IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22.12.2023
Pronounced on	23.01.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.16866 & 22013 of 2023
and
W.M.P.No.32200 of 2023

M/s.Eicher Motors Limited,
Represented by its Group Manager, Finance,
Mr.R.Hari Prasad,
Royal Enfield (A Unit of Eicher Motors Limited),
PO Box No.5284, Tiruvottiyur High Road,
Tiruvottiyur, Chennai 600 019.

... Petitioner in both petitions

Vs.

1.The Superintendent of GST and Central Excise,
Range II, Tiruvottiyur Division,
459, Ananda Complex,
1st Floor, Anna Salai, Teynampet,
Chennai 600 018.

2.The Assistant Commissioner of Central Tax & Central Excise,
Tiruvottiyur Division, Chennai-North Commissionerate,
No.459 (Old No.317), Anna Salai,
Teynampet, Chennai 600 018.

... Respondents in both petitions

Common Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the impugned letter dated 16.05.2023 bearing DIN 20230559TK00020650 issued by the 1st respondent impugned order OC.No.77/2023 bearing DIN 20230759TK000000E36E dated 12.07.2023 passed by the 1st respondent respectively and quash the same.

For Petitioner
in both petitions : Mr.Vijay Narayan,
Senior counsel
for Mr.Raghavan Ramabadran
for Lakshmi Kumaran Sridharan Attorneys

For Respondents
in both petitions : Mr.A.P.Srinivas,
Senior Standing counsel,
Assisted by Mr.K.S.Ramaswamy,
Junior Standing counsel.

COMMON ORDER

The writ petition in W.P.No.16866 of 2023 has been filed challenging the Recovery notice dated 16.05.2023 issued by the respondent.

2. The writ petition in W.P.No.22013 of 2023 has been filed challenging the impugned order dated 12.07.2023 passed by the respondent.

3. The brief facts of the case are as follows:

3.1 The petitioner is a renowned manufacturer of mid-sized motorcycles (250-750CC), vide HS Code 8711 led by the iconic brand Royal Enfield, with its manufacturing unit in Tamil Nadu. They have their Global Head Quarters in Chennai and three manufacturing facilities at Oragadam, Vallam and Tiruvottiyur. The petitioner is operating through their dealers and distributors and by means of more than 1000 large stores and 900 studio stores in major cities and also having more than 800 authorized dealers in India alone.

3.2 The petitioner has paid a sum of Rs.15,033 Crores as GST for the period from the year 2017-18 till the year 2023. Out of the said amount, a sum of Rs.10,871 Crores was paid using the Input Tax Credit and a sum of Rs.4,162 Crores was paid in cash.

3.3 On the date of introduction of GST i.e., 01.07.2017, the petitioner had an accumulated balance of a sum of Rs.33,87,10,445/- as CENVAT credit ready to be transitioned into the GST regime. However, owing to want of system readiness and technical glitches in the GST Common Portal during the initial stages of implementation of GST, the Department had extended the due dates for filing the Form GST TRAN-1 from time to time and accordingly, the petitioner had filed their Form GST TRAN 1 on 16.10.2017 under Sections 140(1) and 140(3) of the Goods and Services Tax Act, 2017 (hereinafter called as "GST Act").

3.4 Due to unknown reasons, the credit in entirety sought to be transitioned was not made available forthwith as Input Tax Credit (ITC) on furnishing of Form GST TRAN-1 on 16.10.2017. Further, since the entire amount of Rs.33,87,10,445/- did not reflect in the Electronic Credit Ledger, the petitioner could not file the monthly return in Form GSTR-3B for July 2017 within the due date i.e., 28.08.2023. Such non-filing of Form GSTR-3B for July 2017 had a domino effect and the petitioner was

unable to file the GSTR-3B for subsequent months from August, 2017 to December, 2017, since Section 39(10) of CGST Act disables an assessee from filing returns for the subsequent period if the returns for the previous tax period are not furnished. Though the petitioner was disabled from filing the returns, the petitioner had ensured that the tax dues are fully paid within the due dates without any delay and accordingly, the petitioner had discharged GST liability for the period from July, 2017 to December, 2017 by depositing the tax amounts in the Electronic Cash Ledger under the appropriate heads as CGST, SGST, IGST into the Government account within the due date for each month.

3.5 The entire amount of accumulated credit was not transitioned and hence, the petitioner was constrained to file revised GST TRAN-1 on 27.12.2017. On such filing, the aforesaid amount of transitioned credit got reflected in the petitioner's Electronic Credit Ledger, which enables the petitioner to file Form GSTR 3B for the month of July, 2017. Since the return for July, 2017 was filed, the GST portal permitted the petitioner to file the returns for the subsequent months as well.

Accordingly, the petitioner filed all the Returns from the month July, 2017 to December, 2017 on 24.01.2018.

3.6 After a lapse of around 6 years, the petitioner was visited with a Recovery notice dated 16.05.2023, demanding the payment of interest of a sum of Rs.23,76,26,657/- for alleged belated payment of GST from July, 2017 to December, 2017. The said recovery proceedings were initiated directly even without the issuance of show cause notice. Even after the filing of a detailed response by the petitioner vide their letter dated 29.05.2023, the recovery proceedings were not withdrawn by the Department and hence, the petitioner challenged the said Recovery notice in W.P.No.16866 of 2023, in which, vide order dated 07.06.2023, this Court had granted stay of recovery proceedings subject to the payment of 30% of the interest amount demanded in the Letter dated 16.05.2023. Aggrieved by the said interim order dated 07.06.2023, the petitioner had preferred an appeal in W.A.No.1263 of 2023 before the Hon'ble Division Bench of this Court. In the said writ appeal, an order came to be passed on 20.06.2023, wherein the Hon'ble Division Bench of this Court had

directed the 1st respondent to consider the petitioner's representation dated 29.05.2023 and pass an order within a period of 3 weeks.

3.7 Pursuant to the said order dated 20.06.2023, the Department considered the petitioner's representation and passed an order dated 12.07.2023 confirming the demand of interest against the petitioner. Aggrieved over the said order dated 12.07.2023, the petitioner had filed W.P.No.22013 of 2023.

3.8 The common issue involved in both these writ petitions is as to whether the petitioner is liable to pay interest of the GST amount, which was routinely deposited into the ECL within the due date. However, the case of the Department is that the deposit of tax in Electronic Cash Ledger would not amount to payment of tax and would tantamount to failure to remit GST in time, for which interest liability would be attracted.

4. Petitioner's Submission:

4.1 Mr.Vijay Narayan, learned Senior counsel appearing for the petitioner would submit that the tax amount is duly remitted by the petitioner to the Government treasury account maintained with RBI and the said amount is paid to the Government (both Central and State) under the appropriate heads such as CGST, SGST, IGST, etc., through the treasury challans in Form PMT-06. Further, he would submit that a reading of Section 49(1) of GST Act read with RBI FAQ makes it clear that the money is transferred from Assessee's account to the Government's account at the time of payment into ECL. At FAQ No.8 of the FAQ dated 14.04.2020 issued by the RBI, it has been stated that *"RBI has also facilitated payment of GST by tax payers directly into Government accounts at RBI by using NEFT/RTGS payment options provided in GST Portal"*. Further, Explanation (a) to Section 49 of GST Act, also clarifies that the deposit to ECL is nothing but deposit in Government Account maintained with RBI.

