

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JULY, 2019

BEFORE

THE HON'BLE MRS.JUSTICE S.SUJATHA

WRIT PETITION No.28876 OF 2019 (T-RES)

BETWEEN:

M/s. LC Infra Projects Pvt. Ltd.,
(Formerly known as
Laxmi Construction)
Having office at: 409,
Iscon Elegance, Nr. Jain Temple,
Prahladnagar Cross Road,
S.G. Highway, Ahmedabad – 380 015.
Rep. by its Chief Financial Officer,
Mr. Nitesh Avadhiya.

... Petitioner

(By Sri. Ajay J. Nandalike, Advocate)

AND :

1. The Union of India
Ministry of Finance,
Having office at
Jeevan Deep Building,
Parliament Street,
New Delhi – 110 001
Rep. by its Secretary.
2. The State of Karnataka
Department of Finance,
Vidhana Soudha,
Bengaluru – 560 001.
Rep. by its Secretary.

3. The Superintendent
Office of Central G.S.T.
Madikeri Range, Block No.18/1,
Main Temple Road, Madikeri,
Kodagu District – 571 201.

... Respondents

(By Sri. Vikram A. Huilgol, Advocate)

This Writ Petition filed under Articles 226 and 227 of the Constitution of India, praying to call for records, issue writ holding that Section 50(1) of Central Goods and Service Tax (CGST) Act, 2017 and Section 50(1) of the Karnataka Goods and Services Tax, 2017 at unconstitutional to the extent that the burden of interest is imposed on the input tax credit available to the credit of the petitioner and etc.,

This Writ Petition coming on for Preliminary Hearing in 'B' Group, this day, the Court made the following:

ORDER

The petitioner has sought for following reliefs:

- i. *Issue writ holding that Section 50(1) of Central Goods and Service Tax (CGST) Act, 2017 and Section 50(1) of the Karnataka Goods and Services Tax, 2017 is unconstitutional to the extent that the burden of interest is imposed on the Input Tax Credit*

Available to the Credit of the petitioner.

- ii. Issue writ or order or direction quashing the email dated 04.03.2019 bearing OC.No.76/2019 (Annexure-J) demanding payments.*
- iii. Issue a writ or order or direction quashing the letter dated 07.05.2019 bearing No.V/15/16/2019 GST Adjn-631/19 issued under GST DRC-13 (Annexure-L) to the Indian Overseas Bank attaching the account of the petitioner.*

Relief No.1 is not pressed, reserving all the contentions raised thereto being kept open.

2. The petitioner is a dealer registered under the provisions of the Goods and Service Tax (GST) Act, 2017 (hereinafter referred to as the 'Act for short). The petitioner was entitled to claim the Input

Tax Credit for the GST paid by the sub-contractors while filing its GST returns. Since some of the sub-contractors had not uploaded the invoices and filed their returns as a result of which ITC to which the petitioner was entitled to was not being tallied. The third respondent addressed an e-mail seeking clarification of availments of ITC. The third respondent contended that there was an excess availment of ITC to the tune of Rs.2,62,48,383/-. The petitioner pointed out that the ITC differential credit is not pertaining to the petitioner, relating to the tax period in question. The petitioner has been levied tax on the unpaid tax without issuing Show Cause Notice and thereafter, the Demand Notice has been issued claiming the tax amount of Rs.13,63,864/- and interest amount of Rs.81,29,684/- payable by the petitioner. The third respondent vide its letter dated 07.05.2019 has sought for attachment of the bank

account of the petitioner. In the said background, the petitioner is before this Court challenging the action of the respondents in quantifying the interest and attaching the bank account without issuing Show Cause Notice as contemplated under Section 73 of the Act.

3. The learned counsel for the petitioner would submit that the mandatory requirement of issuing show cause notice before quantifying interest and attaching bank account of the petitioner not being complied with, the orders impugned at Annexures – J and N deserves to be set aside.

4. The learned counsel for the Revenue fairly submitted that no notice as contemplated under Section 73 of the Act was issued to the petitioner to show Cause before quantifying interest amount and attaching bank account of the petitioner. It is based

on Section 75(12) of the Act, Respondent-Authorities have proceeded to recover the tax and interest by attaching the bank account of the petitioner.

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.

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

**Sd/-
JUDGE**