

Karnataka HC's interim-stay from interest/penalty recovery on GST leviable on employee secondment

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Karnataka HC grants ad interim stay from recovery of interest and penalty on GST leviable on secondment of employees from overseas group entity to its Indian entity [Toshiba Software (India) Pvt. Ltd; /Petitioner)]; Petitioner has admitted its GST liability on such secondments, however, contests the payment of interest and penalty on the same; Petitioner's arguments are premised on grounds of revenue neutrality and non-applicability prior to NOS judgment...; Petitioner contends that no levy of interest or penalty is sustainable when the entire issue is revenue neutral as the GST payable on such secondment arrangement would be available as input tax credit to the taxpayer; The Petitioner also contends that prior to the SC's decision in Northern Operating System (NOS), as per the applicable law of the land, secondment agreements were not leviable to service tax and as such, no interest is leviable prior to the NOS judgment since "failure to pay" tax which is a condition precedent under Section 50 (1) of the CGST Act was never occasioned. and that interest if any is payable from the date of the Supreme Court decision in NOS Case when the SC laid down a new legal position qua taxability of secondment agreements.

The matter is before Justice S.R Krishna Kumar.

Advocate Bharat Raichandani along with Advocates Sudipta Bhattacharjee, Onkar Sharma, Rishabh Prasad and Tanvi M (from Khaitan & Co.) are appearing on behalf of the Petitioner while Revenue is being represented by Shri M.N. Kumar and Shri Jeevan J. Neralgi.

The information contained in the above alert is source based.

Toshiba Software (India) Pvt. Ltd. Vs. UOI