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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 with Mr.Shamim
Kapoor, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Sonu Bhatnagar with Ms.Venus
Mehrotra and Mr.Anushree Narain,
Advocates for R-2, 3 & 4.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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30.07.2020

C.M.No.17145/2020

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) No.4750/2020 & C.M.No.17144/2020

The petition has been listed before this Bench by the Registry in view of the urgency expressed therein. The same has been heard by way of video conferencing.

Present writ petition has 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.

Petitioner also seeks a declaration that the liability to pay interest under Section 50 of the CGST Act should be confined only to the net tax liability and no interest is payable on the available ITC.

Petitioner further prays for a direction to respondent nos.1 and 2 to implement the decision taken by respondent no. 4 in its 31st and 39th GST Council Meetings held on 22nd December, 2018 and 14th March, 2020 respectively whereby it recommended that law should be amended and interest under Section 50 of the CGST Act should be charged only on net liability of the tax payer, after taking into account the admissible credit, by notifying a date of implementation of section 100 of the Finance (No 2) Act 2019.

Learned counsel for the petitioner submits that principles of natural justice have been violated in the present case inasmuch as no proper show cause notice was ever issued to the petitioner under Section 73 of the CGST Act and no opportunity of hearing was granted to the petitioner to effectively present its case before the respondent no. 3.

She further submits that liability to pay interest under Section 50 of the CGST Act should be confined only to the net tax liability, as the component of eligible ITC reflected in the electronic credit ledger of the assessee is the tax component on the input side of the assessee. She states that the assessee is eligible to take ITC in its electronic credit ledger after

due tax is deposited in the Government Treasury. Consequently, according to her, any attempt to levy interest on the tax component, which is already deposited with the Government Exchequer, will amount to double taxation. In support of her submissions, she relies upon the order passed by this Court on 27th May, 2019 in *M/s Landmark Lifestyle Vs. Union of India, W.P.(C) No.6055/2019*.

Issue notice.

Learned counsel for the respondents accept notice on behalf of the respondents.

Let the counter-affidavits be filed within a period of four weeks. Rejoinder-affidavits, if any, be filed before the next date of hearing.

List on 20th October, 2020.

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

JULY 30, 2020

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