

2022-TIOL-1186-HC-MAD-GST

IN THE HIGH COURT OF MADRAS

**WP No. 19044 of 2019
and WMP No. 18404 of 2019**

**INDIA YAMAHA MOTOR PVT LTD
(REPRESENTED BY ASSISTANT GENERAL MANAGER
KHIRODA CHANDRA PATRA) PLOT NO. VV-I, SIPCOT INDUSTRIAL PARK
VALLAM VADAGAL VILLAGE, SRIPERUMBUDUR TALUK
KANCHIPURAM DISTRICT
TAMIL NADU-602105**

Vs

**1) THE ASSISTANT COMMISSIONER
SRIPERUMBUDUR DIVISION, CHENNAI OUTER COMMISSIONERATE
C-48, TNHB BUILDING, ANNA NAGAR
CHENNAI-600040**

**2) THE COMMISSIONER OF CGST AND CENTRAL EXCISE
CHENNAI OUTER COMMISSIONERATE
C-48, TNHB BUILDING, ANNA NAGAR
CHENNAI-600040**

**3) THE DEPUTY COMMISSIONER (CT) (LTU)-III
DUGGAR TOWERS, 5TH FLOOR, MARSHALL ROAD
EGMORE, CHENNAI-600008**

**4) THE GOODS AND SERVICE TAX NETWORK
EAST WING 4TH FLOOR, WORLD MARK 1
AEROCITY, NEW DELHI-110037**

Dr Anita Sumanth, J

Dated: August 29, 2022

Appellant Rep. by: Mr N Prasad

Respondent Rep. by: Mr N Santhanaraman, Sr. Standing Counsel

GST - Petitioner has challenged an order dated 10.04.2019 wherein the respondent calls upon it to remit interest of a sum of Rs.5,00,00,000/- (approx.) for belated remittance of GST for the period from July, 2017 to October, 2017 - The levy of interest u/s 50 of the Act, arose from the fact that when the petitioner filed a GSTR 3B return for the month of July, 2017, there was an inadvertent error whereby the data pertaining to its plant at Faridabad was included instead of data pertaining to the Chennai plant - This swap resulted in a short disclosure of liability for the period July to October 2017 leading to the levy of interest - The petitioner had filed a grievance petition seeking modification of the return for the month of July 2017 that had not been immediately disposed/addressed by the authorities - Petitioner has admittedly not filed monthly returns for the months August to October 2017, on the premise that the proper ascertainment of tax liability for the aforesaid months would be dependent upon the adjudication of its grievance petition as above - Remittance of taxes for the subsequent periods are admittedly belated and the specific argument of the petitioner is that it had sufficient ITC credit in both the electronic cash ledger ('ECR') as well as the electronic credit register ('ECrC') and, therefore, there had been no loss caused to the revenue and hence no justification to levy interest since the interest is only compensatory in nature - Taking note of the amendments to Section 50 of the Act, the respondent has recomputed the interest payable reducing the same from Rs.5,00,00,000/- (approx.) to an amount of Rs.1,19,00,000/- inasmuch as credit to the extent of cash payments effected by the petitioner has been granted to the petitioner - However, it is the submission of the assessee that the same logic that has merited acceptance by GST authorities in relation to the cash balance, should apply in the context of credit balance as well.

Held: Court in Refex Industries Limited = [2020-TIOL-382-HC-MAD-GST](#)

took note of the amendment to Section 50 that had been inserted by Act No.23 of 2019 and concluded that the proviso should operate retrospectively and thus, in a case where an assessee had sufficient cash credit, there is no question of the Department requiring to be compensated, since funds were available with it, to the credit of that assessee - While payments in cash denotes the actual availability of cash to the credit of the assessee concerned/petitioner, deposits standing to the credit of an assessee/petitioner, do not necessarily, and in all circumstances, imply that the resources to back such credit up, are within reach of the Department - This is all the more in a case such as the present where the petitioner has not actually filed the returns and effected a debit to the ECR and EcrR to the extent of the tax payable - Thus, credit cannot be equated with cash remittances - The language used in s.50 is categoric to the effect that it is only when a remittance is effected by way of debit, that an assessee would be protected from the levy of interest - Acceding to the stand of the petitioner would result in rewriting the proviso, to the effect that, even mere availability of credit would insulate the petitioner from interest, which, in my view, is impermissible - That apart, there is some force to the submissions of the respondents that credit cannot, prior to avilment be taken to construe the payment - There are any number of situations where credit may be found to have been availed erroneously or on a mistaken interpretation of law - Thus, it would be risky, from the view-point of the revenue, to state as a general proposition that the mere availability of electronic credit should be assumed to be utilization that would insulate the petitioner from the levy of interest - Inasmuch as this issue is held adverse to the petitioner - Writ Petition is partly allowed, to the extent of the relief granted under order dated 18.01.2021 and the demand, as per aforesaid order, stands confirmed: High Court [para 10, 11, 14, 16, 21, 22]