4.2 Further, he would contend that any amount paid into ECL

cannot be withdrawn by the taxpayer at their sweet will i.e., once the money is deposited into the account of Government maintained with RBI, the same will not be refund unless a suitable order is passed by the Department. Section 49(6) of the GST Act states that any balance in ECL after the payment of GST would be refunded to the Assessee in terms of Section 54 of CGST Act read with Rule 89 of CGST Rules. On the other hand, if the Department wishes to recover any amount from the taxpayer, they can easily recover the same from the ECL vide a mere entry for appropriation of amount against the pending tax demand without any recourse or knowledge or permission of the Assessee. Therefore, he would submit that the amount upon deposit into the ECL belongs to the Government.

4.3 It was also submitted by the learned Senior counsel that debit to ECL is only a journal entry and the same will not take away the fact that the tax already stands paid at the time of remittance into the Government account under Section 49(1) of the GST Act. Further, he would submit that the Personal Ledger Account under Central Excise

Regime is akin to the ECL in GST Regime.

4.4 He would also submit that in the 27th GST Council meeting dated 04.05.2018, the delay in filing the GSTR 3B by tax payers due to technical glitches in the filing of Form TRAN 1 was recognised and as a result, the GST Implementation Committee had approved the waiver of Late Fee on such delayed filing.

4.5 Further, he would contend that in the present case, there is no element of withholding of tax as the petitioner had rightly deposited the amount into ECL on time. Therefore, since there is no basis to levy the demand for interest by the Department and Section 50(1) of GST Act is not attracted in this case.

4.6 It is also brought to the knowledge of this Court by the learned Senior counsel that a query was raised under the Right to Information Act, 2005 (hereinafter called as "RTI Act") on how the GST collection figure is arrived at by the Government and the RTI response, which was

issued by the Ministry of Finance Department of Revenue, set outs that GST collection figures are prepared on the basis of the amount deposited in the electronic cash ledger.

4.7 Further, it was submitted that a writ petition in W.P.No.20158 of 2023 has been filed by the petitioner challenging the retrospective operation of the proviso to Section 50(1) of the CGST Act and Rule 88B(1) and (2) of the CGST Rules and the same is pending before this Court. However, in the present case, though the proceedings were initiated by the Department on the strength of the above provisions, since there is no failure to pay the tax in time, Section 50 of the GST Act will not be applicable to the present case.

4.8 In support of his contention, the learned Senior counsel had referred to the following judgements passed by the Hon'ble Apex Court:

(i) ***Munshi Ram and another vs. Balkar Singh and others*** reported in ***2016 SCC OnLine P&H 11166;***

(ii) ***CIT vs. Modipon Ltd*** reported in ***2017 (356)***

ELT 481 (SC);

4.9 Therefore, he would submit that there was no tax liability even as on the delayed date of filing of returns. Hence, the question of imposing of penalty, interest, etc., would not arise since the same has been waived by the GST Council even for the delayed filing of GSTR returns. Under this circumstances, he requested to set aside the impugned proceedings of the Department.

5. Respondent's submission:

5.1 Per contra, Mr.A.P.Srinivas, learned Senior Standing Counsel, appearing for the respondents would submit that the petitioner being a registered dealer, they are required to file the monthly returns along with self-assessed admitted tax under Section 39(7) of the GST Act on or before 20th of the succeeding months. However, the same was belatedly filed by the petitioner for the period from July, 2017 to December, 2017. Hence, by virtue of Section 50 of the Act, the petitioner was requested to pay the interest vide Recovery notice dated 16.05.2023. However, the

petitioner had declined to remit the demanded interest and challenged the said Recovery notice vide W.P.No.16866 of 2023.

5.2 Further, he would submit that according to the petitioner, since the Department had not granted the "transitional credit", the petitioner was prevented from filing the monthly GSTR-3B returns in time and hence, the same was filed belatedly till December, 2017.

5.3 He would also explained the steps that has to be performed by the petitioner and submitted that it is the duty of a registered dealer to upload the TRAN-1 Form and there is no role for the respondent to grant any "transitional credit" under Section 140 of the GST Act read with Rule 117 of the GST Rules, unless the Form TRAN-1 was uploaded by the petitioner in the GST Portal. Once the said Form TRAN-1 is uploaded, the same will be carried forward and the transitional credit will be credited to the ECL of the petitioner. Hence, he would submit that the non-availability of "Transitional Input Tax Credit" has no bearing for filing the mandatory monthly returns in GSTR-3B on the 20th day of the

succeeding month.

5.4 Further, he would contend that though the time for filing the TRAN-1 was extended by the Government from time to time, there was no extension to file the monthly returns in Form GSTR-3B. Therefore, since the transitional credit can be availed as and when it is credited to the ECL and as and when Form TRAN-1 was filed by the respondent, the reasons assigned by the petitioner for non-filing of monthly returns is not correct.

5.5 He would also submit that there is no reason for the petitioner to retain the GST collected from their customers to the tune of Rs.527.54 Crores and detain the same in the ECL for non-availability of TRAN-1 credit of Rs.33,87,10,445/-. Since the petitioner is only an "authorised agent" to collect the GST on behalf of the Government, they should be responsible to remit the same on or before the 20th of succeeding month, failing which will attract the "compensatory interest" under Section 50 of the GST Act.

5.6 Further, he would submit that the “cash”, which is paid vide challan generated under Rule 87(7) of the GST Rules, is only a “deposit” of such amount as specifically clarified in explanation to Section 49 of the GST Act read with Rule 87 of the GST Rules and such “deposit” in the petitioner's own ECL is not the tax paid to the Government, unless the said amount is debited while filing the monthly GSTR-3B returns. Section 49(3) of the GST Act clearly states that the amount available in ECL may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the Rules made thereunder. Therefore, the tax liability is self-assessed by the tax payer by filing GSTR1 returns and the tax amount paid under the heads IGST, CGST, SGST, cess, interest, fees, etc., are to be paid under the respective heads by filing GSTR-3B returns and after the debiting such amount from the ECL only, the tax liability is said to be discharged, otherwise, the said amount reflects as credit balance in ECL, which the petitioner can get back at any time by filing a refund application under Section 54 of GST Act within a stipulated time limit.

5.7 He would also submit that a combined reading of Sections 50, 75(12) and 79 makes it clear that there is no requirement of issuance of any show cause notice for recovery of unpaid interest on self-assessed tax.

5.8 Therefore, he would contend that being aware of the amount of credit available, the petitioner had failed in filing the mandatory GSTR-3B returns in time and requested for dismissal of these writ petitions. Further, in support of his contentions, he had referred the following judgements:

(i) ***Refex Industries vs. Assistant Commissioner of CGST*** reported in ***2020 SCC Online Mad 587;***

(ii) ***Manasarover Motors P Ltd vs Assistant Commissioner*** reported in ***2020 SCC Online Mad 28155;***

(iii) ***Srinivasa Stampings vs. SPT of GST & CE*** in ***W.P.No.7129 of 2021***

(iv) ***P.K.Ores P Ltd vs Commissioner of State Tax*** reported in ***MANU/OR/236/2022;***

(v) ***Orissa Stvedores Ltd vs. Union of India*** reported in ***MANU/OR/1116/2022;***

(vi) ***RSB Transmission (India) Ltd. vs. Union of India*** reported in ***MANU/JH/1260;***

(vii) ***Haji Lal Mohd Biri Works vs. State of Uttar Pradesh*** reported in ***(1974) 3 SCC 137;***

(viii) ***The Sales Tax Officer vs. Dwarika Prasad Sheo Karan Dass*** reported in ***(1977) 1 SCC 22;***

(ix) ***Khazan Chand vs. State of Jammu and Kashmir*** reported in ***(1984) 2 SCC 456;***

(x) ***Prahlad Rai vs. Sales Tax Officer*** reported in ***(1991) Supp (2) SCC 612;***

(xi) ***Commissioner of Sales Tax vs. Qureshi Crucible*** reported in ***(1993) Supp (3) SCC 495;***

6. I have given due consideration to the submissions made by Mr.Vijay Narayan, learned Senior counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondents and also perused the materials available on record.

