent authorities.

**Consideration:**

24. From the material and submissions made by learned counsel for the petitioner and standing counsel for respondent-department, it is clear that admittedly there is a delay on the part of petitioner

in payment of GST dues. It is also not in dispute that, the petitioner paid the GST dues belatedly, however along with interest as per its own calculation. It is noteworthy to mention that the petitioner had addressed letter dated 28.06.2023 to the respondent authorities requesting three months time for payment of interest owing to financial crisis and acute shortage of working capital. The petitioner addressed another letter dated 25.07.2023 disputing the interest liability arrived at by the respondents and further requested the authority to demand interest from due date of filing of GSTR 3B Return till the date of deposit of GST to Electronic Cash Ledger till the issue is decided by Hon'ble High Court.

25. A perusal of Sections 73, 74 and 79 of CGST Act and Rules, 2017 indicate that before issuing garnishee proceedings under Section 79, the authorities shall issue notice to the assessee in terms of Section 73(1) and provide an opportunity to the assessee to submit his reply to the notice and only thereafter, the authorities shall proceed further by taking into consideration the reply / explanation provided by the assessee.

26. In the case of **Mahadeo Constructions Co vs Assistant Commissioner2** , Hon'ble Jharkhand High Court held as under:-

*"..... If an assessee has allegedly delayed in filing his return, but discharges the liability of only tax on his own ascertainment and does not discharge the liability of interest, the only recourse available to the proper officer would be to*

*initiate proceedings under section 73 (1) of the CGST Act for recovery of the amount of “short paid” or “not paid” interest on the tax amount .....*

27. In **Assistant Commissioner of CGST & Central Excise and Others vs Daejung Moparts Pvt. Ltd. and Ors<sup>3</sup>** (supra), the Hon'ble Madras High Court quashed the garnishee proceedings under section 79 of the CGST Act, 2017 issued to the banker and held as under:-

*29. A careful perusal of sub Sections (2) and (3) of [Section 50](#) thus would show that though the liability to pay interest under [Section 50](#) is an automatic liability, still the quantification of such liability, certainly, cannot be by way of an unilateral action, more particularly, when the assessee disputes with regard to the period for which the tax alleged to have not been paid or quantum of tax allegedly remains unpaid.*

28. In the case of **LC Infra Projects Pvt.Ltd. vs. The Union of India & Ors<sup>4</sup>**, Hon'ble Karnataka High Court held as under:-

*“.....the issuance of Show Cause notice is sine qua non to proceed with the recovery of interest payable thereon under Section 50 of the Act and penalty leviable under the provisions of the Act or the Rules. Undisputedly, the interest payable under Section 50 of the Act has been determined by the third respondent - Authority without issuing Show Cause Notice, which is in breach of principles of natural justice.....*

29. In the case of **Vision Distribution Pvt. Ltd. vs. Commissioners<sup>5</sup>**, Hon'ble Delhi High Court held that the taxpayer cannot be made to suffer for no fault of his own, on account of failure of the Government in devising smooth GST systems

providing of debiting the Electronic Cash Ledger without filing of GSTR 3B Return.

30. Hon'ble Supreme Court in the case of **Pratibha Processors v.**

**Union of India** <sup>6</sup> observed as under;-

*“In fiscal Statutes, the import of the words -- "tax", "interest", "penalty", etc. are well known, they are different concepts. Tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an assessee who has withheld of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty-- which is penal in character.”*

31. In the present case, admittedly, the respondent authorities have not issued any notice in terms of Section 79(1) of CGST Act, 2017 to the assessee to submit his reply/explanation to the demand notice for delay payments. Instead, the respondent Authorities have straight away issued garnishee proceedings under Section 79 of CGST Act, 2017, by which the petitioner's bankers were directed to debit the alleged tax dues, which is referred to 73 of the CGST Act, 2017.

32. In considered opinion of this Bench, there is considerable amount of force in the contention of the petitioner that without

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<sup>6</sup> 1996(88) E.L.T.12 (S.C)



providing an opportunity of clarifying / explaining, the respondents authorities have calculated that the petitioner is liable to pay a sum of Rs. 1,28,97,355/- on account of late filing of GSTR 3B Return for the period July, 2017 to January, 2023 and had issued the impugned garnishee notices under Section 47(2) of the CGST Act, 2017.

33. The respondent authorities are required to issue notice to the assessee seeking their response, clarifications for non-payment of tax, interest on late payment prior to passing garnishee proceedings under Section 79(1) of the CGST Act, 2017. Therefore, the action of respondent authorities in issuing the proceedings under section 73(1) of CGST Act, 2017 are in clear violation of principles of natural justice.

**Conclusion:**

34. In the above factual background and legal position, this Bench is of the considered opinion that petitioner is entitled to prior notice before passing garnishee proceedings, which the respondent authorities have failed to follow and instead, the respondent authorities passed impugned garnishee proceedings dated 25.07.2023 and 28.07.2023 contrary to section 73 (1) of CGST Act, 2017. Hence, impugned garnishee proceedings dated

25.07.2023 and 28.07.2023 are bad in law and are accordingly, set-aside.

35. The respondent authorities are at liberty to issue notice under Section 73(1) of CGST Act, 2017 to the petitioner as per law and afford an opportunity of hearing and thereafter, proceed further in accordance with law.

36. Accordingly, the present Writ Petition is allowed. No order as to costs.

37. Pending miscellaneous applications, if any, shall stand closed.

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**P.SAM KOSHY,J**

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**LAXMI NARAYANA ALISHETTY,J**

Date: 20.09.2023  
*ktm*

**HONOURABLE SRI JUSTICE P.SAM KOSHY**  
**AND**  
**HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

**WRIT PETITION NO.23431 OF 2023**

**Date: 20.09.2023**

*ktm*