

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 984 of 2021**

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FLAIR WRITING INDUSTRIES LTD.

Versus

UNION OF INDIA

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Appearance:

MR BHAVESH B CHOKSHI(3109) for the Petitioner(s) No. 1,2  
for the Respondent(s) No. 1,2,3,4

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CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**

and

**HONOURABLE MR. JUSTICE ILESH J. VORA****Date : 21/01/2021****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1. We have heard Mr. Abhishek Rastogi, the learned counsel assisted by Mr. Bhavesh Choksi, the learned counsel appearing for the writ applicants.
2. It appears from the materials on record that the writ applicant No.1 is a limited company engaged in the manufacture of wide range of writing instruments like Ball Pens, Gel Pens, Fountain Pens etc.
3. The subject matter of challenge in the present litigation is to the constitutional validity of the proviso to Section 50 of the Central Goods and Services Tax Act, 2017 (for short "the Act, 2017"). Section 50 of the Act, 2017 is with regard to the interest on delayed payment of tax. Section 50 (1) of the Act reads as under:

*"50 (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made there under, but fails to pay the*

*tax or any part thereof to the Government within the period prescribed, shall, for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent, as may be notified by the Government, on the recommendation of the Council.*

4. The proviso inserted by the Finance (No.2) Act, 2019 with effect from the date yet to be notified reads as under:

*"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.*

5. Mr. Rastogi submitted that the proviso to Section 50 (1) of the Act, 2017 allows the benefit of interest on tax payable in respect of the supplies made (i) during a tax period (ii) declared in the return for the said period (iii) and furnished after the due date. He pointed out that while the writ applicant is required to furnish return every month as per the first proviso to Section 37 of the CGST Act, he is not permitted to revise its returns after the month of September following the financial year in which the tax amount becomes due. Mr. Rastogi would argue that the amendment in the form of proviso is in violation of the decision taken by the GST Council in its 31<sup>st</sup> meeting held on 22.12.2018, wherein, the Council unanimously

decided that interest is not payable for the delayed payment of tax through electronic credit ledger i.e. interest is applicable only on the "net liability".

6. Mr. Rastogi invited the attention of this Court to the Press Release dated 22.12.2018 (at Annexure-D, at page 36 of the paper-book). The relevant part thereof reads thus:

*"2. Amendment of section 50 of the CGST Act to provide that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit, i.e. interest would be leviable only on the amount payable through the electronic cash ledger.*

*The above recommendations of the Council will be made effective only after the necessary amendments in the GST Acts are carried out."*

7. It is argued that the Council thought fit to recommend the Government to levy interest only on the net cash liability irrespective of classification of the tax payers. Such mandate from the GST council could not have been overlooked or restricted by the Parliament. Mr. Rastogi has also placed reliance on few decision in the aforesaid context.

8. It is also argued that the first proviso is manifestly arbitrary as its create differently treatment between two classes of persons (i) who self assessed payment of tax after duly filing of the tax returns pursuant to the investigation

and (ii) who fails to file a return in time and pays tax on account of delayed in filing of return in terms of Section 39 (1) of the CGST Act. Thus, the writ applicant is aggrieved by its exclusion from the proviso to Section 50 (1) of the Act. He is also aggrieved by the levy of interest on the GST paid by him through the electronic credit ledger on account of short payment of tax. This according to the writ applicant is violative of Article 14 of the Constitution of India.

9. Let **Notice** be issued to the respondents, returnable on **11.02.2021**. The respondents shall be served directly through email. In the meantime, Mr. Choksi, the learned counsel appearing for the writ applicants shall furnish one set of entire paper-book to Mr. Devang Vyas, the learned Addl. Solicitor General of India, so that by the next returnable date, Mr. Vyas can seek appropriate instructions in the matter.

(J. B. PARDIWALA, J)

(ILESH J. VORA, J)

SUCHIT