Petition partly allowed

Case laws cited:

Refex Industries Limited vs The Assistant Commissioner of CGST and Central Excise - [2020-TIOL-382-HC-MAD-GST](#) ... Para 10...relied upon

Union of India Vs Bharti Airtel Limited & Ors - [2021-TIOL-251-SC-GST](#) ... Para 17...distinguished

Eicher Motors Ltd. And Another Vs. Union of India and Others - [2002-TIOL-149-SC-CX-LB](#) ... Para 20...distinguished

Commissioner of C.Ex., S.T. & Cus., Cochin Vs. Fact Ltd - [2016-TIOL-3420-HC-KERALA-CX](#) ... Para 20...distinguished

N.C.Mukherjee and Co. V.s Union of India and Another, [68 ITR 500] = [2002-TIOL-1877-SC-MISC-CB](#) ... Para 20...distinguished

Vijaya oil Mills Vs. State of Kerala, [(1979 (Tax. L.R. 1799)] ... Para 20...distinguished

Mahant Bhagwan Bhagar Vs. G.N.Bhagat and Others, [(1972) 1 SCC 486] ... Para 20...distinguished

JUDGEMENT

Per: Dr Anita Sumanth:

The petitioner is an assessee under the provisions of the Tamil Nadu Goods and Service Tax [Act, 2017](#), ('TNGST Act'/Act') and has challenged an order dated 10.04.2019 wherein the respondent calls upon it to remit interest of a sum of

Rs.5,00,00,000/- (approx.) for belated remittance of Goods and Service Tax ('GST') for the period from July, 2017 to October, 2017.

2. When the matter had come up before me on 16.12.2020, I had passed the following order:

"Heard Mr.Prasad, learned counsel for the petitioner and Mr.Santhanaraman, learned Standing Counsel for the respondents.

2. Impugned order dated 10.04.2019 calling upon the petitioner to remit interest for the belated payment of GST has, admittedly, been passed without a pre-intimation notice/show cause notice. However, without having to set aside the impugned order, it would suffice that a direction be issued to R2, who is the jurisdictional Commissioner, to consider representation dated 28.09.2017 wherein the factual matrix of the matter has been set out in detail.

3. It appears that while seeking to file a return for the month of July, 2017, an error was discovered therein, as a result that the return was merely 'filed' and not 'submitted' and the process was aborted at that stage. According to the petitioner, the output tax liability has been remitted in full into the cash ledger even prior to the 'filing' of the return. The petitioner has been making efforts to correct the error and to obtain opening of the GST portal in order that the corrected return could be filed, to no avail. According to the petitioner, the cascading effect of the aforesaid events have led to the subsequent monthly returns being delayed well as, till such time the error in the July return is rectified, the proper determination of output tax liability for the subsequent months cannot be made.

4. The petitioner will appear before R2 on 23.12.2020 at 10.30 a.m. without expecting any further notice in this regard. The Commissioner/R2 will hear the petitioner, either over video conference or physical hearing, consider the representation of the petitioner dated 28.09.2017 along with any other material that may be supplied and pass orders thereupon within a period of four (4) weeks from today.

5. List this on 25.01.2021 for production of orders."

3. Consequent upon the direction as aforesaid, the petitioner has appeared before the respondent and advanced submissions, pursuant to which, an order has been passed on 18.01.2021 accepting one portion of the submissions made. The petitioner has sought and has been granted permission to raise additional grounds addressing what remained of the grievance under order dated 10.04.2019, as covered under order dated 18.01.2021 and the respondent has also filed an additional counter. Pleadings are thus complete.

4. What follows in the succeeding paragraphs of this order addresses the contents of order dated 18.01.2021 alone, and the prayer in this writ petition thus stands moulded, to this extent. The levy of interest u/s 50 of the Act, arises from the fact that when the petitioner filed a GSTR 3B return for the month of July, 2017, there was an inadvertent error whereby the data pertaining to its plant at Faridabad was included instead of data pertaining to the Chennai plant.

