

INTEREST ON DELAYED PAYMENT OF TAX TO BE PAID ON NET TAX LIABILITY W.E.F. 01.09.2020

Background:

The GST Council in its 31st meeting held on 22.12.2018, took up the issue of interest on delayed payment of tax 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.

Consequently, the Ministry of Finance through Section 100 of the Finance Act, 2019 amended Section 50 of the CGST Act to include a proviso whereby cases where return for a particular period is furnished after the due date, interest shall be levied only on that portion of the tax that is paid by debiting the electronic cash ledger.

Subsequently, the Goods and Services Tax Council (the '**GST Council**') in its 39th meeting held on 14.03.2020 recommended that interest for delay in payment of GST to be charged on the net cash tax liability w.e.f. 01.07.2017 (law to be amended retrospectively).

Overview of Amendments:

The Central Board of Indirect Taxes (the '**Board**') vide Notification No. 63/2020-Central Tax dt. 25.08.2020, has appointed 01.09.2020 as the date on which Section 100 of the Finance Act, 2019 shall come into force i.e. prospectively. However, on 26.08.2020 the Board vide its twitter handle released a press release which provides that the Notification No. 63/2020-Central Tax dt. 25.08.2020 has been issued prospectively due to certain technical limitations and assured that no recoveries shall be made for the past period keeping in mind the decision taken in the 39th GST Council meeting.

It is trite to note that the issue with respect to chargeability of interest on delayed payment of tax whether on gross or net tax liability has been a highly litigated matter before various high courts. The Courts had been taking a consistent view that no coercive action is to be taken with respect to non-payment of interest amount. In a very recent judgement of the Orissa High Court in the matter of Prasanna Kumar Bisnoi [W.P. (C) 13190 of 2020], the court taking note of the 39th GST Council allowed the petition and held that interest for delay in payment of GST is to be charged on the net cash tax liability w.e.f. 01.07.2017 and directed the Superintendent to dispose of the representation filed before him taking cognizance of the 39th GST Council.

VA Comments:

1. In essence, interest on delayed payment of tax shall be charged on the net tax liability i.e. after taking into account the admissible ITC.
2. That even after the issuance of Notification and Press release, the sanguine expectations of taxpayers remains to be fully realized solely on account of uncertainty of whether the press release would override the effect of the notification.

For any further information/ clarification, please feel free to write to:

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