
CONTROVERSY SURROUNDING INTEREST ON DELAYED PAYMENT OF TAX UNDER GOODS AND SERVICES TAX ACT

“Justice delayed is Justice denied” and quiet aptly, it applies to the controversy revolving around the amount on which interest is to be levied for delayed payment of tax under the Central Goods and Services Tax Act, 2017 (the ‘CGST Act’). Goods and Services Tax (‘GST’) was introduced with the intention of ease of doing business. However, within its life of three years, businesses have had to face unfathomable situations. One of the contentious issues under GST is whether interest on delayed payment of tax is required to be paid on gross or net tax liability?

In the erstwhile regime, interest was payable on the amount of tax after adjustment of the Input Tax Credit (‘ITC’), howbeit in the present regime the confusion arises due to segregation of ‘Electronic Cash Ledger’ and ‘Electronic Credit Ledger’. At the time of inception of GST, Section 50¹ of the CGST Act provided for leviability of interest on delay in payment of tax but, failed to provide the amount on which interest was to be calculated i.e. whether interest would be payable even on the tax liability that maybe set offset with accumulated ITC. To the dismay of taxpayers, the tax authorities took benefit of this loophole and issued notices demanding huge amount of interest on the gross liability. Against such demands, various representations were filed seeking clarification on the issue.

In respect thereof, the GST Council in its 31st meeting held on 22.12.2018², took up the issue in their agenda and recommended that interest under Section 50 of the CGST Act should be charged on net tax liability i.e. after taking into account the admissible ITC. However, the said recommendation was to be brought into effect only after carrying out necessary amendments in the GST Acts. Subsequently, the issue also found cognizance in section 100 of the Finance Act, 2019³ whereby a proviso was inserted in section 50 of the CGST Act clarifying that, interest on delayed payment of tax shall be levied only on tax that is paid by debiting the electronic cash ledger. Such an amendment was believed to provide relief to the taxpayers however, the disappointment and anguish continues since the amendment is yet to be notified.

The situation for taxpayers worsened with the judgement rendered by the Telangana High Court in the case of M/s. Megha Engineering & Infra Ltd.⁴, wherein the court held that interest is to be levied on gross liability that is even on the amount available as ITC. Following the judgement, tax authorities continued raising atrocious demands and sought recovery even without proper adjudication. The controversy only escalated with the recent decision in the case of Refex Industries Ltd.⁵, whereby the Madras High Court held that levy of interest on delayed payment is compensatory in nature thus, would be levied only on the net liability and not gross liability.

It is trite to note that ITC is the amount of tax deposited by the supplier to the government, and as the essence of GST has always been collection of tax on value addition, levying interest on the amount already received will tantamount to collection of interest on the tax already available of with the government. Further, it is a known fact that interest is charged on delayed payment thereby, levying interest on available ITC (i.e. tax paid by supplier, available with the government), would be fundamentally wrong and against the principles of GST Law.

¹Central Board of Indirect Taxes and Customs <<https://www.cbic.gov.in/resources//htdocs-cbec/gst/cgst-act.pdf>> accessed 02 July 2020

²Central Board of Indirect Taxes and Customs < https://www.cbic.gov.in/resources//htdocs-cbec/press-release/22181222_Press%20Release_31st%20GST%20Council%20Policy_In%20Principle.pdf > accessed on 02 July 2020

³Central Board of Indirect Taxes and Customs< <http://egazette.nic.in/WriteReadData/2019/209695.pdf> > accessed on 02 July 2020

⁴2019-TIOL-893-HC-TELANGANA-GST

⁵2020-TIOL-382-HC-MAD-GST

Interestingly, in the budget speech of 2020⁶, the Finance Minister sent out a very strong message that harassment of taxpayers will not be tolerated and assured that suitable amendments would be made to incorporate the proposed amendments. However, at this juncture, it would not be out of place that the trend being followed is of notifying amendments that are pro-revenue i.e. bar on availing transitional credit⁷ etc.

Another dilemma is in respect of those taxpayers who have been issued demand notices levying interest on gross amount and have paid the said amount. Pursuant to the Finance Act, 2019; it was clarified that interest shall be levied on amount after deduction of available ITC i.e. to say that the tax authorities had no authority to levy interest on the ITC component. In such scenario, drawing reference from Article 265 of the Constitution, one can argue that interest paid on the ITC component would be refunded and additionally as the same has been collected without authority of law, the taxpayer might be eligible for interest on such amount.

The matter is highly litigated before various High Courts and continues to remain pending for final disposal. Although the Courts have taken a consistent view that no coercive action is to be taken with respect to non-payment of interest amount^{8,9}, it is essential that the amendment in section 50 of the CGST Act is notified at the earliest.

The position of law stands clarified, however the sanguine expectations of taxpayers remains to be fully realized solely on account of undue delay in notifying the amendment. Such a delay continues to cause monetary hardships to taxpayers and unnecessary litigation. One of the primary objectives of GST is to enable seamless flow of credit however, it remains an illusion. With an optimistic approach, we believe that Courts will continue to remain reasonable and issue appropriate directions.

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⁶Indian Budget < https://www.indiabudget.gov.in/doc/Budget_Speech.pdf > accessed on 03 July 2020

⁷Central Board of Indirect Taxes and Customs <<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-43-central-tax-english-2020.pdf>> accessed on 03 July 2020

⁸2019-TIOL-1140-HC-DEL-GST

⁹TS-473-HC-2020(BOM)-NT