

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 3508 of 2021

With

W.P.(T) No. 3509 of 2021

With

W.P.(T) No. 3531 of 2021

With

W.P.(T) No. 3532 of 2021

With

W.P.(T) No. 3533 of 2021

With

W.P.(T) No. 3534 of 2021

M/s BGR Mining & Infra Limited, Dhanbad. --- Petitioner (in all cases)

Versus

1. The State of Jharkhand through the Secretary
—cum- Commissioner, State Tax Department, Ranchi.
 2. Joint Commissioner of State Tax (Appeal), Dhanbad Division,
Dhanbad.
 3. Deputy Commissioner of State Tax, Dhanbad Circle, Dhanbad.
 4. Goods and Services Tax Council through its Secretary, New Delhi.
- --- Respondents (in all cases)

CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh
Hon'ble Mrs. Justice Anubha Rawat Choudhary

For the Petitioner	: Mr. Sumeet Gadodia, Advocate
For the Resp.-State	: Mr. Sachin Kumar, AAG-II
	Ms. Surabhi, A.C to AAG-II
	[In W.P.(T) Nos. 3508, 3509, 3533 of 2021]
	Mr. Ashok Kr. Yadav, G.A.I
	[In W.P.(T) Nos. 3532, 3534 of 2021]
For the Resp.-CGST	: Mr. P.A.S. Pati, Advocate

05/03.11.2021 Heard learned counsel for the petitioner and learned counsel for the respondents.

2. In all these writ petitions common appellate order dated 22nd February 2021 (Annexure-15) passed by the Joint Commissioner of State Tax (Appeal), Dhanbad Division, Dhanbad in Appeal Case Nos. DH/GST-14/2019-20, DH/GST-13/2019-20, DH/GST-17/2019-20, DH/GST-12/2019-20, DH/GST-15/2019-20 and DH/GST-16/2019-20 are under challenge relating to the period of April 2019, March 2019, July 2019, February 2019, May 2019 and June 2019 respectively whereby the appeal filed by the petitioner against the adjudication order levying interest upon the petitioner under Section 50 of the Jharkhand Goods and Services Tax Act, 2017 on gross tax liability has been dismissed. The total interest liability imposed by the

adjudication order has been upheld in appeal and are indicated in the form of a chart at internal page-7 of the impugned order.

3. Learned counsel for the petitioner has stated at para-49 of W.P.(T) No.3508 of 2021 that the petitioner has got gross tax liability of Rs.25,52,42,916/- out of which an amount of Rs.4,26,21,158/- has been adjusted through ITC available to it and the rest amount of Rs.21,26,21,759/- has been discharged by utilizing Electronic Cash Ledger. The petitioner was liable to pay interest on the Net Tax Liability of Rs.89,21,451/- from the period February 2019 to July 2019 which was duly discharged by the petitioner through Form DRC-03 dated 25.11.2020 (Annexure-8). Learned counsel for the petitioner has submitted that the respondent- Joint Commissioner, State Tax (Appeal), Dhanbad Division, Dhanbad had, earlier in the case of the same petitioner, also passed a similar order upholding levy of interest on gross tax liability under Section 50 of the JGST Act, 2017 which was for the period April 2018 to January 2019 and was under challenge in a batch of writ petitions led by W.P.(T) No.1908/2020 (M/s. BGR Mining & Infra Limited, Dhanbad Vs. State of the Jharkhand & Ors.). This Court has by order dated 21st January 2021 after taking note of the administrative instruction contained in the communication dated 18th September 2020 issued by the Central Board of Indirect Taxes and Customs on the subject of recovery of interest on net tax liability w.e.f. 1st July 2021 and also the counter affidavit and supplementary affidavit of the State wherein the respondent Department had categorically stated at para-6 of the supplementary affidavit that after issuance of the above administrative instructions by the CBIC the State authorities are imposing interest on net tax liability, disposed of the writ petition. The submission of learned A.A.G-I was also taken note of that the State authorities are imposing interest on net tax liability only as per the administrative instructions of CBIC. It is submitted that the Joint Commissioner, State Tax (Appeal), Dhanbad has failed to take note of the order dated 21st January 2021 passed by this Court on identical issue in the case of the same petitioner while upholding the adjudication order imposing interest upon the gross tax liability. The order dated 21st January 2021 passed in the case of the present petitioner should govern the present batch of writ petitions where identical issues are involved. It is further submitted that the respondent by way of a counter affidavit filed in W.P.(T) No.3508 of 2021

have also realized their folly and reiterated that the appellate authority failed to consider the order passed by this Court due to inadvertence.

4. Learned A.A.G.-II Mr. Sachin Kumar and learned G.A.-I Mr. Ashok Kumar Yadav appearing for the State submit that the same stand as indicated in the supplementary affidavit filed in W.P.(T) No. 3508/2021 is being adopted in the other connected cases as the issues are common. It is further submitted that the issue of levy of interest on net tax liability is being governed by the administrative instruction issued by CBIC and State authorities are also now imposing interest on net tax liability. The stand of the respondent State as reflected in the previous batch of cases of the same petitioner is being reiterated herein as well.

5. We have considered the submissions of learned counsel for the parties on the present challenge relating to levy of interest upon gross tax liability under Section 50 of the JGST Act, 2017 as has been upheld by the appellate order dated 22nd February 2021 passed by the respondent no.2 Joint Commissioner of State Tax (Appeal), Dhanbad (Annexure-15) in 6 appeals preferred by the petitioner for the period covering February 2019 to July 2019 in individual cases. Since the respondent State have also reiterated their stand as taken note of in the order dated 21st January 2021 passed in the batch of writ petitions led by W.P.(T) No.1908/2020 in the case of the same petitioner covering different period from April 2018 to January 2019, no fresh determination on this issue is required. The issue relating to levy of interest on net tax liability under Section 50 of the JGST Act, 2017 shall stand governed by the order dated 21st January 2021, the operative part whereof is quoted hereunder for proper appreciation :-

“We have considered the submission of learned counsel for the parties in respect of the issue of levy of interest under Section 50 of the Act on the gross tax liability as upheld in appeal by the Respondent Joint Commissioner of State Sales Tax (Appeal), Dhanbad Division. We have also taken note of the CBIC circular dated 18th September, 2020 quoted hereinabove. The Respondent-State by way of supplementary counter affidavit has made a categorical statement that after issuance of the above Administrative Instructions by CBIC, the State authorities are also imposing interest on Net Tax Liability. Having regard to the categorical stand of the respondent State, for the present, it appears to us that there is no purpose in keeping the writ petitions pending for decision on the challenge to the appellate order made herein on the grounds urged. However, liberty is reserved with

the petitioner to approach the Court in case the respondent State chooses to realize interest on the gross tax liability for the subject period covered under the appellate order.

Accordingly, the writ petitions are disposed of in the aforesaid term.”

6. These writ petitions are disposed of in the manner indicated herein above.

(Aparesh Kumar Singh, J)

(Anubha Rawat Choudhary, J)

Shamim/