

# TAX INFO

*Dated 13/09/2022*

**Latest update on GST Law: Department has to follow Section 73 or 74 procedure, if the Assessee disputes GST Interest Liability as given in judgement by Jharkhand High Court.**

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<b>Name of Petitioner</b>	Bluestar Malleable Pvt. Ltd.
<b>Name of Respondent</b>	The State of Jharkhand and Union of India
<b>Court</b>	Jharkhand High Court
<b>Date of Judgement</b>	18.8.2022
<b>Appeal No.</b>	W.P.(T) No. 2043 of 2020 and W.P.(T) No. 2051 of 2020

## **Brief Facts of the Case Law:**

The petitioner found itself entitled to claim transitional credit of ITC in form TRAN-1 for Rs.3,11,43,255/- which was filed electronically on the common portal of the department. The accountant of the petitioner company repeated the said claim of transitional credit for the same amount in the GSTR-3B furnished in July, 2017. The said repetition being due to human error, absence of adequate practice/familiarity in the working of the new concept of GST laws, which had been introduced in 2017 itself. Immediately, in July, 2018, the petitioner took step to reverse the said entry to rectify the error. In GSTR-3B of July 2018, the sum of Rs.3,11,43,255/- has been reversed towards ITC of SGST. A clarification was sought by the department vide letter No.225 dated 22.10.2018 regarding reversal of SGST Credit amounting to Rs.3,11,43,255. A clarification was also sought as to why no interest was paid on the said reversal of ITC. Petitioner responded to the said clarification vide letter no. BSMPL /245 dated 2.11.2018. The authority vide letter No.249 dated 06.11.2018 (impugned letter) responded to the petitioner's letter. The impugned letter pertains to direction for payment of interest for Rs.72,49,126/- in respect of irregularly taken credit of Rs.3,11,43,255/-. In the meanwhile, the petitioner filed an application on 12.09.2018 (with an acknowledgment delivered by the system on 26.09.2018) seeking refund of excess amount lying in the electronic cash ledger of the petitioner for a sum of Rs.26,45,301/-. Pursuant thereto; the refund was sanctioned by the competent authority vide the refund sanction order dated 09.11.2018. But the said refund was allowed with an adjustment towards a sum of Rs.72,49,126/- in light of the impugned letter dated 06.11.2018. Petitioner challenged the part of refund order in appeal. The appeal was dismissed vide order dated 31.01.2020 passed in appeal no.01/CGST/JSR/2020.

## **Contention of the Petitioner:**

The grievance of the Petitioner is that though it submitted a detailed objection to the impugned letter dated 06.11.2018 before the Department vide letter no.351 dated 09.01.2019; the Department vide letter no.309 dated 28.01.2019 (impugned letter) repeated its earlier stand and refused to accept the request made by the petitioner vide letter dated 02.11.2018 and 09.01.2019. The petitioner was requested to pay the balance of Rs.40,71,403/- towards interest payment after adjustment of the refund amount sanctioned in favour of the petitioner.

It is specific case of the petitioner that the said amount of transitional credit mistakenly mentioned in form GSTR-3B for July 2017 was never utilized by the petitioner company against the output tax liabilities arising out of daily business transactions.

The interest under Section 50 of the JGST Act, 2017 which is primarily compensatory in nature cannot be levied upon the petitioner if the ITC has not been availed twice. It is the petitioner's case that no tax dues remained unpaid during this period. Despite taking an objection to the notice dated 06.11.2019 for payment of interest in term of Section 50(3) of the JGST Act through reply dated 09.01.2019 by the petitioner, the Department have not followed the procedure prescribed for realization of the interest. No intimation in the prescribed format or proceedings have been initiated for recovery of the interest in terms of Section 50(3) of the Act.

