

INTEREST
GROSS
V/S
NET
UNDER GST ?

CA Bhavesh Mittal



ए० के० पाण्डेय
विशेष सचिव एवं सदस्य

A. K. Pandey
Special Secretary & Member



भारत सरकार
वित्त मंत्रालय
राजस्व विभाग
केन्द्रीय अप्रत्यक्ष कर एवं सीमा शुल्क बोर्ड
नार्थ ब्लॉक, नई दिल्ली-११० ००९

Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes & Customs
North Block, New Delhi-110 001
Tel. No. : +91-11-23092230, Fax No. : +91-11-23093106
E-mail : ak.pandey60@gov.in

F. No. CBEC-20/16/07/2020- GST

Dated the 10th February 2020

Dear *Principal Chief Commissioner / Chief Commissioner,*

Kind attention is drawn towards the cases wherein the taxpayers have filed their **FORM GSTR-3B** returns belatedly without discharging the applicable interest payable on the delayed payment of tax under the sub-section (1) of the Section 50 of the Central Goods and Services tax Act, 2017 (CGST Act, in short).

2. In this regard, I would like to draw your attention towards following provisions of the CGST Act:

i. **Sub-section (1) of Section 50:**

"(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, 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 recommendations of the Council."

ii. **Sub-section (12) of Section 75:**

"(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79."

2.2 From the above provisions, it can be seen that the law has cast liability on the taxpayer to assess and pay the interest on delayed payment of tax. Further, interest payable on such delayed payment of tax can be recovered under the provisions of section 79 of the CGST Act read with section 75(12), which provides for various methods by which the proper officer shall proceed to recover any amount which is payable to the Government.

3. The Principal Additional Director General (Systems), on 01.02.2020 has generated and shared the GSTIN wise list of the registered person, who have not discharged the due interest liability while filing their GSTR-3B returns belatedly. On perusal of said report, it is observed that the interest amounting to Rupees Forty-five thousand nine hundred and ninety-six crores (Rs.45,996/-crores) remains unpaid to the Government on account of delayed payment of tax. The said report has been shared on SFITP portal for initiating the process for recovery of such unpaid interest as per the provisions of section 79 read with section 75 (12) of the CGST Act.

4. Doubts have been raised by field formations, whether the interest has to be paid on the gross tax liability or on the net cash liability. In this regard, the provisions of section 50 are very clear that interest liability is required to be paid on the tax liability that is paid belatedly, either through cash or through utilization of input tax credit (ITC). In other words, interest is required to be paid on total amount of tax liability as shown in **FORM GSTR-3B**.

6. In view of the above, you are requested to look into the issue personally and to urge the field formations under your jurisdiction for making recovery of applicable interest from the identified taxpayers and to furnish weekly report of GSTIN wise recovery of interest made in this regard.

With regards,

Yours *Sincerely*

A.K. Pandey

(A.K. Pandey)

All Principal Chief Commissioners/ Chief Commissioners of Central Tax

Section 50 of the CGST Act, 2017

“Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government 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 recommendations of the Council.”

*“The interest under sub-section (1) shall be calculated, in such **manner as may be prescribed**, from the day succeeding the day on which such tax was due to be paid”.*

- *No manner has been prescribed till date to compute interest ?*
- It is settled position of law that when the measure fails the levy fails as laid down by **Hon’ble Supreme Court in the case of B.C. Srinivasa Setty 1981(2) SCC 460**. Accordingly, since the mechanism to compute interest is not set out, the levy of interest also fails.

31st GST council meeting held on 22nd December 2018

- The Council had given in Principle approval to charge interest on the amount payable **through the electronic cash ledger** after adjusting Input Tax Credit.

Section 100 of the Finance (No. 2) Act, 2019

- 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,..... **shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.**
- It means that interest would be only payable on the net amount payable in cash **after deduction of eligible Input Tax Credit.**

Date not notified-Intentionally??

- Allied Motors (P) Ltd. v. C.I.T., (1997) 3 SCC 472-

*A proviso which is inserted to remedy unintended consequences and **to make the provision workable**, a proviso which supplies an **obvious omission** in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as **retrospective in operation** so that a reasonable interpretation can be given to the section as a whole."*

M/s. Megha Engineering & Infrastructures Ltd. Vs Commissioner of Central Tax (Telangana High Court)

- *“until a return is filed as self-assessed, no entitlement to credit and no actual entry of credit in the electronic credit ledger takes place”.*
- *It is true that the tax paid on the inputs charged on any supply of goods and/services, is always But, it is available in the air or cloud.*
- *Such tax becomes an in-put tax credit only when a claim is made in the returns filed as self-assessed.*
- *The above recommendations of the Council will be made effective only after the necessary amendments in the GST Acts are carried out.” But, unfortunately, the recommendations of the GST Council are still on Therefore, we cannot interpret Section 50 in the light of the proposed amendment.*

M/s. Refex Industries Limited (Madras HC)

- In my considered view, the proper application of Section 50 is one where interest is levied on a belated cash payment but not on ITC available all the while with the Department to the credit of the assessee.
- The above **proviso**, as per which interest shall be levied only on that part of the tax which is paid in cash, has been inserted with effect from 01.08.2019, but clearly **seeks to correct an anomaly** in the provision as it existed prior to such insertion. It should thus, in my view, be read as clarificatory and operative **retrospectively**.
- Today, however, the amendment stands incorporated into the Statute and comes to the aid of the assessee. Therefore decision of the **Telengana High Court** in the case of *Megha Engineering and Infrastructures Ltd. V. The Commissioner of Central Tax and others- May not apply*.

Thread

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1/n There are some discussions in social media w.r.t. interest calculation on delayed GST payments post a few media reports regarding Rs. 46000 Cr interest on the delayed GST payments to be collected by tax authorities. On this issue of interest calculation, it is clarified that-

12:41 am · 15 Feb 20 · [Twitter Web App](#)

32 Retweets 68 Likes

   

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Replying to @cbic_india

2/n The GST laws, as of now, permit interest calculation on delayed GST payment on the basis of gross tax liability. This position has been upheld in the Telangana High Court's decision dated 18.04.2019 (indiankanoon.org/doc/159736439/)

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3/n In spite of this position of law and Telangana High Court's order, the Central Government and several State Governments, on the recommendations of GST Council, amended their respective CGST/SGST Acts to charge interest on delayed GST payment on the basis of net tax liability

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4/n Such amendment will be made prospectively. The States of Telangana and West Bengal are in the process of amending their State GST Acts. After the process of amendment is complete, the changed provisions can be put in operation for the entire country.

8 9 16

Conclusion

- In the case of **Pratibha Processors v. Union of India 1996 (88) E.L.T. 12 (S.C.)**- It was held that “***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. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date.
- In the case of Eicher Motors Ltd [2002-TIOL-149-SC-CX-LB], the Supreme Court mentioned that **the facility of credit is as good as tax paid** till tax is adjusted on future goods.
- The Delhi High Court in **Landmark Lifestyle vs UOI** in WP(C) No. 6055/2019 & CM Appl.No. 26114/2019 has **granted stay from the recovery of interest demanded in gross liability.**
- **Therefore interest may be paid on Net GST liability.**

THANK YOU

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For any clarification

bhaveshmittal@hiregange.com

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