The Commissioner of Central Tax, Mysore Audit Commissionerate & Ors. vs. Sadguru Infratech Pvt Ltd.

Whether a writ court can direct the GST authorities to permit filing/amendment of returns while waiving interest, penalty and limitation under the GST Acts, and to refrain from precipitative action, in respect of the incremental tax burden arising from th

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CASE DESCRIPTION / SUMMARY

Background

This is the Revenue's appeal against a Single Judge order dated 11.04.2023 (a common order in a batch led by Sri. Chandrashekaraiah v. State of Karnataka) which had allowed the writ petitioner's (Sadguru Infratech's) writ and issued directions to the tax authorities and contracting parties. The writ petitioner, a sub-contractor in a lift irrigation works contract, had challenged interest demands and recovery action for delayed GST payment, contending the rates were fixed pre-GST and did not include GST. The Revenue confined its appeal to the directions issued to the tax authorities.

Facts

The writ petitioner, registered under KVAT and later under GST with effect from 01.07.2017, is a sub-contractor and constituent of the main contractor (a JV) awarded a lift irrigation and canal works contract by Karnataka Neeravari Nigam Limited (KNNL). The main contract dated 06.03.2017 and the sub-contract dated 24.06.2017 were both entered into at the Schedule of Rates prevailing under the VAT regime, which did not include the element of GST. With the GST Acts coming into force on 01.07.2017, the works contract became subject to GST at 18% (01.07.2017 to 21.08.2017) and 12% thereafter, increasing the writ petitioner's tax liability. The writ petitioner filed its returns for 2017-18, 2018-19 and 2019-20 belatedly, with delay in payment of self-assessed tax occurring on as many as twenty-six occasions, ranging from one day to 338 days.

The GST authorities issued a notice dated 13.02.2020 in Form GST ASMT-10 demanding interest on delayed payment under Section 50, followed by a notice dated 19.02.2020, and initiated recovery by a notice dated 18.03.2020 in Form GST DRC-13 under Section 79(1)(c) to the writ petitioner's

banker. The Single Judge allowed the writ and, among other directions, permitted petitioners to file returns/amended returns post-01.07.2017 by calculating differential tax in a prescribed manner without insisting on interest, penalty or limitation, directed the GST authorities not to take precipitative action for six months, and directed reimbursement of the differential tax by the concerned employer. The Revenue appealed only against the directions to the tax authorities, contending that interest under Section 50 is mandatory with no discretion to waive or reduce, and that there is no provision enabling filing or amendment of returns in the manner directed. The short question was whether the Single Judge could have issued such directions to the tax authorities.

Court Observations (Verbatim)

Para 9: "The dispute as to whether the writ petitioner would be entitled to reimbursement of the incremental tax paid or payable by it on account of the levy of GST is strictly a matter between the contracting parties - writ petitioner and the main contractor - with whom it had entered into the contract. The contract between the said parties or the contract between the main contractor and KNNC would not alter the statutory scheme for the levy of GST... The question of the levy of GST, assessment, recovery, and enforcement is a matter of statutory prescription."

Para 10: "It is well settled that the liability to pay interest on delayed payment of tax under a fiscal statute arises by operation of law, leaving no discretion in the authority to waive or reduce, if the statute makes no such provision (see Pratibha Processors v. Union of India, (1996) 11 SCC 101). The directions in the impugned order waiving interest, penalty, and limitation, and permitting the filing or amendment of returns in a manner not contemplated by the statute, therefore cannot be sustained."

Para 11: "In view of the above, the directions issued permitting the filing of any revised returns contrary to the provisions of the statute are unsustainable. The blanket directions to waive the penalty, interest under the GST Acts or the limitation for filing returns/revised returns are also unsustainable."

Para 12: "The controversy as to which party is required to bear the incremental tax burden arising on account of the change in the tax regime is, in essence, one between the contracting parties. In the context of such a dispute, no directions could be issued to the tax authorities regarding the levy, assessment, and collection of tax, penalty, or interest."

Para 13: "In the aforesaid view, the direction issued to the respondents to reimburse the tax is required to be construed as a direction only to the concerned party with whom the writ petitioner had entered into the contract and not to the tax authorities."

Verdict

The Revenue's appeal was allowed. The Division Bench held that interest under Section 50 arises by

operation of law with no discretion to waive, and that directions waiving interest, penalty and limitation and permitting filing/amendment of returns contrary to the statute are unsustainable. The direction to reimburse tax was construed as binding only the contracting party (main contractor), not the tax authorities. The impugned Single Judge order, insofar as it relates to W.P. No. 10163/2020, was set aside.

Cases Referred by the Court

- Pratibha Processors v. Union of India — (1996) 11 SCC 101 (relied upon: liability to pay interest on delayed tax under a fiscal statute arises by operation of law, leaving no discretion to waive or reduce absent statutory provision)

Order under challenge (not a precedent):

- Sri. Chandrashekaraiah & Ors. v. The State of Karnataka — W.P. No. 9721/2019 and connected matters (including W.P. No. 10163/2020), decided 11.04.2023 (the impugned common Single Judge order)

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