## **Contention of the Department:**

The claim of the taxpayer that it made all best efforts to rectify the said error by reversal of the said Input Tax Credit but due to shortcomings in the online facilitation procedures of the department, the reversal of the said Input Tax Credit facilitated in the month of July, 2018; is not tenable. The procedure for matching, reversal and reclaim of Input Tax Credit has been laid down under Section 42 of CGST Act, 2017. As per the procedure, the irregularly taken SGST Credit was required to be reversed by adding the same to the output tax liability in the GSTR-3B return for the month

of August, 2017. So, additional column for reversal of irregularly taken SGST credit was not required in the GSTR-3B. Further, while filing the GSTR-3B for the month July, 2017 the taxpayer again took the Input Tax Credit which the taxpayer already transferred into the electronic credit ledger through TRAN-1. The taxpayer was able to file GSTR-3B returns on the online portal and the facility to reversal was available in the GSTR-3B return itself, therefore the plea of taxpayer that the online portal had shortcomings is not tenable. Further, the taxpayer itself said that it was just on account of error of understanding and absence of adequate practice and confidence in the working of the new concept of GST laws introduced for the first time in the year 2017 that the concerned accountant of the petitioner company repeated the said claim of transition credit for the same amount in the return furnished in the month of July, 2017. The taxpayer himself said that they were ignorant of law and procedures related to CGST Act, 2017. It is established law that ignorance of law cannot be an excuse for non-compliance of legal provisions. The petitioner tries to put their failure on online portal which is not correct and tenable. The department correctly issued letter to deposit interest on input Tax Credit wrongly availed by the petitioner. Accordingly, the department issued letter to deposit interest on the suo-moto reversal of ineligible Input Tax Credit by the taxpayer. The department also took necessary instruction from the GSTN after receiving the instant writ petition, and made a categorical query from the GSTN “as to whether any feature of reversal of erroneous credit taken in GSTR-3B has been added in the system in the month of July, 2018, as claimed by the petitioner and as to when has the facility of reversal of erroneous entry of credit has been activated”. The said queries of the department were replied by the GSTN quoting that the: - “GSTR-3B was enable on the GST Portal in August, 2017. The functionality for reversal of credit was also made available in Table-4(B)(2) in this deployment of FORM GSTR-3B. The user manual deployed on the GST portal, for explaining this functionality to the taxpayers, also covers the part pertaining to ITC reversed in Table -4(B)(2), which demonstrates that this functionality was also there on the GST portal”. Thus, there is a provision in the GSTR-3B return itself to reverse the credit at column 4(B) under the head ‘ITC Reversed’. In view of the above, the contention of the petitioner is not tenable.

#### **Findings and Decision of the Court:**

The only question which falls for consideration is that “whether liability of interest under Section 50 of the JGST Act can be raised without initiating any adjudication proceeding either under Section 73 or 74 of the JGST Act in the event assessee has raised a dispute towards liability of interest”.

After going through the order passed by this Court in the case of Mahadeo Construction (supra) it appears that if any assessee disputes the liability of interest under Section 50 of the JGST Act then the revenue will have to follow the specific procedure as stipulated under Section 73 or 74 of the JGST Act. In the instant case, admittedly; a notice was issued to the petitioner dated 6.11.2018. Thereafter, the petitioner duly replied in form of objection with regard to non-payment of interest vide its reply dated 9.1.2019. However, the department vide letter dated 28.1.2019 repeated its earlier stand and refused to accept the petitioner’s stand and the petitioner was directed to pay the balance amount of Rs.40,71,403/- towards interest payment after adjustment of refund amount sanctioned in favour of the petitioner. Thus, it clearly transpires that the Department have not followed the procedure as enshrined in Section 73 or 74 of the JGST Act. Thus, the issue involved in the writ applications is squarely covered by the decision passed by this Court in the case of Mahadeo Construction (Supra).

Consequently, letter dated 6.11.2018 whereby the petitioner was called upon to pay interest for the sum of Rs.72,49,126/- on account of alleged irregular Input Tax Credit as well as the impugned order dated 28.1.2019 whereby the objection filed by the petitioner towards payment of interest under Section 50 of JGST Act has been negated were quashed and set aside. The appellate order was also quashed and set aside. The matter was remitted back to the revenue to initiate a fresh proceeding with regard to the liability towards interest under Section 50 of JGST Act in accordance with law as stipulated in JGST Act.

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