

## **Interest is payable on the Gross Liability for the delay in filing GSTR-3B.**

Payment of interest is big issue in GST regime. The Section 50 of CGST Act is drafted in such a way that it seems that the interest is payable on gross amount i.e. the total tax liability. Though under Central Excise and service tax regime, it was payable on net liability. Gross liability is total tax liability and net liability means that the tax liability after deduction of credit amount from the total liability. This means that cash payable after deduction of credit amount from total GST liability.

In a recent judgement of Megha Engineering & Infrastructures Ltd., (the petitioner) is engaged in the manufacture of MS Pipes and in the execution of infrastructure projects. This petitioner had delayed in filing the returns in GSTR-3B for the period from October 2017 to May 2018. They had paid Tax liability along with interest calculated on the net tax liability at the time of filing of its returns. The revenue thereafter, had issued a letter demanding interest to be calculated on the total tax liability (gross). In response to the said demand, the petitioner filed a writ before Telangana High Court.

After considering the various provisions under GST law, the court observed and held as under: Until a return is filed as self-assessed, no entitlement to credit and no actual entry of credit in the electronic credit ledger take place. As a consequence, no payment can be made from out of such a credit entry. Tax paid on the inputs charged on any supply of goods and/ or services, is always available, but, the same is available in the air or cloud. Such tax becomes an input tax credit only when a claim made in the returns filed as self-assessed. It is only after a claim is made in the return that the same gets credited in the electronic ledger.

Consequently, the court dismissed the writ petition filed against the interest demand raised by the revenue on the gross total liability. Section 50 (1) of the CGST ACT, 2017 is not confined only to the cash component of the tax payable, that the claim of the petitioner is based upon the wrong presumption as though ITC amount was lying with the Government Treasury. Since the liability under Section 50 is not penal in nature, the petitioner cannot escape liability.

This is an landmark judgement as the court has determined that tax paid on inputs shall be considered as input tax credit only when the returns are filed. Though the GST Council headed by ex-finance minister Arun Jaitely has decided in its meeting that the interest is payable on net tax liability but this decision could not be implemented as the amendment in law could not take place. Even this meeting has held that the interest is payable only the amount of cash not deposited. This can be clear with an example. Suppose an assessee M/s Ram Lal and company has total liability of Rs. 10 Lakhs and credit available is 6 lakh. Hence, the tax payable is 4 lakh only. But due to financial problem, he is not able to deposit the complete amount but has deposited Rs. 2 Lakh then interest is payable only on Rs. 2Lakh. Hence, this decision was logical and cleared the intention of Government. But amendment to this effect could not be carried out in the law. Hence, it could not be implemented.

Later on, new finance minister Ms. Nirmala Sitaramanan in his first GST council meeting has decided this issue once but said that the above amendment will have prospective effect. She has also proposed the amendment in the Finance Bill in its first Budget. For this purpose, a proviso is inserted in the law and not explanation. If the explanation was inserted then the assessee should have pleaded that it has retrospective effect.

Furthermore, the amendment in law is not so easy in GST regime. It is to be passed by Lokhsabha, Rajyasabha and president assent. The same amendment is to be carried out by all states in their state assemblies. Then the amendment in Section 50 will be effective. Hence, it will still take time. Till then the hanging sword of interest will be on assessee.

# CA PRADEEP JAIN

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But in an another landmark judgement on issue of service tax liability on liquor licence fee, the High Court has struck down the same on the basis of GST council decision whereas the notification to effect this notification was not issued. Similarly, the same pleading can be taken in such type of cases in various High Courts. Moreover, when the intention of Government is clear with this amendment then it should have retrospective effect. It seems to be more logical. But logics does not any place in statue book.

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