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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) 4750/2020**

PARNIKA COMMERCIAL AND ESTATES PRIVATE LIMITED.

..... Petitioners

Through: Ms.Kavita Jha, Mr. Shammi Kapoor
and Ms. Swati Agarwal, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms.Sonu Bhatnagar, Sr.Standing
Counsel with Ms.Mallika Joshi,
Mr.Vaibhav Joshi and Ms.Anushree
Narain, Advocates for R-2, 3 & 4.

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Date of Decision: 23rd October, 2020

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J: (Oral)

CM APPL.17144/2020

Allowed, subject to just exceptions.

W.P. (C) 4750/2020

1. The petition has been heard by way of video conferencing.
2. Present writ petition had been filed challenging the notice for rejection of application for refund dated 5th December, 2019 along with corrigendum dated 18th December, 2019 and to direct respondent no.3 to refund the amount wrongly forfeited from the pending refund application of

the petitioner.

3. Petitioner had also sought a declaration that the liability to pay interest under Section 50 of the Central Goods and Services Tax Act, 2017 (for short “CGST Act”) is confined only to the net tax liability and no interest is payable on the available ITC.

4. On 30th July, 2020, this Court had issued notice in the present writ petition.

5. The petitioner has now placed on record the Administrative Instruction dated 18th September, 2020 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, (GST Policy). The said Administrative Instruction is reproduced herein below:

*“Room No. 159A,
North Block, New Delhi,
Dated: 18th September, 2020*

*To,
The Principal Chief Commissioners/Chief Commissioners/
Principal Commissioners/Commissioners of Central Tax (All)
The Principal Director Generals Director Generals (All)*

Madam / Sir,

*Subject: Administrative instructions for recovery of interest
on net cash tax liability w.e.f. 01.07.2017 -reg.*

Based on the recommendations of the 35th meeting of the GST Council held on 21st June, 2019, the provision of section 50 was amended vide section 100 of the Finance (No. 2) Act, 2019 to provide for charging interest on the net cash tax liability. The said amendment was to be made effective from a date to be notified by the Government. Accordingly, the said provision was made effective vide notification No. 63/2020 - Central Tax dated the 25th August, 2020, w.e.f. 01.09.2020.

2. The GST Council, in its 39th meeting, held on 14th March, 2020 recommended interest to be charged on the net cash tax liability w.e.f. 01.07.2017 and accordingly, recommended the amendment of section 50 of the COST Act retrospectively w.e.f. 01.07.2017. The retrospective amendment in the OST laws would be carried out in due course through suitable legislation.

3. Post issuance of notification 63/2020 - Central Tax dated the 25111 August, 2020, there were apprehensions raised by taxpayers that the said notification is issued contrary to the Council's recommendation to charge interest on net cash liability w.e.f. 01.07.201 7. Consequently, a press release, dated 26.08.2020 was issued to clarify the position. Further, in order to implement the decision of the Council in its true spirit, and at the same time working within the present legal framework, it has been decided to address the issue through administrative arrangements, as under:

a. For the period 01.07.2017 to 31.08.2020, field formations in your jurisdiction may be instructed to recover interest only on the net cash tax liability (i.e. that portion of the tax that has been paid by debiting the electronic cash ledger or is payable through cash ledger); and

b. wherever SCNs have been issued on gross tax payable, the same may be kept in Call Book till the retrospective amendment in section 50 of the CGST Act is carried out.”

4. Difficulty, if any, in the implementation of these instructions may please be brought to the notice of the Board.

Yours faithfully,
Sd/-
(Yogendra Garg)
Pr. Commissioner”

(emphasis supplied)

6. From the aforesaid, it is apparent that for the period of 1st July, 2017 to 31st August, 2020 field formations have been instructed to recover interest only on the net cash liability i.e. that portion of the tax that has been paid by debiting the electronic cash ledger or is payable through cash ledger. In those cases where show case notices have been issued calling upon the noticees to make payment on gross tax liability, those have been directed to be kept in the Call Book till retrospective amendment is made in Section 50 of the CGST Act.

7. In view of the aforesaid decision taken by the Central Board of Indirect Taxes and Customs, grievance of the petitioner no longer survives.

8. Accordingly, the present writ petition is disposed of in accordance with the Administrative Instruction dated 18th September, 2020 issued by the Ministry of Finance through the Central Board of Indirect Taxes and Customs.

9. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

**OCTOBER 23, 2020
AS**