

Computation of Interest on Delayed Payment Tax



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Introduction:

The interest is payable whenever there is delay in the payment of any tax. The tax, interest and penalty are different in nature. The Hon Supreme Court in the case of Pratibha Processors v. Union of India¹ held that the tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforce by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. Every taxation law need have the relevant provision for levy of interest.

Interest under GST Act:

Section 50 of the CGST Act, 2017 provides for payment of interest by every person who is liable to pay tax but fails to pay the tax within the prescribed period at the rate notified and the interest shall be calculated in such manner as may be prescribed.

The Notification No. 13/2017-CT, dated 28.06.2017 provided for 18% interest for the delayed period on the whole of amount of tax paid belatedly. The tax is discharged either by utilizing the balance available in Electronic Cash Ledger (ECL) or Electronic Credit Ledger (ECrL). Initially, only through monthly return GSTR 3B, the tax liability could have been discharged. From

¹ 1996 (88) E.L.T. 12 (S.C.)

October 2019, facility of paying the tax voluntarily through DRC 03 has been made available.

However, when the tax is paid through DRC 03, the details of the taxable value and tax cannot be shown in the GSTR 3B. Therefore, the correct procedure to pay the tax liability on supply is to first disclose in GSTR 1 and then pay through GSTR 3B.

It is a settled legal position that the input tax credit validly taken is nothing but tax paid. The Hon'ble Supreme Court in the case of Eicher Motors Ltd. v. Union of India² held that that the credit is as good as the tax paid. Said principle was also reiterated in the case of Collector of Excise v. Dai Ichi Karkaria Ltd.³. When the assessee is having the balance in ECrL, paying interest for delayed filing of return was a burden on the assessee.

Amendment to section 50(1):

In the 35th GST Council held on 21.06.2019, it was proposed that the amendment to section 50 is to be done retrospectively to provide for payment on interest on tax paid in cash. This was necessitated because of the different high courts interpreted this provision in different ways. In the Finance Act, 2019, the proviso to section 50(1) was added 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.”

Though the intention was to amend the above proviso retrospectively, the date from which the said proviso is effective was not notified since many States had not amended their GST Act. Subsequently, in the 39th GST Council

² 1999 (106) E.L.T. 3 (S.C.)

³ 1999 (112) E.L.T. 353 (S.C.)

Meeting held on 14.03.2020 it was recommended to amend the above provision retrospectively and accordingly, Notification No. 63/2020-CT, dated 25.08.2020 was issued notifying that the amendment to section 50(1) shall be applicable with effective from 01.09.2020.

Immediately a press release was issued clarifying that due to certain technical limitations, the amendment was notified prospectively and assured that no recovery shall be made on the gross tax liability for past period also both by Central and State administration. An administrative instruction was also issued on 18.09.2020 clarifying that as per the 39th GST Council recommendation, the interest would be charged on net tax liability.

To make the amendment effective retrospectively, once again the amendment was enacted through the Finance Act, 2021 and finally the Notification No. 16/2021-CT, dated 01.06.2021 notified that the retrospective amendment to section 50(1) is effective from 01.06.2021.

Issues in section 50(1):

First issue is that the GST Council has recommended to levy interest only on the next tax liability. It appears that the recommendation of the GST Council was to levy interest on net tax liability in all cases whereas the section 50(1) was amended to provide for interest on net tax liability only in those cases where the tax liability for a tax period has been declared in the GSTR 3B of that tax period and the return has been filed belatedly. The second issue is that the manner in which the calculation of the interest is to be made was not prescribed in the rules.

Insertion of rule 88B:

On the recommendation of the 47th GST Council meeting, rule 88B was inserted explaining the manner in which the interest is to be computed. This new rule provides for the computation of interest on the delayed payment of tax as under;

“88B. Manner of calculating interest on delayed payment of tax.-
(1) In case, where the supplies made during a tax period are declared by

the registered person in the return for the said period and the said return is furnished after the due date in accordance with 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, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.

(2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50...”

The above rule read with proviso to section 50(1) is explained with the following examples.

Illustration 1: In April 2022, the total tax liability was Rs. 100 lakh on the supplies made during the month and the due date of filing the return was 20th May, 2022 but filed on 29th May 2022 and the Rs. 60 lakh tax liability was discharged through ECrL and RS. 40 lakh tax liability was discharged through ECL. In this case, interest at 18% p.a. is applicable on Rs. 40 lakh for 9 days.

Illustration 2: In April 2022, the total tax liability was Rs. 100 lakh which included Rs. 10 lakh tax liability on the invoices of March 2022 and the due date of filing the April return was 20th May, 2022 but filed on 29th May 2022 and the Rs. 60 lakh tax liability was discharged through ECrL and Rs. 40 lakh tax liability was discharged through ECL. The rule does not provide any clarity on the computation of interest in such case. It appears (logically) that on Rs. 30 lakh the interest is to be paid for 9 days and on Rs. 10 lakh the interest is to be paid for 39 days.

Illustration 3: The tax liability of April 2022 Rs.10 lakh was not included in the return of April 2022 and the balance in ECrL as on 20th May 2022 (date

of filing of return) was Rs. 12 lakh. The said tax liability was included in the return for the month of June 2022 and the entire tax liability including for the month June 2022 was paid through ECrL. In this case, the interest is to be paid on Rs. 10 lakh for the period from 20th May 2022 to the date of filing June 2022 return.

Illustration 4: The part tax liability of Rs. 5 lakh for November 2018 is discharged on 10th April 2022 through DRC 03 (either voluntarily or against show cause notice/letter issued by the dept) by using Rs. 3 lakh from ECrL and Rs. 2 lakh from ECL. The interest is to be paid on entire Rs. 5 lakh for the period from 20th December 2018 to 10th April 2022.

Illustration 5: A debit note was issued on 15th April 2022 for the differential tax of Rs. 5 lakh for the month of December 2021. The total tax liability for April 2022 was Rs. 70 lakh which was discharged by utilizing Rs. 40 lakh from ECrL and Rs. 30 lakh from ECL in GSTR 3B filed on 18th May 2022. In this case the interest is payable on Rs. 5 lakh for the period from 20th January 2022 to 18th May 2022.

Illustration 6: A debit note was issued in June 2022 due to change in the value on account of price escalation with regard to supply made in December 2021. The tax involved in the said debit note was Rs. 15 lakh which is included in the return for the month of June 2022 which was filed on 31st July 2022 and the tax liability of Rs 15 lakh was discharged through ECL. In this case, the interest is payable on Rs. 15 lakh for the period from 21st July to 31st July 2022.

Illustration 7: The taxpayer had received a show cause notice for non filing of the returns/non payment of tax for the period from December 2020 onwards on 10th June 2022 and the total tax liability for the said period was Rs. 80 lakh and the same has been paid through ECrL on 20th June 2022. In this case, the interest is applicable on the entire tax liability though it is paid through ITC since the tax has been paid after the issue of show cause notice. The benefit of payment of interest on net tax liability is not available where

proceedings under section 73 or 74 has been initiated for the same period before the payment of tax.

Conclusion:

There appears to be a gap between what was recommended by the 39th GST Council meeting and what has been enacted by inserting proviso to section 50(1). Much needed rule for calculation of interest has been notified now, though it does not cover many scenarios. The interest would have been recovered from the taxpayer on the gross tax in many cases where it is actually applicable on the net tax. In such cases, the taxpayer can apply for the refund subject to limitation of time. As against the settled principle that the input tax credit is as good as tax paid, except for the belated filing of the return, in all other cases, the interest is to be paid on gross tax which is again a matter of litigation in time to come.

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