7. In the present case, on the date of introduction of GST i.e., 01.07.2017, the petitioner had an accumulated balance of a sum of

Rs.33,87,10,445/- as CENVAT credit ready to be transitioned into the GST regime. However, due to the technical glitches and other difficulties faced by the assessees, the petitioner was not able to file the GST TRAN-1 in time, however, the Department had extended the due dates for filing the Form GST TRAN-1 from time to time and accordingly, the petitioner had filed their Form GST TRAN 1 on 16.10.2017 under Sections 140(1) and 140(3) of the GST Act.

8. Further, since Form GST TRAN 1 was not filed in time by the petitioner, the credit in entirety sought to be transitioned was not made available as ITC and thus the entire amount of Rs.33,87,10,445/- did not reflect in the Electronic Credit Ledger, therefore the petitioner could not file the monthly return in Form GSTR-3B for July 2017 within the due date i.e., 28.08.2023. Due to such non-filing of Form GSTR-3B for July 2017, the petitioner was unable to file the GSTR-3B for subsequent months from August, 2017 to December, 2017, since Section 39(10) of GST Act disables an assessee from filing returns for the subsequent period if the returns for the previous tax period are not furnished. Though

the petitioner was disabled from filing the returns, the petitioner had discharged GST liability in time without any delay for the period from July, 2017 to December, 2017 by depositing the tax amounts both in the Electronic Credit Ledger and Electronic Cash Ledger under the appropriate heads as CGST, SGST, IGST into the Government account within the due date for each month as provided under the Act.

9. Thereafter, the petitioner was constrained to file revised GST TRAN-1 on 27.12.2017 and on such filing, the aforesaid amount of transitioned credit got reflected in the petitioner's Electronic Credit Ledger, which enables the petitioner to file Form GSTR 3B for the month of July, 2017. Since the returns for July, 2017 was filed by the petitioner, the GST portal permitted them to file the returns for the subsequent months as well. Accordingly, the petitioner filed all the Returns from the month July, 2017 to December, 2017 on 24.01.2018.

10. The GST Council at its 26th meeting held on 10.03.2018, it had discussed about the reversal of late fee paid by the tax payers on filing

the Form GSTR-3B due to delay in filing Form GST-TRAN-1 in Item No.4.10. The said decision taken by the GST Council is extracted hereunder:

> *"**4.10. Agenda Item 9-Reversal of late fee paid by taxpayers on filing of FORM GSTR-3B due to delayed filing of FORM GST TRAN-1***
>
> *4.10.1. Commissioner (GST Policy Wing), CBIC stated that in the 15 meeting of GIC held on 26 03 2018, it was recommended that the taxpayers, who could not submit FORM GST TRAN-1 due to technical errors, should be allowed to authenticate and file the same by 30.04.2018 and that those taxpayers who were not able to file FORM GSTR-3B due to non-filing of FORM GST IRAN-1, shall be allowed to file the same by 31.05 2018. He informed that the GSTN has sent a proposal to waive late fee on delayed filing of FORM GSTR-3B in such cases. He further stated that to enable such waiver through notification, a class of taxpayers has to be defined for the 17,573 such identified cases, CEO, GSIN replied that the formulation of such definition and the list of 17,573 taxpayers would be prepared by GSTN*
>
> *4.10.2. Special Secretary, GST Council observed that such waiver/reversal of the late fee may be conditional upon the taxpayers authenticating and filing FORM GST*

TRAN-1 and associated FORM GSTR-3B by 30.04.2018 and 31.05.2018 respectively.

4.10.3. After discussion, GIC approved the following:

i. Waiver of late fee on such delayed filing of FORM GSTR-3B of taxpayers who could not submit FORM GST TRAN-1 due to technical errors.

ii. Such waiver shall be conditional upon the taxpayers authenticating and filing FORM GST TRAN-1 and associated FORM GSTR-3B by 30.04.2018 and 31.05.2018 respectively.

iii.GSTN shall prepare a formulation defining 17,573 taxpayers to enable preparing of notification and also send the list of 17,573 taxpayers to the GST Policy Wing."

11. A perusal of the above minutes of GST Council shows that they had waived the late fee for belated filing of Form GSTR-3B and Form GST-TRAN-1 due to the technical glitches.

12. If an Assessee had failed to file the Form GSTR-3B returns for a month on the due date, he cannot be permitted to file the Form GSTR-3B returns for the subsequent months in terms of the provisions of

Section 39(10) of the GST Act, which reads as follows:

> *"**Section 39- Furnishing of returns**.-*
>
> *(1) to (9).....*
>
> *(10) A registered person shall not be allowed to furnish a returns for a tax period if the return for any of the previous tax periods has not been furnished by him."*

13. A perusal of the above makes it clear that no registered person can furnish a monthly return for tax, if the return for tax of any previous tax periods has not been furnished by them.

14. Though the credit around a sum of Rs.33 crores was available under the CENVAT Regime for transition to the GST Regime, the petitioner was not able to file the Form GST-TRAN-1 due to technical glitches in time.

15. Further, in terms of the provisions of Section 39(10) of the Act, if the entire amount payable as tax has been paid before the last date for filing Form GSTR-3B Form, i.e., on or before 20th of succeeding month,

no Assessee can upload the Form GSTR-3B. In the present case, since the Form GST-TRAN-1 was not able to upload, by the petitioner, they were unable to upload the Form GSTR-3B for the month of July, 2017 and thereafter.

16. Even though the petitioner was not able to file the GSTR-3B returns in time, they had duly paid the entire tax amount in time in the manner stated below:

Month (2017)	***Gross Tax Liability (Rs. in Crore)***	***ITC (Rs. in Crore)***	***Net liability (Rs. in Crore)***	***Paid through ECL before due date (Rs. in Crore)***	***Actual Payment date per ECL***	***Due date for payment***
July	202.81	113.59	89.21	89.21	28.08.2017	25.08.2017
August	197.06	103.28	93.78	93.78	20.09.2017	20.09.2017
September	206.66	119.53	87.13	87.13	17.10.2017	20.10.2017
October	189.93	105.11	84.82	84.82	20.11.2017	20.11.2017
November	207.49	128.70	78.79	78.79	20.12.2017	20.12.2017
December	217.78	123.98	93.80	93.80	19.01.2018	22.01.2018
TOTAL	1221.73	694.19	527.54	527.54		

17. Therefore, except the pending transitional CENVAT credit to the extent of a sum of Rs.33 crores for the month of July, 2017, all the

other amounts have been credited to Electronic Credit Ledger and Electronic Cash Ledger and there was no due as on the date of filing of Form GSTR-3B returns. The following table also shows the actual due date for filing of Form GSTR-3B returns for the respective months and the date on which the Form GSTR-3B returns were filed by the petitioner:

Month (2017)	***Due date for filing Form GSTR 3B***	***Date of filing Form GSTR 3B***
July	28.08.2017	24.01.2018
August	20.09.2017	31.01.2018
September	20.10.2017	02.02.2018
October	20.11.2017	07.02.2018
November	20.12.2017	07.02.2018
December	22.01.2018	14.02.2018

18. Though there was a delay in filing the returns, the entire tax amount has been deposited in time to the Government without any delay in the manner stated above at paragraph No.16.

