



## Validity of the direct recovery of Interest under GST?

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In the recent past, the matter of interest on Gross (before adjusting GST ITC) or Net liability (after adjusting GST ITC) is knocking the doors of every belated GST return filers. The Hon'ble HC of Telangana in case of **Megha Engineering & Infrastructures Ltd. v. Commissioner — 2019 (26) G.S.T.L. 183 (Telangana)** held that interest is liable on the Gross GST liability but the Hon'ble has admitted the review petition and granted an interim stay and the other HC's are yet to deliver the final decision. Thus, the matters still pending before various HC's and the Government also has not made amendment effective yet (prospective or retrospective!!).

While the principle issue of interest liability is still pending, it is observed that the GST department across the country has been issuing letters asking the taxpayers to remit the interest on Gross GST liability and if not paid within 7 days of the letter, the Bank accounts are being attached and the amount is recovered directly. Surprisingly, these recoveries are made without issuing any Show Cause Notices and without providing any opportunity of being heard to the taxpayers. An attempt has been made in this article to analyze the legal validity of the direct recovery of interest by the GST department.

It is an elementary principle of natural justice that fair opportunity of being heard must be given. There is a legal maxim "*Audi Alteram Partem*" which means that "*listen to the other side*", or "*let the other side be heard as well*". It is the principle that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them. Based on this elementary principle of natural justice, every law provides for the issuance of show cause notice ('SCN' for brevity) and the opportunity of being heard before taking any adverse action. In this process, it is required to hear the other side before proposing any action and to do so, the said person must be served a notice detailing the allegations and the basis on which the actions are proposed. The GST law is not an exception to the aforesaid principles. Therefore, it is inescapable for the GST department to issue SCN and hear personally before initiating any action against the taxpayers. More so when the issue of interest on Gross GST liability is debatable.

In this regard, the observations made by the Hon'ble SC in case of **Dabur India Ltd. v. State of Uttar Pradesh — 1990 (49) E.L.T. 3 (S.C.)** would be relevant to say that direct recovery without following principles of natural justice is illegal. The relevant part of the decision is extracted below:

*"30. Before we part with this case, two aspects have to be adverted to - one was regarding the allegation of the petitioner that in order to compel the petitioners to pay*



*which the petitioners contended that they were not liable, the licence was not being renewed for a period and the petitioners were constantly kept under threat of closing down business in order to coerce them to make the payment. This is unfortunate. **We would not like to hear from a litigant in this country that the Government is coercing citizens of this country to make payment which the litigant is contending not to be leviable.** Government, of course, is entitled to enforce payment and for that purpose to take all legal steps but the Government, Central or State, cannot be permitted to play dirty games with the citizens of this country to coerce them in making payments which the citizens were not legally obliged to make. If any money is due to the Government, the Government should take steps but not take extra-legal steps or manoeuvre. Therefore, we direct that the right of renewal of the petitioner of licence must be judged and attended to in accordance with law and the occasion not utilised to coerce the petitioners to a course of action not warranted by law and procedure.”*

The action of direct recovery was challenged before various HC's. The HC's has quashed the action of direct recovery and ordered to follow the aforesaid principles of natural justice by issuing SCN & granting a personal hearing. Some of the HC decisions are cited below along with relevant extracts of the decision:

- ✓ **L.C. Infra Projects Pvt Ltd Vs UOI 2019 (28) G.S.T.L. 3 (Kar.)** wherein it was held that “5. *I have carefully considered the rival submissions made by the parties. Perused the materials on record. 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.*

6. *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.”*

- ✓ **Godavari Commodities Ltd VS UOI 2019-TIOL-2818-HC-JHARKHAND-GST** wherein it was held that

*“A plain reading of this provision shows that this provision shall be fully applicable in cases where the tax was not paid for any reason other than fraud. In the present case, though it is submitted by learned counsel for CGST that since the tax was paid, Section 73 (1) of the Act shall not be attracted in the case of the petitioner, but the fact remains that the tax was not paid by the petitioner Company in the Government account within the due date, and accordingly it is a case of tax not being paid, within the period prescribed, or when due. In that view of the matter, we are unable to accept the contention of learned counsel for CGST that no show-cause notice was required to be given in this case. Even otherwise, if any penal action is taken against the petitioner, irrespective of the fact whether there is provision under the Act or not, the minimum requirement is that the principles of natural justice must be followed. In the present case admittedly, prior to the issuance of letter dated 6.2.2019, no show-cause notice or an opportunity of being heard was given to the petitioner and no adjudication order was passed”*

In view of the above, it is mandated on the part of the GST department to follow principles of natural justice by issuing SCN and fair opportunity of being heard before taking any recovery action. Hence, the direct recovery of interest liability by the GST department is a gross violation of principles of natural justice and runs contrary to the settled jurisprudence.

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