5. This swap resulted in a short disclosure of liability for the period July to October 2017 leading to the levy of interest. The petitioner had filed a grievance petition seeking modification of the return for the month of July 2017 that had not been immediately disposed/addressed by the authorities.

6. Thus, the petitioner has admittedly not filed monthly returns for the months August to October 2017, on the premise that the proper ascertainment of tax liability for the aforesaid months would be dependent upon the adjudication of its grievance petition as above. According to the petitioner, it was for this reason that the petitioner did not file returns for the later periods, as a measure of containing the cascading effect of the error that had transpired in the return for July 2017.

7. The remittance of taxes for the subsequent periods are admittedly belated, and the period of delay and consequent levy of interest, are as tabulated below:

Tax Period	Date of echallans	Due date to pay tax and file returns	Date of payment	Delay in filing of Monthly Return (number of days)
July 2017	19.08.2017	25.08.2017	20.09.2017	26

July 2017	19.08.2017	25.08.2017	19.07.2019	693
August 2017	18.09.2017	20.09.2017	14.12.2017	85
Sep 2017	16.10.2017	20.10.2017	20.12.2017	61
Oct 2017	16.11.2017	20.11.2017	20.12.2017	30

8. The specific argument of the petitioner is that it had sufficient ITC credit in both the electronic cash ledger ('ECR') as well as the electronic credit register ('ECrC'). Thus, there had been no loss caused to the revenue and hence no justification to levy interest since the interest is only compensatory in nature.

9. Taking note of the amendments to Section 50 of the Act, the respondent has recomputed the interest payable reducing the same from Rs.5,00,00,000/- (approx.) to an amount of Rs.1,19,00,000/-. Thus, credit to the extent of cash payments effected by the petitioner has been granted to the petitioner. The submission of the assessee is that the same logic that has merited acceptance by GST authorities in relation to the cash balance, should apply in the context of credit balance as well.

10. It may be recalled that there was substantial litigation in the context of levy of interest under Section 50 of the Act in cases where the assessee concerned had sufficient cash credit. This Court, in

Refex Industries Limited vs The Assistant Commissioner of CGST and Central Excise, (order dated 06.01.2020 in W.P.Nos.23360 & 23361 of 2019) = 2020-TIOL-382-HC-MAD-GST

took note of the amendment to Section 50 that had been inserted by Act No.23 of 2019. The conclusion was that the proviso should operate retrospectively and thus, in a case where an assessee had sufficient cash credit, there is no question of the Department requiring to be compensated, since funds were available with it, to the credit of that assessee.

11. While it is the above reasoning that is found favour with the respondents qua cash credits, a distinction is sought to be made qua cash credits and credits available in the ECR and ECrR. While payments in cash denotes the actual availability of cash to the credit of the assessee concerned/petitioner, deposits standing to the credit of an assessee/petitioner, do not necessarily, and in all circumstances, imply that the resources to back such credit up, are within reach of the Department. This is all the more in a case such as the present where the petitioner has not actually filed the returns and effected a debit to the ECR and ECrR to the extent of the tax payable. Thus, credit cannot be equated with cash remittances.

12. The reasoning in the impugned order is as follows:

'4.2.Sufficient Balance in Electronic Credit and Cash ledger:

4.2.1. The GST Registrant stated that in their case, eligible ITC in the Electronic Credit Ledger and sufficient cash balance in the Electronic Cash Ledger were available, in the common portal operated by the GST Network. The actual net tax liability was deposited in Electronic Cash Ledger before the due date of filing returns for the period from July 2017 to October 2017. The contention of the GST Registrant that they had sufficient closing balance in ITC and net tax liability was deposited in Electronic Cash ledger before due date of filing returns is not legally sustainable, because under the Goods and Service Tax, having sufficient balance of ITC in the Electronic Credit Ledger is immaterial unless the Return is filed and the same is debited towards payment of GST. To be precise, the system of Electronic Credit and Cash ledgers is maintained electronically in the Common portal operated by the GST Network. The tax payment happens only when the statutory Returns are filed and the two ledgers are debited towards the tax liability. Hence any kind of tax payment is final only when the Returns are electronically filed in the Common portal and the actual tax liability is debited in the 'Electronic Credit/ Cash Ledgers' and the GST Registrant cannot claim that the tax was debited in their books of accounts, when as admitted, the filing of proper Return was delayed.

