

GIB/KN/LC INFRA/22-07-2019/HC-59**High Court Category :** INTEREST**State :** Karnataka**Order No.:** GIB/KN/LC INFRA/22-07-2019/HC-59**Name of Entry :**

LC Infra Projects Pvt. Ltd.

Date : 22-07-2019**Breif Issue :****Fact & Issue Involved:**

The petitioner is a dealer registered under the provisions of the Goods and Service Tax (GST) Act, 2017 (hereinafter referred to as the 'Act for short). The petitioner was entitled to claim the Input Tax Credit for the GST paid by the sub-contractors while filing its GST returns. Since some of the sub-contractors had not uploaded the invoices and filed their returns as a result of which ITC to which the petitioner was entitled to was not being tallied.

The third respondent addressed an e-mail seeking clarification of availments of ITC. The third respondent contended that there was an excess availment of ITC to the tune of Rs.2,62,48,383/-. The petitioner pointed out that the ITC differential credit is not pertaining to the petitioner, relating to the tax period in question. The petitioner has been levied tax on the unpaid tax without issuing Show Cause Notice and thereafter, the Demand Notice has been issued claiming the tax amount of Rs.13,63,864/- and interest amount of Rs.81,29,684/- payable by the petitioner. The third respondent vide its letter dated 07.05.2019 has sought for attachment of the bank.

Decision of Advance Ruling Authority :**Decision:**

Section 73 of the Chapter XV of the Act – contemplates that where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should

not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

Thus, the issuance of Show Cause notice is sine qua non to proceed with the recovery of interest payable thereon under Section 50 of the Act and penalty leviable under the provisions of the Act or the Rules. Undisputedly, the interest payable under Section 50 of the Act has been determined by the third respondent – Authority without issuing Show Cause Notice, which is in breach of principles of natural justice. It is trite law that any order passed by the quasi-judicial authorities in contravention of the principles of natural justice, cannot be sustained. Similarly, after determination of the interest liable to be paid by the petitioner, no notice has been issued before attaching the bank account of the petitioner. There is a lapse on the part of the third respondent Authority. The notion of the third respondent – Authority that Section 75(12) of the Act empowers the authorities to proceed with recovery without issuing Show Cause Notice is only misconceived. The said Section is applicable only to the self-assessment made by the assessee and not to quantification or determination made by the Authority.

Considering these aspects, it is ex-facie apparent that action of the third respondent is perverse and illegal and the same deserves to be set aside. Hence, the orders impugned at Annexure–J dated 04.03.2019 as well as Annexure– L dated 07.05.2019 are quashed with liberty to the third respondent to proceed in accordance with law. All rights and contentions of the parties are left open.

Further, this order of the Single Judge Bench was taken to Division Bench of Karnataka High Court by the respondent Authority. The decision of Division bench is available on following link.

[GIB/KN/LC INFRA PROJECTS/03-03-2020/HC-121](#)