19. According to the respondent, the amount available in ECL will be transferred to the Government by virtue of debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.

Debiting the said payment would occur only on the date when the petitioner file the Form GSTR-3B returns. Thus, it was contended if there is any delay in filing the Form GSTR-3B returns, the interest will be accrued in terms of provisions of Section 50 of the GST Act.

20. The further contention of the respondent was that the amount available in the ECL is not the amount available for the Government and the same can be utilised only upon the debiting of payment therefrom towards the tax by the petitioner. Unless and otherwise the debit entry is made in the ECL, it is not the money of the Government. Thus, the Government cannot use the said amount available in ECL. On the other hand, the money available in both the Electronic Cash Ledger and Electronic Credit Ledger is the money, which belongs to the Assessee till the time of debit entry is made in the GSTR-3B returns and uploading of the same electronically.

21. The judgement rendered the Hon'ble Division Bench of the Jharkand High Court, in ***RSB Transmission*** case (referred supra) has

been referred by the learned Senior Standing counsel appearing for the respondent, wherein at paragraph No.15 it has been stated as follows:

> *"15. ..... Under the Scheme of the GST Act, no person can make payment of tax prior to the filing of Form GSTR-3B returns, though such deposits may be made are lying in his electronic cash ledger. The tax liability gets discharged only upon filing of Form GSTR3B returns, the last date of which is 20th of the succeeding month, of which the tax is due and even though the Form GSTR3B returns can be filed prior to the last date and such tax liability can be discharged on its filing, but mere deposit of amount in the electronic cash ledger on any date prior to filing of GSTR3B return, does not amount to payment of tax due to its State exchequers....."*

22. By referring the above judgement, he would submit that in terms of Section 50 of the GST Act, the proceedings has been launched against the petitioner for the belated filing of Form GSTR-3B returns and for the payment of the self-assessed tax, beyond the due date for which the petitioner is liable to pay the interest at a sum of Rs.23,76,26,657/-.

23. However, Mr.Vijayanarayan, learned Senior counsel, who is appearing for the petitioner would submit that it is not correct to state that the instance of payment of tax would occur only after filing the GSTR3B returns but otherwise when the actual payment of tax made to the Government in terms of the explanation (a) to Section 49(11) of the Act.

24. Under these backgrounds, now let me examine the legal position by referring the various provisions of the Act, Rules made thereunder and case laws of various High Courts and Hon'ble Apex Court. In such view, it would be apposite to extract the provisions of Section 39(1) of the Act, which states as follows:

> *"**39. Furnishing of returns.**— (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both,*

input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof."

25. A reading of the above provision will reveal that every Registered person has to file the returns for every calendar month or part thereof electronically to furnish the following details:

a) inward and outward supply of the goods or services or both;
b) input credit available;
c) tax payable;
d) **tax paid;**
e) such other particulars;

26. In view of the above, it is clear that in the monthly returns i.e., Form GSTR-3 or GSTR-3B, it is mandatory to provide the details about the **tax paid**, which means that prior to filing Form GSTR-3B, the tax should have been paid by the registered person as provided in Section 39(1) of the Act.

27. Now, let me examine as to how the tax required to be paid before filing the GSTR-3B returns. For this purpose, it would be apposite to extract Form GST PMT-06 challan, which is to be generated for the purpose of payment of tax. The format of the said challan is extracted hereunder:

Form GST PMT –06

(See Rule ----)

Challan for deposit of goods and services tax

CPIN	<<Auto Generated after submission of information>>	Date <<Current date>>	Challan Expiry Date --

GSTIN	<<Filled in/Auto populated>>	Email address	<<Auto Populated>>
Name (Legal)	<<Auto Populated>>	Mobile No.	<<Auto Populated>>
Address	<<Auto Populated>>		

Details of Deposit (All Amount in Rs.)

Government	Major Head	Minor Head					
		Tax	Interest	Penalty	Fee	Others	Total
Government of India	Central Tax (----)						
	Integrated Tax (----)						
	CESS (----)						
	Sub-Total						
State (Name)	State Tax (----)						
UT (Name)	UT Tax (----)						
Total Challan Amount							
Total Amount in words							

Mode of Payment (relevant part will become active when the particular mode is selected)

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☐ e-Payment (This will include all modes of e-payment such as CC/DC and net banking. Taxpayer will choose one of this)	☐ Over the Counter (OTC)		
	Bank (Where cash or instrument is proposed to be deposited)		
	Details of Instrument		
	☐ Cash	☐ Cheque	☐ Demand Draft

☐ NEFT/RTGS	
Remitting bank	
Beneficiary name	GST
Beneficiary Account Number (CPIN)	<CPIN>
Name of beneficiary bank	Reserve Bank f India
Beneficiary Bank's Indian Financial System Code (IFSC)	IFSC of RBI
Amount	

Note: Charges to be separately paid by the person making payment.

Particulars of depositor	
Name	
Designation/ Status (Manager, partner etc.)	
Signature	
Date	

Paid Challan Information	
GSTIN	
Taxpayer Name	
Name of Bank	
Amount	
Bank Reference No. (BRN)/UTR	
CIN	
Payment Date	
Bank Ack. No. (For Cheque / DD deposited at Bank's counter)	

Note - UTR stands for Unique Transaction Number for NeFT / RTGS payment.

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28. In the above Form GST PMT-06, for deposit of GST, there is a column for mode of payment. In the said portion, the details of the remitting bank, beneficiary name, beneficiary account number, name of beneficiary bank, beneficiary bank's IFSC code and amount has to be

mentioned. In the present case, the name of the beneficiary bank has been mentioned as Reserve Bank of India. Therefore, whatever the amount deposited by the petitioner, the same will go to the Reserve Bank of India under the name of GST, where the Government has been maintaining their account. The date of deposit through Form GST PMT-06 is the date of credit of GST to the Government account. Thus, the tax can be remitted to the Government well before the filing of Form GSTR-3B monthly returns by using GST PMT-06.

29. At this juncture, it is also relevant to extract Form GSTR3B, which is supposed to be filed by any registered person on or before 20th of every month:

FORM GSTR-3B

[See rule 61(5)]

Year	
Month	

1.		GSTIN	
2.		Legal name of the registered person	Auto Populated

3.1 Details of Outward Supplies and inward supplies liable to reverse charge

Nature of Supplies	Total Taxable value	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
(a) Outward taxable supplies (other than zero rated, nil rated and exempted)					
(b) Outward taxable supplies (zero rated)					
(c) Other outward supplies (Nil rated, exempted)					
(d) Inward supplies (liable to reverse charge)					
(e) Non-GST outward supplies					

3.1.1. Details of supplies notified under sub-section (5) of section 9 of the Central Goods and Services Tax Act, 2017 and corresponding provisions in Integrated Goods and Services Tax/Union Territory Goods and Services Tax/State Goods and Services Tax Acts.

Description	Total Taxable Value	Integrated Tax	Central Tax	State/UT Tax	Cess
(1)	(2)	(3)	(4)	(5)	(6)
(i) **Taxable supplies on which electronic commerce operator pays tax under Sub-section (5) of Section 9** [To be furnished by the electronic commerce operator]					
(ii) **Taxable supplies made by the registered person through electronic commerce operator, on which electronic commerce operator is required to pay tax under Sub-section (5) of Section 9** [To be furnished by the registered person making supplies through electronic commerce operator].					

