

**GIB/GJ/RAJKAMAL BUILDER /23.03.2021/HC-226**

**High Court Category :** VALUATION AND INTEREST

**State :** Gujarat

**Order No.:** GIB/GJ/RAJKAMAL BUILDER /23.03.2021/HC-226

**Name of Entry :**

RAJKAMAL BUILDER INFRASTRUCTURE PRIVATE LIMITED

**Date :** 23-03-2021

**Breif Issue :**

**FACTS OF THE CASE:**

This writ application is filed against the order dated July 19, 2019 issued to M/S. Rajkamal Builder Infrastructure Private Limited ("Applicant") in Form GST DRC-01 under Section 50 of the Central Goods and Services Tax Act, 2017 for recovery of the amount towards interest on delayed payment of tax on gross tax liability.

It has been contended by the Applicant that the order has been issued without any authority of law and the demand raised by the Revenue Department ("Respondent") is not in accordance with law.

**ISSUE OF THE CASE:**

Whether interest under Section 50 of the CGST Act is to be levied on the net tax liability or on the gross tax liability?

Whether issuance of Form GST DRC-01 under Section 50 of the CGST Act is legal and proper?

**Decision of Advance Ruling Authority :**

**DECISION:**

Relied on the proposed amendment in Section 50 of the CGST Act vide clause 112 of the Finance Act, 2021 to state that the interest under Section 50 of the CGST Act can only be levied on the net tax liability and not on the gross tax liability. Thus, the demand raised by the Respondent is not in accordance with law.

Observed that the Respondent has issued Form GST DRC-01 under Section 50 of the CGST Act, whereas Rule 142(1)(a) of the Central Goods and Services Tax Rules, 2017 indicate that Form GST DRC-01 can be served by the proper officer along with the notice issued

under Section 52 or Section 73 or Section 74 or Section 76 or Section 122 or Section 123 or Section 124 or Section 125 or Section 127 or Section 129 or Section 130 of the CGST Act and that too, electronically as a summary of notice.

Stated that, Form GST DRC-01 could not have been issued for the purpose of recovery of the amount towards interest on delayed payment of tax. Further stated that, the notice should have been issued in Form GST DRC-07 as per Section 75(12) of the CGST Act read with Rule 142(5) of the CGST Rules. The notice should specify the amount of tax, interest and penalty payable by the person chargeable with tax.

Thus, it can be concluded that the notice should have been issued in Form GST DRC 07. The Notice should specify the amount of tax, interest and penalty payable by the person chargeable with tax - the Form GST DRC 01 could be said to have been issued without any authority of law.

The impugned order issued in GST DRC 01 is hereby ordered to be quashed and set aside - Application allowed.