

Recovery of interest for late GST payment needs to be adjudicated in case of dispute, says HC

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Goods & Services Tax (GST) authority cannot raise demand or initiate recovery of interest on late payment of tax without adjudication in case of a dispute, a High Court has ruled.

Amid lockdown, a division Bench of Jharkhand High Court, using video conference, delivered judgment to interpret certain Sections on the GST Act. These Sections deal with interest on delayed payment of tax (Section 50), determination of tax not paid or short-paid or erroneously refunded or input tax credit wrongly availed of or utilised for any reason other than fraud or any wilful misstatement or suppression of facts (Section 73 & 74) and recovery of tax (Section 79).

“Liability of interest is automatic, but the same is required to be adjudicated in the event an assessee disputes the computation or very leviability of interest, by initiation of adjudication proceedings under Section 73 or 74 of the CGST Act. In our opinion, till such adjudication is completed by the Proper Officer, the amount of interest cannot be termed as an amount payable under the Act or the Rules,” the Bench said. Further, it ordered that without initiation of any adjudication proceedings, no recovery proceeding under Section 79 of the Act can be initiated for recovery of the interest amount.

Every GST assessee is required to file the return GSTR 3B (actual tax paid) after depositing the tax. Due date for completion of the process is 20 days from the end of month for businesses with turnover of more than 5 crore; for those with less than 5-crore turnover, the due date in some States/UTs is 22nd day and, in the remaining States/UTs, it is 24th day from the end of month. Delay will result in interest being levied.

In the matter under consideration, the Jharkhand-based company Mahadeo Construction was saddled with interest of over 19.5 lakh for delayed filing of GSTR-3B returns for February and March 2018. The petitioner submitted that, according to GSTN portal, the due date for filing of the return for February 2017-18 and March 2017-18, was March 31, 2019. The returns for both months were filed within the stipulated date.

Bank account attached

However, as the petitioner submitted, the tax authority sent a demand for payment of interest amounting to over 19.5 lakh for filing the delayed GSTR-3B. Later, the bank account of the petitioner was attached for non-payment of interest. The petitioner further submitted that not only the respondent (authorities without initiating adjudication process) straight away demanded interest from the petitioner in a most arbitrary and illegal manner, by adopting extra legal steps, initiating garnishee proceedings under Section 79 of the CGST Act for recovery of interest.

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A garnishee proceeding refers to a legal action where the creditor is allowed to collect due amount from the debtor's bank account or any other means.

Responding to the petitioner's submission, the respondent (tax authority) said that the present dispute pertains to recovery of interest not on the grounds of delay in filing GSTR-3B return, but for delayed payment of tax. Further, for the tax authority, once there is a delay in payment of tax, the liability to pay interest on the same becomes automatic, for which no separate proceedings are required to be initiated for determining such interest liability.