3.2 Of the supplies shown in 3.1 (a) above, details of inter-State supplies made to unregistered persons, composition taxable persons and UIN holders

	Place of Supply (State/UT)	Total Taxable value	Amount of Integrated Tax
1	2	3	4
Supplies made to Unregistered Persons			
Supplies made to Composition Taxable Persons			
Supplies made to UIN holders			

4. Eligible ITC

Details	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5
(A) ITC Available (whether in full or part)				
(1) Import of goods				
(2) Import of services				
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)				
(4) Inward supplies from ISD				
(5) All other ITC				
(B) ITC Reversed				
(1) As per rules 42 & 43 of CGST Rules				
(2) Others				
(C) Net ITC Available (A) – (B)				
(D) Ineligible ITC				
(1) As per section 17(5)				
(2) Others				

5. Values of exempt, nil-rated and non-GST inward supplies

Nature of supplies	Inter-State supplies	Intra-State supplies
1	2	3
From a supplier under composition scheme, Exempt and Nil rated supply		
Non GST supply		

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6.1 Payment of tax

Description	Tax payable	Paid through ITC				Tax paid TDS./TCS	Tax/Cess paid in cash	Interest	Late Fee
		Integrated Tax	Central Tax	State/UT Tax	Cess				
1	2	3	4	5	6	7	8	9	10
Integrated Tax									
Central Tax									
State/UT Tax									
Cess									

6.2 TDS/TCS Credit

Details	Integrated Tax	Central Tax	State/UT Tax
1	2	3	4
TDS			
TCS			

Verification (by Authorised signatory)

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed there from.

Instructions:

1) Value of Taxable Supplies = Value of invoices + value of Debit Notes – value of credit notes + value of advances received for which invoices have not been issued in the same month – value of advances adjusted against invoices

2) Details of advances as well as adjustment of same against invoices to be adjusted and not shown separately

3) Amendment in any details to be adjusted and not shown separately.

30. In the above form, the particulars, which were sought under Section 39(1) of the Act, has to be stated in the column No.6.1, which states about the **payment of tax.** Further, in the 2nd column of 6.1, the details of **tax payable** under the Integrated tax, Central tax, State and Union Territory tax and Cess has to be stated and this will be the total tax liability of a Registered person for the relevant month for which the return is filed. Further, the column Nos. 3, 4, 5 and 6 of 6.1 (payment of tax), states about the tax **paid through ITC** under the different heads, the **column No.7** deals with the **details of tax paid by way of TDS/TCS** and the **column No.8** states about the **tax/cess paid in cash.**

31. Therefore, it is clear that prior to the filing of the Form GSTR-3B, the tax should have been paid by using GST PMT-06 and that is the reason why the details of the payment of tax is required to be furnished in the said form irrespective of time of filing the GSTR-3B, whether it is before or after the due date for filing the returns.

32. Now let me examine as to what is the last date for payment of tax, by a registered person, to the Government? For this purpose, it is just and necessary to extract the provisions of Section 39(7) of the Act, which reads as follows:

> *"39. (7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return."*

33. A reading of the above provisions will reveal that every registered person, who is required to furnish the returns under Sub-Section (1) of Section 39 of the Act, shall pay the tax dues to the Government as per such return not later than the last date, on which he is required to furnish such return. Thus, it is clear that not later than the last date of filing of Form GSTR-3B, i.e., on or before 20th of every month, the tax should have been paid to the Government. The last date for payment of tax to Government would be the date not later than the last

date on which he is required to furnish the monthly return. Thus, for payment of tax to Government filing the monthly returns is not the matter but the last date for furnishing the monthly return is important. Thus, whether the monthly return is filed in time or not but the GST has to be remitted not later than the last date for filing the monthly returns.

34. Now, a question may arise as to how the tax to be paid to the Government. In the present case, the tax has been paid by using the Form GST-PMT-06. In such case, if any amount is paid by virtue of Form GST PMT-06 as discussed in paragraph No.27 hereinabove, it will first credit to the account of the Government and thereafter only, it will deemed to be credited to the Electronic Cash Ledger. To explain further, it would be apposite to extract the explanation (a) to Section 49(11) of the Act, which states as follows:

> *"**49. Payment of tax, interest, penalty and other amounts.—** (11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in subsection (1).*

Explanation: For the purpose of this Section,-

(a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;

(b) the expression,-

(i) "tax dues" means the tax payable under this Act and does not include interest, fee and penalty and

(ii) "other dues" means interest, penalty, fee or any other amount payable under this Act or the Rules made thereunder;"

35. A reading of the above explanation makes it clear that the date of credit to the account of Government in an authorised bank shall be deemed to be the date of deposit in the Electronic Cash Ledger. Therefore, once the Form GST PMT-06 is generated and if any amount is paid through the said form in the authorised bank, the same will be credited to the account of the Government and thereafter only, it will be deemed to be credited to the Electronic Cash Ledger. When the GST is paid by using Form GST PMT-06, it will be credited in the following manner:

1) First the GST amount will be credited to the account of the Government;

2) Secondly, the date, on which it is credited to the Government, is deemed to be the date of deposit in the Electronic Cash Ledger.

36. Thus, it is clear that in terms of Section 39(1) of the Act, while filing the the monthly returns in Form GSTR-3 or GSTR-3B, the registered person/assessee has to state the amount of tax paid, which means before the filing of returns, the tax should have been paid.

37. Further, Section 39(7) of the Act states that the tax should have been paid to the Government before the last date for filing the GSTR-3B returns, which means the instance of payment of tax would occur not later than the last date of filing of GSTR-3B returns. Thus it is immaterial whether GSTR-3B is filed within due date or not for remittance of tax to the account of Government. In view of the above, it is not correct to state that the instance of payment of tax to Government would occur only upon the filing of GSTR-3B return and thereafter by debiting the

electronic credit ledger or electronic cash ledger. The assessees have been maintaining said ledgers, only for the purpose of accounting, while, the entire tax to be paid to the Government directly by using the Form GST PMT-06 not later than the last date for filing the Form GSTR-3B.

38. The GST, which has been collected by a registered person by virtue of sale or otherwise, is the amount of the Government and thus, the same can not be retained by any registered person/assessee forever atleast up to the date of filing of GSTR-3B returns but immediately. As soon as the collection is made, the said amount shall be deposited in the account of Government by generating Form GST PMT-06, since the said amount is belonging to the Government. Thus, once it is deposited, it should be made available to the Government for their use and the Government cannot wait or postpone the utilisation of the said amount until the date of filing of the GSTR-3 or GSTR-3B by the registered person. At any cost, the exchequers cannot be deprived of its right to utilise the amount deposited into the Government account under the pretext of non-filing of GSTR-3B monthly returns.

39. Before the introduction of Electronic Cash Ledger and Electronic Credit Ledger, a registered person used to maintain a physical ledger and the same has been now converted into the Electronic form of cash/credit Ledgers. Ultimately, the assessees/registered person, who have been maintaining these ledgers would quantify their tax liability for the relevant month and to ensure as to whether the said tax liability has been paid to the Government or not and to determine the eligibility for refund, if any, etc. Only for the said limited purposes, the Electronic Cash Ledger and Electronic Credit Ledger have been maintained and it is not that the tax liability would be discharged only on the date when the GSTR-3B has been filed. But it is ultimate proof/account for discharge of tax liability. The said discharge of tax liability will happen on different date, which is prior to the filing of GSTR-3B monthly return, in terms of provisions of Section 39(1) and 39(7) of the Act, whenever the GST payment is remitted to the account of Government by the registered person.