4.2.2. The GST Registrant stated that they generated e-challans for payment of tax. It is submitted that when the GST Registrant generates e-challan, the amount will be credited to the 'Electronic Cash Ledger'. Whatever the balance available in the 'Electronic Cash Ledger', the same is the property of the GST Registrant and it is apposite to mention that they can claim refund of the balance in 'Electronic Cash Ledger' at any point of time as per the GST provisions. Whereas the amount will go to the Government Exchequer only when the Return is filed and amount is debited from the 'Electronic Cash Ledger' towards tax liability. Hence mere generation of e-challans is inconsequential unless the Return is filed and a 'debit' towards actual tax liability arising from the Return, is made electronically in the 'Electronic Cash Ledger'. The date of debit of tax payable in the Ledger operated by the common portal is the date of payment of tax. Such debit of tax would arise only in the event of filing of statutory Return.

4.2.3. From the foregoing discussions, it is evident that unless the GST Registrant files the Returns and a debit entry towards tax liability is made in the Electronic Credit and Cash ledgers, in respect of the tax liability for the relevant tax period, it cannot be considered as tax payment made. In this regard, the observations of the Honorable Telangana High Court, in the Writ Petition No.44517 of 2018 filed M/s.Megha Engineering & Infrastructures Ltd, are relatable to the discussions made above.'

13. The contention of the petitioner has been rejected to this extent, and liability computed as follows:

4.9. Calculation of interest on delayed 'cash payments under the Reverse Charge Mechanism (RCM):

4.9.1. Now, after the above-mentioned amendments in law, interest on delayed payment of GST is chargeable only on net tax liability (cash portion). As per the verification report submitted by the Jurisdictional Deputy Commissioner, Sriperumbudur Division, the GST Registrant is liable to pay amount of Rs.67,84,030/ [under the Reverse Charge Mechanism (RCM), payable in cash, for the month of July 2017], which the GST Registrant had deposited on 19.08.2017 and adjusted the said amount at the time of filing GSTR 3B for the month of June 2019, Le, on 19.07.2019. Here, interest liability arises on the delayed payment of tax (under RCM, tax payable only in cash). Table B, gives a detailed account of calculation of interest liability.

4.9.2 In view of the discussions in above paragraphs, M/s. India Yamaha, the GST Registrant, is liable to pay the interest on cash payments towards RCM, in as much as the Goods and Services Tax, for the months of July, August, September and October, 2017, were paid belatedly as worked out in Table B below. Since the payment was not made on or before the due date, the GST Registrant shall be liable for payment of interest on delayed payment of tax starting from 26th day of August, 2017 till the date of debit in the electronic cash ledger on filing of Return.

INTEREST CALCULATION ON DELAYED CASH PAYMENTS UNDER RCM								
Tax Period	IGST	CGST	SGST	Total	Due date to pay tax	Date of payment	No.of days delayed	Interest Payable
(a)	(b)	(c)	(d)	(e)	(k)	(l)	(m)	(n)
Jul-17	2,09,252	6,752,	6,752	2,22,756	25.08.17	20.09.2017	26	2,856
Jul-17	65,80,578	1,01,726	1,01,726	67,84,030	25.08.17	19.07.2019	693	23,18,465
Aug- 17	18,36,76,20 0	4,83,127	4,83,127	18,46,42,45 4	20.09.17	14.12.2017	85	77,39,807
Sep- 17	5,38,91,358	12,17,481	12,17,481	5,63,26,320	20.10.17	20.12.2017	61	16,94,419
Oct- 17	83,45,296	7,82,906	7,82,906	99,11,108	20.11.17	20.12.2017	30	1,46,630

Total	25,27,02,68 4	25,91,992	25,91,99 2	25,78,86,66 8				1,19,02,17 8
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Table-B

4.9.3. Further to the judicial precedents discussed above, it is an established principle of law that interest is compensatory in nature. Hon'ble Supreme Court in the case of Pratibha Processors Union of India - 1996 (88) E.L.T. 12 (S.C.) = [2002-TIOL-273-SC-CUS](#)

held, that Interest is compensatory in character and is imposed on an assessee who has withheld payment of 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.

