

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P(T)/1908/2020**

**With**

**W.P(T)/1915/2020**

**With**

**W.P(T)/1910/2020**

**With**

**W.P(T)/1907/2020**

**With**

**W.P(T)/1909/2020**

**With**

**W.P(T)/1912/2020**

**With**

**W.P(T)/1921/2020**

**With**

**W.P(T)/1911/2020**

**With**

**W.P(T)/1913/2020**

**With**

**W.P(T)/1914/2020**

....

**MS BGR MINING AND INFRA LIMITED** ..... Petitioner (in all cases)

**Versus**

**The State of Jharkhand Through The Secretary Cum**

**Commissioner, State Tax Department & Ors. ... Respondents (in all cases)**

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**CORAM: The Hon'ble Mr. Justice Aparesh Kumar Singh**

**The Hon'ble Mrs. Justice Anubha Rawat Choudhary**

**Through Video Conferencing**

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**For the Petitioner : Mr. Sumeet Gadodia, Adv.**

**For the Respondents : Ms. Darshana Poddar Mishra, A.A.G.-I**

**Mr. Sachin Kumar, A.A.G.-II**

**Mr. P.A.S. Pati, S.C.-IV**

**Mr. Navneet Toppo, A.C. to S.C-V**

**Mr. Salona Mittal, A.C. to G.A.-I**

**Mr. Ratnesh Kumar, Adv.**

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**03/16.12.2020**

Reference may be made to the order dated 2<sup>nd</sup> December 2020

passed in W.P.(T) No.1908/2020. Mr. Ratnesh Kumar had accepted notice on behalf of the Goods and Service Tax Council in this matter on that date.

However, Mr. Ratnesh Kumar informs that there is a revision in the panel of the counsels appearing for C.G.S.T. Council in view of the order dated 7<sup>th</sup> December 2020 passed by the Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India. Mr. P.A.S. Pati and Mr. Amit Kumar have been appointed as counsels to represent the C.G.S.T. Council henceforth. The formal process of handing over of the files may take about one week to the new counsel.

Mr. Gadodia, learned counsel for the petitioner has referred to the notification dated 25<sup>th</sup> August 2020 issued by the CBIC whereby the Central Government has appointed 1<sup>st</sup> day of September 2020 as the date on which the provisions of Section 100 of the Finance (No.2) Act, 2019 (23 of 2019) have been brought into force. Section 100 of the Finance Act 2019 is an amendment in Section 50 of the C.G.S.T. Act by insertion of a proviso as under :-

*“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.”*

The issue relating to interest for delay in payment of G.S.T. on the net cash tax liability w.e.f. 1<sup>st</sup> July 2017 was taken up in the 39<sup>th</sup> meeting of the G.S.T. Council as per the press release dated 14<sup>th</sup> March 2020 issued by the CBIC. Learned counsel submits that by a communication dated 18<sup>th</sup> September 2020 issued by the CBIC addressed to all the Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All), the Principal Director General / Director Generals (All) on the subject of administrative instructions for recovery of interest on net cash tax liability w.e.f. 1<sup>st</sup> July 2017, the following instructions have been issued :-

*“3. Post issuance of notification 63/2020- Central Tax dated the 25<sup>th</sup> August 2020, there were apprehensions raised by taxpayers that the said notification is issued contrary to the Council’s recommendation to charge interest on net cash liability w.e.f. 01.07.2017. Consequently, a press release dated 26.08.2020 was issued to clarify the position. Further, in order to implement the decision of the Council in its true spirit, and at the same time working within the present legal framework, it has been decided to address the issue through administrative arrangements, as under :*

- a. For the period 01.07.2017 to 31.08.2020, field formations in your jurisdiction may be instructed to recover interest only on the net cash tax liability (i.e. that portion of the tax that has been paid by debiting the electronic cash ledger or is payable through cash ledger); and*
- b. Wherever SCNs have been issued on gross tax payable, the*

*same may be kept in Call Book till the retrospective amendment in section 50 of the CGST Act is carried out.”*

In the present batch of cases, the appellate orders confirming the adjudication orders are under challenge. Learned counsel for the petitioner submits that insistence on recovery of interest on gross tax liability would be unfair and improper by the assessing officers in the light of the latest decision of the CBIC conveyed to all concerned. He has also referred to a decision of the Bombay High Court rendered in Writ Petition (ST.) No.826 of 2020 ***Royal Chins Private Limited Vs. Union of India & Ors.*** dated 8<sup>th</sup> October 2020 wherein the Hon'ble Court has disposed of the petition in terms of the stand taken by the respondents through the administrative instruction of the CBIC on the question of recovery of interest for the period 1<sup>st</sup> July 2017 to 31<sup>st</sup> August 2020 on the net cash liability. Similar decisions have been rendered by other High Courts such as Madras High Court.

Learned counsel for the State and the CGST Council are required to seek specific instructions on this issue and make their stand clear by the next date. Let these cases appear on 14<sup>th</sup> January 2021.

***(Aparesh Kumar Singh, J.)***

***(Anubha Rawat Choudhary, J.)***

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