40. Whenever, the GST has been paid by using Form GST PMT-06, the tax liability will be discharged to that extent. Thus, the filing of GSTR-3B would ensure the complete discharge of GST liability by the registered person through the accounting entries in the respective ledgers. Hence, it does not mean that only when the GSTR-3B is filed, the Government can utilise the GST collection made by the registered person i.e., it is not that until the filing of monthly returns, the registered person can retain the said amount in the Electronic Cash Ledger or Electronic Credit Ledger forever. From the moment it is deposited by generating GST PMT-06, it is the money of the exchequers, since the money was collected only under the name of the exchequer in the form of GST.

41. A combined reading of aforementioned provisions of Section 39(1), 39(7) and Explanation (a) to Section 49(11) of the Act along with Forms viz., Form GST PMT-06, Form GSTR-3 and Form GSTR-3B makes it clear that the payment of tax will always be made not later than the last date for filing the GSTR-3 or GSTR-3B monthly returns, i.e., on or before 20th of every month.

42. Thus, the submissions of the learned Senior Standing counsel for the respondents that the GST can be paid only after filing the GSTR-3B, is against the provisions of Sections 39(1), 39(7) and Explanation (9) to Section 49(11) of the Act.

43. As discussed above, for the payment of tax to the account of Government, the filing of GSTR-3B is immaterial, which means either with or without filing of monthly returns, the tax can be remitted to the Government. Therefore, no interpretation can be made as held in the judgement of the Hon'ble Division Bench of Jharkand High Court rendered in ***RSB Transmission*** case (referred supra) stating that no payment of tax can be made until the filing of GSTR-3B, which is against the provisions of Section 39(1) and 39(7) of the Act and thus, the said finding would render a disastrous consequences in utilisation of GST collections by the exchequers. Merely, for the default on the part of a registered person in filing the GSTR-3B, the utilisation of tax amount, which was already deposited into the account of Government, cannot be

postponed. The GST collections made by the registered person, have been made on behalf of Government and once the said collections were deposited to the Government account and the same is made available to the Government for its use at once, otherwise the rights of the exchequers in utilising the GST collections in time for welfare measures of public will be deprived, which is not permissible under the Act.

44. In the present case, as stated above, the GST amount has been paid by generating GST PMT-06 before the due date without any delay. If any amount is deposited after due date, for the said amount alone, the payment of interest would arise in terms of provisions of Section 50(1) of the Act.

45. Now let me examine Section 49(1)(3) & (6) of the Act and thus, it would be apposite to extract the same, which reads as follows:

> *"**49. Payment of tax, interest, penalty and other amounts.—** (1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person*

by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

(2) .....

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4).....

(5).....

(6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54."

46. Section 49(1) of the Act deals with the amount to be credited to the Electronic Cash Ledger i.e., every deposit made towards the tax,

interest, penalty, fee or any other amount shall be credited to the Electronic Cash Ledger of such person to be maintained in such manner as may be prescribed. Further, as discussed above, the explanation (a) to Section 49(11) of the Act clearly states that any tax amount, which is to be paid by generating GST PMT-06, will be directly credited to the account of the Government and thereafter, for the purpose of accounting, it would deemed to be credited to the Electronic Cash Ledger, which is only for the limited purpose of the quantification of the liability towards GST and to verify as to whether the entire liability has been paid/ deposited/ discharged by the registered person in accordance with the provisions of the Act and Rules made thereunder. It is not that the discharge has been made only when the debit entries are made since whenever the amount is deposited or credited to the Government, that will be the actual date of discharge of tax liability to the extent of deposit and the ECL is only a ledger which will ultimately ensure the discharge of tax liabilities are made in time as per the due date.

47. Section 49(3) of the Act states that the amount available in the Electronic Cash Ledger may be used for making any payment towards

tax, interest, penalty, fees or any other amount etc., which means upon payment of tax by a registered person under the IGST, CGST, SGST, if any excess amount is available under any particular head, the said person can utilise said amount against other heads of tax liabilities, if there is any due. The amount available under one head can be utilized against the other head in terms of the provisions of Section 49(3) of the Act.

48. Section 49(6) of the Act states that the balance amount in electronic cash ledger or electronic credit ledger after the payment of tax/interest/penalty/fee or any other amount, payable under the Act and Rules made thereunder, will be refunded in accordance with Section 54 of the Act. The excess amount will be refunded, since the claim for refund would be made while filing the GSTR-3 and the column No.14 deals with the refund claim made by a registered person. Therefore, in this background, let me examine the provisions of Section 50(1) of the Act, which reads as follows:

> *"**50. Interest on delayed payment of tax.**— (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made*

thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council"

49. A reading of the above provision makes it clear that every person, who is liable to pay the tax in accordance with the provisions of the Act and Rules made thereunder, but fails to pay the tax within a prescribed period, which remains unpaid, shall pay on his own interest at such rate not exceeding 18% per annum.

50. The aforesaid Section deals with the interest, which has to be paid, if the tax is not paid within the prescribed period. If such being the case, what would be the prescribed period? To answer this, we have to analyse the provisions of Section 39(7) of the Act.

51. The provisions of Section 39(7) of the Act states that the tax

shall be paid to the Government not later than the last date, on which he required to furnish the monthly returns in terms of Section 39(7) of the Act, otherwise, the tax has to be paid along with interest in terms of the provisions of Section 50(1) of the Act. Thus, the prescribed date mentioned in Section 50(1) of the Act refers to the last date for payment of GST in terms of the provisions of Section 39(7) of the Act.

52. In the present case, the notice was sent in terms of the proviso to Section 50(1) of the Act, whereby called upon the petitioner to pay interest. At this juncture, it would be apposite to extract the proviso to Section 50(1) of the Act hereunder:

> *"**50. Interest on delayed payment of tax.—***
>
> *(1).....*
>
> *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."

53. The above proviso deals with 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 Section 39 of the Act, shall be payable on that portion of tax, which is paid by debiting the electronic cash ledger.

54. The said provision has been interpreted by the respondents by stating that once if the debit entry is made in the electronic cash ledger, that will be the date of actual payment of tax, whereas, Section 50(1) of the Act states that cash should have been paid to the Government within the prescribed period, which is 20th day of every month in terms of Section 39(7) of the Act. The said prescribed period is the only time limit provided under Section 50(1) of the Act. However, the said proviso was also interpreted otherwise as discussed above vide the judgement rendered in ***RSB Transmission*** case by the Hon'ble Division Bench of the

Jharkand High Court, which is not permissible since the same is beyond the scope of the provision of Section 50(1) of the Act.

55. Normally, a proviso does not travel beyond the provision, to which it is a proviso. It carves out an exception and to the main provision, to which it has been enacted as a proviso to no other. The normal function of a proviso is to except the something out of the enactment or to quantify something enacted therein, which but for the proviso would be within the purview of the enactment.

56. With regard to the above aspect, it would apposite to extract the law laid down by the Hon'ble Apex Court with regard to the usage of the proviso as rendered in ***Romesh Kumar Sharma*** case, which reads as follows:

> *"The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in Mullins v. Treasurer of Survey [1880*

(5) QBD 170, (referred to in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha (AIR 1961 SC 1596) and Calcutta Tramways Co. Ltd. v. Corporation of Calcutta (AIR 1965 SC 1728); when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso." Said

Lord Watson in West Derby Union v. Metropolitan Life Assurance Co. (1897 AC 647)(HL). Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (See A.N. Sehgal and Ors. v. Raje Ram Sheoram and Ors. (AIR 1991 SC 1406), Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal and Ors. (AIR 1991 SC 1538) and Kerala State Housing Board and Ors. v. Ramapriya Hotels (P)Ltd. and Ors. (1994 (5) SCC 672).

