



INTEREST PAYABLE ON OUTPUT TAX LIABILITY UNDER GST LAW

CA Radhika Singhal
Partner in L B Jha & Co.

Introduction

1. A letter dated 10th February 2020 has been circulating on social sites regarding the view of Revenue officers on payment of interest on the gross value of output tax without making any adjustment of input tax credit. This was further elucidated by a Tweet from CBIC that the existing laws permit collection of interest on gross liability. The amendment by Finance Act (2), 2019 will have prospective effect from the date of notification. Consequently, a debate has started whether the interpretation of the revenue is correct or not.
2. The GST Council, in its 31st meeting held on 22.12.2018, has recommended that interest should be charged only on net tax liability of the taxpayer, after taking into account the admissible input tax credit. Finance Act (2), 2019 has also inserted the relevant provision for payment of interest on net liability. However this amendment is not yet notified.
3. As per the provisions of the GST law, sub-section (2) of section 50 provides that 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. However, nothing has been prescribed in the CGST Rules, 2017 till date in pursuance of the provisions of sub-section (2) of section 50. Hence, some of the taxpayers have calculated interest on gross output tax liability whereas others have calculated interest on net tax liability after adjustment of input tax credit.
4. **Opinions by the Revenue Officers in support of charging of interest on gross output tax under the existing law:**
 - a. As per the interpretation of the Revenue Officers, sub section 1 of section 50 clearly states that interest liability is required to be paid on the tax liability that is paid belatedly, either through cash or through utilisation of Input Tax credit.
 - b. Also, as per Section 16 of the Act, ITC can be availed when return is filed before due date as given u/s 39. Thus there are views that if the return is filed after due date, ITC cannot be availed. Hence interest is payable on gross liability.
5. **Opinions in support of charging of interest on net output tax i.e, after adjustment of input tax credit under the existing law:**
 - a. Under excise, service tax and VAT regime a dealer was also liable to pay interest on delayed payment of tax, but the interest was calculated on the net tax liability after set off of input tax credit. This was so because the interest is intended to compensate the revenue for the belated remittance of tax and also to ensure timely payment of taxes. The objective of collecting interest was never to increase the revenue of the State. The input tax credit portion is already deposited to the government by the seller. The provision of section 16 seems to be an unintentional drafting mistake. The lawmaker's intent was never to get enriched from taxpayer's money.
 - b. The input tax credit claimed is already deposited to the account of Government. The interest portion cannot be termed as belated. Charging of interest on such amount is increasing the tax burden of tax payer. This view was also upheld by the Madras High Court in its recent order dated 6th January 2020 on the writ petition filed by Refex Industries Ltd & Shreisha Technologies Private Limited (Writ Petition Nos.. 23360 and 23361 of 2019). The court was of the view that levy of interest on belated payments would apply only to payments of tax by cash, belatedly, and would not stand triggered in case of available ITC, since such ITC represents credit due to an assessee by Department held as such.

- c. Reference can also be drawn from the GST council's recommendation and the amendments in Finance Act. Moreover, no Circular/ Standing order/ any tweet are binding on the taxpayer.
- d. To the question of whether the amendment by Finance Act would be retrospective or prospective, the High Court of Telengana in the writ petition filed by Raghava Construction (WP NO. 16885 OF 2019) states that the question requires examination, hence interim stay or proceeding was granted.

The Government should issue the necessary notification on chargeability of interest on net liability. Otherwise, the matter will be escalated to the Courts.

We recommend that the taxpayer can pay interest on the net liability till any such notification is issued by the Government.

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