4.9.4 In view of the above discussion and findings, as the law on payment of interest on delayed payment of GST stands today, in the light of the representation dated 28.09.2017 made by the GST registrant, the interest on delayed payment of tax (cash under RCM), worked out as per Table B above, payable by the GST registrant, works out to Rs.1,19,02,178/- (Rupees One Crore, Nineteen Lakh, Two Thousand, One Hundred and Seventy Eight).

14. In deciding this issue, what must weigh with the Court is the pointed and specific language of Section 50 of the Act and I have extracted Section 50 of the Act below. I find that the language used is categoric to the effect that it is only when a remittance is effected by way of debit, that an assessee would be protected from the levy of interest. Acceding to the stand of the petitioner would result in rewriting the proviso, to the effect that, even mere availability of credit would insulate the petitioner from interest, which, in my view, is impermissible.

15. The provisions of Section 50 are extracted below:

Section 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.]

16. That apart, there is some force to the submissions of the respondents that credit cannot, prior to availment be taken to construe the payment. There are any number of situations where credit may be found to have been availed erroneously or on a mistaken interpretation of law. Thus, it would be risky, from the view-point of the revenue, to state as a general proposition that the mere availability of electronic credit should be assumed to be utilization that would insulate the petitioner from the levy of interest. Thus, 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.

17. Learned counsel for the petitioner relies upon a judgment of the Hon'ble Supreme Court in the case of ***Union of India Vs Bharti Airtel Limited & Ors (2021 (11) TMI 109- SC) = [2021-TIOL-251-SC-GST](#)***

. The aforesaid judgment had been rendered in the context of rectification of Form GSTR-3B by that assessee. The challenge before the High Court had related to the timelines for filing of GSTR-3B and revision thereof and the relief sought for, by way of extension of such timelines. The request had been acceded to by the High Court that had permitted the rectification of GSTR-3B form as sought.

18. In appeal, the decision was reversed by the Supreme Court and the appeal filed by the Union, allowed. Though this judgment does not specifically bear upon this issue, the attempt of the petitioner is to refer to paragraph Nos.33 to 36 where the Court refers to the scheme of the TNGST Act. The Court observes that a registered person is obliged to self-assess its turnover after reckoning its eligibility to ITC and Outward Tax Liability (OTL) taking note of the balances lying in its cash or credit ledgers.

19. These observations, though rendered in the context of rectification of GSTR-3B, are relied upon by the petitioner to suggest that availability of credit would suffice to exonerate it from both non-filing of return as well as tax liability. The Nagpur Bench of the Bombay High Court, in the case of Mahavir Manakchand Bhansali Vs Commissioner of Income Tax, has held that while the normal rule of interpreting the physical statute is the literal rule of interpretation, when Parliament enacts a law, it proceeds, the Bench states, on the basis that the State will act fairly and not place an unjustified burden upon the subject. This decision has been rendered in the context of the Income Tax Act, 1961, and application of the ratio of this decision will depend on whether or not the impugned action is found to be proper and legally sound.

20. Though a slew of judgments have been cited and relied upon by the petitioner and I have perused the same carefully, ***Eicher Motors Ltd. And Another Vs. Union of India and Others*, [(1999) 2 SCC 361] = [2002-TIOL-149-SC-CX-LB](#), *Commissioner of C.Ex., S.T. & Cus., Cochin Vs. Fact Ltd.*, [(2017) 355 ELT 55] = [2016-TIOL-3420-HC-KERALA-CX](#), ***N.C.Mukherjee and Co. V.s Union of India and Another*, [68 ITR 500] = [2002-TIOL-1877-SC-MISC-CB](#), *Vijaya oil Mills Vs. State of Kerala*, [(1979 (Tax. L.R. 1799)] and *Mahant Bhagwan Bhagar Vs. G.N.Bhagat and Others*, [(1972) 1 SCC 486], I find that none of the decisions touch upon the specific points agitated in this writ petition.****

21. The specific issue raised relates to the levy of interest u/s 50 of the Act in a situation where the petitioner has not filed its returns of turnover for a particular period and the remittance of taxes for the aforesaid periods is admittedly belated. The petitioner argues that no interest need be levied on the strength of the balances lying to its credit in the ECR and ECRR. This peculiar issue has not been decided in any of the decisions cited, and on the basis of the detailed discussion as above, I hold this issue, adverse to the petitioner.

22. This Writ Petition is partly allowed, to the extent of the relief granted under order dated 18.01.2021 and the demand, as per aforesaid order, stands confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

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