"This word (proviso) hath divers operations. Sometime it worketh a qualification or limitation; sometime a condition; and sometime a covenant" (Coke upon Littleton 18th Edition, 146) "If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant, and the earlier clause prevails....But if the later clause does not destroy but only qualifies

the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole" (per Lord Wrenbury in Forbes v. Git [1922] 1 A.C. 256).

A statutory proviso "is something engrafted on a preceding enactment" (R. v. Taunton, St James, 9 B. & C. 836).

"The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances" (per Lord Esher in Re Barker, 25 Q.B.D. 285).

A proviso to a section cannot be used to import into the enacting part something which is not there, but where the enacting part is susceptible to several possible meanings it may be controlled by the proviso (See Jennings v. Kelly [1940] A.C. 206)."

57. In view of the above, it is clear that at any cost, the proviso cannot be beyond the scope of the provision of Section.

58. In the present case, the proviso to Section 50(1) of the Act was interpreted in such way to give a meaning so as to the proviso will override the provision. In the provision of Section 50(1) of the Act, it has been stated that every person is liable to pay tax within the prescribed period. This Court has already given its findings for the words **"prescribed period"** holding that the date prescribed under Section 39(7) of the Act would be the last date for the payment of tax. Hence, when a specific date is prescribed in the provisions, the proviso cannot alter the said date, since it is contrary to that provision. In the present case, the Hon'ble Division Bench of the Jharkand High Court had interpreted the said proviso in such a way that the proviso will override the provision and whereby altered the date for payment of tax to the Government, which is not permissible and thus, the same is contrary to the provisions of Section 50(1) of the Act.

59. Further, Section 54(12) of the Act deals with the payment of

interest at the rate of 6% for the delay in refund of GST. If there is any delay in refund of GST in terms of Section 54(12) of the Act, the Government has to refund the same along with interest. However, the learned Senior Standing counsel for the respondent had contended that no tax amount will be passed on to the Government until the filing of Form GSTR-3B. In such case, merely for taking the refund from ECL, without even passing on the said amount to the Government, why should the Government has to pay the interest for delay in refund at the rate of 6%? Therefore, the submission of the learned Senior Standing counsel, that no tax amount will be passed on to the Government until filing of GSTR-3B, would be contrary to Section 54(12) read with 39(7) of the Act.

60. The respondent's further contention was that as long as the amount is available to the credit of Electronic Cash Ledger, the tax amount would be retained until the suitable debit entries are made by filing GSTR3B. If it is so, then why should Section 54(12) of the Act dealt with the refund with interest for getting back the excess amount of

tax paid by a registered person. Therefore, as discussed above, Electronic Cash Ledger is maintained only for the accounting purpose and ultimately to determine the final tax liability and to verify the payment of said tax liability within the time prescribed under the Act and Rules made thereunder as discussed herein above.

61. A reference has also been made to Rule 61(1) and 61(2) of the GST Rules and it would be apposite to extract the aforesaid rules below:

> ***"Rule 61.Form and manner of furnishing of return.-***
>
> *(1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in* ***FORM GSTR-3B,*** *electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, as specified under -*

(i) sub-section (1) ofsection 39 , for each month, or part thereof, on or before the twentieth day of the month succeeding such month:

(ii) proviso to sub-section (1) of section 39,for each quarter, or part thereof, for the class of registered persons mentioned in column (2) of the Table given below, on or before the date mentioned in the corresponding entry in column (3) of the said Table, namely:-

S.No	***Class of Registered persons***	***Due date***
(1)	*(2)*	*(3)*
1	*Registered persons whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.*	*twenty-second day of the month succeeding such quarter.*
2	*Registered persons whose principal place of business is in*	*twenty-fourth day of the month succeeding*

S.No	Class of Registered persons	Due date
	the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.	*such quarter.*

(2) Every registered person required to furnish return, under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in ***FORM GSTR-3B.”***

62. The aforesaid Rule 61(1) deals with regard to the furnishing the Form GSTR-3B and 61(2) states about the discharge of liability towards the tax, interest, penalty, fees and any other amount under the Act by debiting the electronic cash or credit ledger and include the details

in the GSTR-3B returns.

63. As discussed above, once GSTR-3B is filed, the total amount of tax would be quantified, by which it would be ascertained about the discharge of tax liabilities. In terms of Rule 61(1), the registered person has to file the monthly return on or before 20th of succeeding month.

64. As far as Rule 61(2) is concerned, it deals with the discharge of liability in terms of Section 49(1) of the Act. This Court had already discussed above elaborately about when the instance of discharge of tax liability would occur.

65. Further, a reference was also made to Rules 87(6) and 87(7), which is extracted hereunder:

"Rule 87. Electronic Cash Ledger.-

(6) On successful credit of the amount to the concerned government account maintained in the

authorised bank, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan.

(7) On receipt of the Challan Identification Number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect."

66. The aforesaid Rule 87(7) and (8) deals with the credit to Electronic Cash Ledger. Immediately on receipt of challan identification number from the collecting bank, the said amount shall be credited to the Electronic Cash Ledger of the person, on whose behalf the deposit has been made, which means, as stated in Explanation (a) to Section 49(11) of the Act, initially the amount is credited to the Government and thereafter, it will deemed to be credited to the Electronic Cash Ledger, which is an automatic process, i.e., once GSTR-3B is filed, automatically, it will appear in the electronic cash ledger, which is only for the accounting purpose and nothing more than that.

67. In a judgement ***Modipon Ltd*** (referred supra), the Hon'ble Apex Court had taken a similar view and held as follows:

> *"9. Deposit of Central Excise Duty in the PLA is a statutory requirement. The Central Excise Rules, 1944, specify a distinct procedure for payment of excise duty leviable on manufactured goods. It is a procedure designed to bring in orderly conduct in the matter of levy and collection of excise duty when both manufacture and clearances are a continuous process. Debits against the advance deposit in the PLA have to be made of amounts of excise duty payable on excisable goods cleared during the previous fortnight. The deposit once made is adjusted against the duty payable on removal and the balance is kept in the account for future clearances/removal. No withdrawal from the account is permissible except on an application to be filed before the Commissioner who is required to record reasons for permitting an assessee to withdraw any amount from the PLA. Sub-rules (3), (4), (5) and (6) of Rule 173G indicates a strict and vigorous*

scrutiny to be exercised by the central excise authorities with regard to manufacture and removal of excisable goods by an assessee. The self removal scheme and payment of duty under the Act and the Rules clearly shows that upon deposit in the PLA the amount of such deposit stands credited to the Revenue with the assessee having no domain over the amount(s) deposited.

10. .....

11. .....

12. The above discussions, coupled with the peculiar features of the case, noticed above i.e. consistent practice followed by the assessee and accepted by the Revenue; the decisions of the two High Courts in favour of the assessee which have attained finality in law; and no contrary view of any other High Court being brought to our notice, should lead us to the conclusion that the High Courts were justified in taking the view that the advance deposit of central excise duty constitutes actual payment of duty within the meaning of Section 43B of the Central Excise Act and, therefore, the assessee is entitled to the benefit of deduction of the said amount."

