

INTRODUCTION

In case of delayed payment of GST interest is payable u/s. 50 (1) of the CGST Act. There were interpretational issues as to calculation of interest on gross tax liability declared in the return or net liability after netting off input tax credit. The said section was amended by the Finance Act, 2019 to provide that interest on delayed payment to be calculated on net tax liability but, the operation of said section was to take effect from date to be notified. Meanwhile, in a big relief for businesses, the Goods and Services Tax Council in its 39th Meeting held in March 2020 has recommended that amendment in section 50 of CGST Act, 2017 would be made applicable retrospectively i.e. With effect from July 1, 2017, the date on which GST law came into force.

This puts to rest the vexing question that had become a bone of contention between tax department and business since the inception of GST. To give the effect to the GST council decision, the Central Board of Indirect Taxes and Customs (CBIC) has issued the much awaited Notification No. 63/2020- Central Tax dated 25.08.2020.

NOTIFICATION

The CBIC has notified that from 1st September 2020, Interest for delayed GST payment shall be calculated on the net tax liability. Henceforth, the base value for interest computation shall be the amount debited from the electronic cash ledger.

A synopsis of major changes in the law brought about by such notification is presented herewith:

Amendment to CGST Act, 2017 (Notification 63/2020 – Central Tax dated 25.08.2020) –

- 1. Seeks to notify the provision of section 100 of the Finance Act 2019 to amend section 50 of the CGST Act , 2017 w.e.f. 01.09.2020**

Analysis:	<p>It gave effect to the amendment made to Section 50 of the CGST Act through the Finance Act, 2019. The move was a much-awaited one as it has been more than a year since the parliament passed the Finance Bill. Meantime, several litigations have been initiated challenging the levy of interest on gross tax liability across the country.</p> <p>Section 100 of the Finance Act, 2019 inserted a new proviso to Section 50 of the CGST Act. The proviso states that where any tax is payable on supplies for a period and is reported in a return which is filed after the due date, interest will be levied in a particular manner. It shall be charged on that portion of the tax paid by debiting the electronic cash ledger. However, there is an exception when this will not hold good. In case the return has been furnished after the proceedings have been initiated under Sections 73 or 74 (demand notice) for the relevant period, interest shall be imposed on the gross tax liability.</p> <p>Before this notification, the taxpayers had to calculate interest on the total tax liability without adjusting the input tax credit available in their ledger for utilization. This way, it led to more cash outflow for the taxpayers.</p>
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Many taxpayers and tax consultants are not delighted with the notification. In the 39th GST Council meeting held in March 2020, the Hon'ble Union FM Nirmala Sitharaman stated that this amendment should be made retrospectively. In other words, the interest on a net liability basis would be effective from 1st July 2017. However, with the notification in hand, the change applies prospectively. Many taxpayers have lashed out on the inconsistency between the address made and notification issued. In case this was made a retrospective change, all those notices already issued by the authorities, claiming the interest short paid, would have receded.

As the above Notification issued is effective from 01st September, 2020, it is not in line with the GST Council's decision. Hence, CBIC has also issued a Press Release on 26 August 2020.

RECENT PRESS RELEASE

In a press release issued later dated 26.08.2020 the government has stated that no recoveries shall be made from the taxpayers who have already been served any notice solely on this matter. In other words, the notices shall be recalled or stand dropped. The CBIC must issue a circular to its officials. The directive must lay down the detailed procedure to be followed at every stage of a proceeding along with the legal implications on the taxpayers.

NOTICES ISSUED FOR INTEREST

Presently, the interest is not auto-computed on the GST portal and must be manually declared by the taxpayer. Some of the taxpayers had paid interest on the net tax liability instead of gross. Accordingly, the authorities issued notices last year based on the directions of the CBIC's Chairman. The interest short paid amounted to the tune of Rs. 45,996 crore , claimed the authorities. As a response to the notice, many taxpayers took legal help on the matter.

EXAMPLE

For better understanding, please refer following example:

XYZ Ltd has output liability of Rs.30 lakh and ITC of Rs.10 lakh on August 2020 so XYZ Ltd needs to pay the GST of Rs.20 lakh on or before 20th September, 2020. However, it only manages to pay the tax on 20th October, 2020. Please calculate the Interest on tax which is to be paid.

To calculate the correct interest we need the following:

- Interest rate (18% as per section 50)
- No. of days default (30 days, we shall not count 20th September)
- Outstanding tax (Which is Rs.20 lakh)
- **Hence, interest on late payment of tax will be Rs.29,589/- (20 lakh*18%*30/365) but according to department notices interest to be calculated on 30 lakh and not 20 lakh.**

RELEVANT JUDGEMENT

Madras HC had in the **M/s Refex Industries Limited** case held that interest could be imposed on the overdue cash component of GST liability and not on the input tax credit. Further, the Gujarat HC had also taken a similar stand in the case of **M/s Amar Cars Private Limited**.

Whereas, the Telangana HC took a slightly different stand in the case of **M/s Megha Engineering & Infrastructures Limited**. It stated that until a GSTR-3B is filed by self-assessment, the taxpayer is not entitled to such input tax credit in the electronic credit ledger. Accordingly, the interest must be paid on gross tax liability.

CONCLUSION

In response to the press release, several tax experts pointed out that a press release may legally not stand valid vis-a-vis the GST law. Hence, a GST circular should be notified for this at the earliest. Also, the circular must clarify those taxpayers who are not sure of being refunded for the excess interest paid on a gross basis.

12th September, 2020

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