

GIB/JK/MAHADEO/21-04-2020/HC-123**High Court Category :** GSTN-Portal**State :** Jharkhand**Order No.:** GIB/JK/MAHADEO/21-04-2020/HC-123**Name of Entry :**

Mahadeo Construction Co.

Date : 21-04-2020**Breif Issue :****Facts & Issue of the case**

The petitioner, “Mahadeo Construction Co.” is a partnership firm, registered under the provisions of the CGST Act. It is the case of the petitioner that in GSTN Portal, due date for filing of GSTR 3B Return for the month of February, 2018 and March, 2018 was reflecting as 31st March 2019 and the petitioner reasonably believed that due date of filing of GSTR-3B Return for the months of February and March, 2018 has been extended up to 31st March, 2019 and in the said background, the petitioner filed its monthly return for the month of February, 2018 and March, 2018 within the due date as reflected in GSTN Portal. The petitioner was served with a letter by Superintendent of Goods and Services Tax and Central Excise directing the petitioner to make payment of interest amounting to Rs.19,59,721/- on the ground of delay in filing of GSTR-3B Return for the months of February and March, 2018.

The respondent-Authorities further exercised powers under Section 79 of the CGST Act by initiating garnishee proceedings for recovery of aforesaid amount of interest by issuing notice to the petitioner’s Banker. The petitioner has submitted that the impugned letter dated 08.03.2019 issued by authority demanding interest amount of Rs.19,59,721/- on the ground of delay in submitting GSTR-3B Return for the months of February and March, 2018, is not sustainable in the eyes of law, as the said amount of interest has been determined without initiating any adjudication process under Sections 73 or 74 of the CGST Act. It is the specific case of the petitioner that the petitioner is not liable to pay interest as there has been no delay on its part in furnishing of GSTR-3B Return and, consequentially, there is no delay on its part in depositing the tax with the respondent Authority, as in GSTN Portal, due date for furnishing of return for the months of February and March, 2018 was shown as 31st March, 2019. It has been further argued by petitioner that if the amount of interest is not admitted by an assessee, the same requires determination through an adjudication process to be initiated as per the detailed provisions contained under Section 73 of the CGST Act.

The respondent authority submitted that the present dispute pertains to recovery of interest not on the ground of delay in filing of GSTR-3B Return, but on the ground of delayed payment of tax beyond the stipulated date as prescribed under Section 39(1) read with Section 39(7) of the CGST Act. It is submitted by revenue that, once there is a delay in payment of tax, the liability to pay interest on the

same becomes automatic, for which no separate proceedings is required to be initiated for determining such interest liability. Further, while referring to Section 73 or 74 of the CGST Act, it has been contended that said Sections are not applicable in the instant case, as it relates only to demand and recovery of tax not paid or short paid either on account of fraud or willful misstatement or suppression of facts, or otherwise. It has been further contended by the respondents that due date as reflected in GSTN Portal as “31st March, 2019” for furnishing of GSTR-3B monthly return for the months of February and March, 2018 was reflecting owing to the fact that Central Government, through Central Board of Indirect Taxes and Customs, vide Notification No. 76/2018-Central Tax dated 31st December, 2018 has waived the levy of late fee for furnishing returns for the months of July, 2017 to September, 2018, if the said returns were furnished between the period 22nd December, 2018 to 31st March, 2019, and the said Notification cannot be interpreted to mean that the last date of filing of GSTR-3B Return has been extended up to 31st March, 2019. Learned counsel for the revenue, in support of his contention that liability for payment of interest is automatic and does not require any adjudication process has relied upon the following two decisions, namely, **U.P. Cooperative Cane Unions Federations vs. West U.P. Sugar Mills Association & ors. and Commissioner of Central Excise vs. International Auto Limited**

Decision of Advance Ruling Authority :

Decision

The order dated 08.03.2019 issued by authority is quashed/set aside and, further, garnishee notice contained in the Order dated 22.05.2019 issued under Section 79 of the CGST Act to the Banker of the petitioner for recovery of interest amount of Rs.19,59,721/- is also, quashed/set aside by the court.

Court in its proceedings analysed the question that if an assessee, who has already paid tax, but has paid the same after some delay, would fall within the expression “tax not being paid or short paid”. The Court, while interpreting the term “tax not paid” has held that if a tax has not been paid within the prescribed period, the same would fall with the expression “tax not paid” as mentioned under Section 73 of the CGST Act. If an assessee disputes the liability of interest i.e. either disputes its calculation or even the leviability of interest, then the only option left for the Assessing Officer is to initiate proceedings either under Section 73 or 74 of the Act for adjudication of the liability of interest.

The court after going through provisions of Section 73 and 74 held that, the 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 court’s 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. **Thus, without initiation of any adjudication proceedings, no recovery proceeding under Section 79 of the Act can be initiated for recovery of the interest amount.**

It shall be open for the respondent Authorities to initiate appropriate adjudication proceeding either under Section 73 or 74 of the CGST Act (as the case may be) against the petitioner-assessee and determine the liability of interest, if any, in accordance with law after giving due opportunity of hearing to the petitioner.