68. In the aforesaid case, the interpretation, which was made with regard to the deposit made to the PLA, is squarely applicable to the present case, since in the present case, the issue is with regard to the ECL, which is equivalent to PLA.

69. Further in the judgement of ***Megha Engineering and Infrastructures Limited vs. CCT*** reported in ***MANU/TL/41/2019***, which was rendered by Telangana High Court, it has been held as follows:

> *"37. In other words, until a return is filed as self-assessed, no entitlement to credit and no actual entry of credit in the electronic credit ledger takes place. As a consequence, no payment can be made from out of such a credit entry. It is true that the tax paid on the inputs charged on any supply of goods and/services, is always available. But, it is available in the air or cloud. Just as information is available in the server and it gets displayed on the screens of our computers only after connectivity is established, the tax already paid on the inputs, is available in the*

cloud. Such tax becomes an in-put tax credit only when a claim is made in the returns filed as self-assessed. It is only after a claim is made in the return that the same gets credited in the electronic credit ledger. It is only after a credit is entered in the electronic credit ledger that payment could be made, even though the payment is only by way of paper entries.

38. If we take a common example of banking transactions, this can be illustrated much better. An amount available in the account of a person, though available with the bank itself, is not taken to be the money available for the benefit of the bank. Money available with the bank is different from money available for the bank till the bank is 14 VRS,J & PKR,J W.P.No.44517/2018 allowed to appropriate it to itself. Similarly, the tax already paid on the in-puts of supplies of goods or services, available somewhere in the air, should be tapped and brought in the form of a credit entry into the electronic credit ledger and payment has to be made from out of the

same. If no payment is made, the mere availability of the same, there in the cloud, will not tantamount to actual payment.

39. Admittedly, the petitioner filed returns belatedly, for whatever reasons. As a consequence, the payment of the tax liability, partly in cash and partly in the form of claim for ITC was made beyond the period prescribed. Therefore, the liability to pay interest under Section 50 (1) arose automatically. The petitioner cannot, therefore, escape from this liability."

70. For all the reasons as discussed above, this Court is of the view that the law laid down by the Hon'ble Division Bench of the Jharkand High Court in ***RSB Transmission*** case and the judgement rendered by Telangana High Court in ***Megha Engineering*** case in my humble opinion are not in line with the provisions of the Act and Rules made thereunder and hence, this Court is unable to follow the same.

71. Further, in the judgement of ***Vishnu Aroma Pouching Private***

Limited vs. Union of India reported in ***2020 (38) G.S.T.L. 289 (Guj.)***, the Gujarat High Court had taken a view, which is similar to the view of this Court and held as follows:

> *"12. From the facts as emerging from the record, it is manifest that despite the fact that the petitioner had approached them at the earliest point of time, the respondent authorities maintained silence for a considerable period of time and did not provide remedial measures till directed by this court. The errors in uploading the return were not on account of any fault on the part of the petitioner but on account of error in the system. In these circumstances, it would be unreasonable and inequitable on the part of the respondents to saddle the petitioner with interest on the amount of tax payable for August 2017, despite the fact that the petitioner had discharged its tax liability for such period well within time.*
>
> *13. The respondents, in paragraph 19 of their affidavit-inreply, have submitted that CIN is generated after deposit of money by the petitioner for the purpose of payment of tax. CIN is generated by the authorised banks/ Reserve Bank of India (RBI) when payment is actually received by such authorised banks or RBI,*

which then is seen as credit balance in the electronic cash ledger of the petitioner. In response to such submission made on behalf of the respondents, the learned advocate for the petitioner invited the attention of the court to the averments made in paragraphs 5.4 and 5.5 of the petition, wherein it has been stated that when any payment is made by an assessee by internet banking, a number for the challan for making payment is generated, which is known as Challan Portal Identification Number (CPIN). For two challans dated 19.9.2017, through which the petitioner has paid a total sum of Rs.114.51 crores (rounded off), such CPINs have been generated on the common portal, and such numbers appear on the challans with other details. CPIN for payment of taxes by the petitioner are 17092400195007 and 17092400195744. On successful credit of the amount to the concerned Government account maintained in the authorised bank, a Challan Identification Number is generated by the collecting bank, and the same is indicated in the challan as laid down under subrule (6) of rule 87 of the CGST Rules. In the petitioner's case, such CINs have been generated, and such Challan Identification Numbers have been

recorded on the challans also, which are HDFC17092400195007 and HDFC17092400195744. These facts have not been disputed by the respondents. Thus, it is evident that the amount in question had actually been deposited by the petitioner on 19.9.2017 for the purpose of payment of tax and was received in the bank designated by the respondents. Moreover, it is an admitted fact that Rs.114.51 crores (rounded off) paid in the designated bank on 19.9.2017 and also input tax credit of Rs.14,12,35,762/- debited on 19.9.2017 have been lying to the credit of the GST Department, and the petitioner has not utilised this sum aggregating to Rs.128.63 crores (rounded off) for discharging any other tax liability.

14. Thus, the petitioner had duly discharged the tax liability of August, 2017 within the period prescribed therefor; however, it was only on account of technical glitches in the System that the amount of tax paid by the petitioner for August 2017 had not been credited to the Government account. Hence, the interests of justice would best be served if the declaration submitted by the petitioner in October, 2019

along with the return of September, 2019 is treated as discharge of the petitioner's tax liability of August, 2017 within the period stipulated under the GST laws. Consequently, the petitioner would not be liable to pay any interest on such tax amount for the period from 21.9.2017 to October, 2019."

72. In view of the above finding and following the law laid down by the Gujarat High Court in the aforesaid ***Vishnu Aroma*** case, since in the present case, the tax amount has already been credited to the Government within the prescribed time limit, i.e., before due date, the question of payment of interest would not arise. Under these circumstances, this Court passes the following orders:

1) The credit to the account of Government would always occur not later than the last date for filing the monthly returns in terms of the provisions of Section 39(7) of the Act.

2) Once the amount is paid by generating GST

PMT-06, the said amount will be initially credited to the account of the Government immediately upon deposit, at which point, the tax liability of a registered person will be discharged to the extent of the deposit made to the Government. Thereafter, for the purpose of accounting only, it will be deemed to be credited to the ECL as stated in the Explanation (a) to Section 49(11) of the Act.

3) As long as the GST, which was collected by a registered person, is credited to the account of the Government not later than the last date for filing the monthly returns, to that extent, the tax liability of such registered person will be discharged from the date when the amount was credited to the account of the Government. If there is any default in payment of GST, even subsequent to the due date for filing the monthly returns i.e., on or before 20th of every succeeding month, for the said delayed period alone a registered person is liable to pay interest in terms of Section 50(1) of the Act.

73. In view of the above, impugned letter dated 16.05.2023 bearing DIN 20230559TK00020650 issued by the 1st respondent

impugned order OC.No.77/2023 bearing DIN 20230759TK000000E36E dated 12.07.2023 passed by the 1st respondent are liable to be quashed. Accordingly, quashed.

74. In the result, these writ petitions are allowed. No cost. Consequently, the connected miscellaneous petitions are also closed.

23.01.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To

1.The Deputy Commissioner of Commercial Taxes,
Collectorate Taxes,
Virupatchipuram,
Dharmapuri 636 705.

2.The Assistant Commissioner (District Revenue),
Collectorate Complex,
Virupatchipuram,
Dharmapuri 636 705.

KRISHNAN RAMASAMY.J.,

nsa

W.P.Nos.16866 & 22013 of 2023
and W.M.P.No.32200 of 2023

23.01.2024