



DEMYSTIFYING INTEREST LIABILITY IN GST

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Every taxpayer who collects taxes from his customers on the outward supply of goods or services is required to remit the amount collected to the department within the due date on a self-assessment basis. If the taxpayer does not pay the tax within the due date prescribed, then interest will be applicable on such amount/tax not remitted or paid. Interest is required to be paid on such amount as the taxpayer has unduly utilized the Government's money. For the utilization of the Government's money, he is required to pay interest. This principle applies to all taxes, including GST. The Honourable Supreme Court has endorsed the same in its judgment in the case of Pratibha Processors. Extract of the same is produced for ready reference

In fiscal Statutes, the import of the words -- "tax", "interest", "penalty", etc. are well known They are different concepts. tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an assessee who has withheld of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty-- which is penal in character.

Before we discuss on the payment of interest on gross GST Liability or Net GST Liability lets discuss few of the important provisions of the GST

Section 50(1) of CGST Act 2017 – Interest

*Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, **on his own**, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.*

A careful reading of the above provisions, the wording used is “to pay,” and pay is normally referred to the payment of tax, and the same is provided in Section 49 of the CGST Act 2017. Section 49 uses both the words Electronic cash ledger as well as electronic credit ledger, thereby meaning that payment of tax can be made through the existing cash balance as well as the credit balance. Reading between the words indicate that interest has to be paid on GST Gross Liability as the provisions of Section 51(1) explicitly does not have the word on net liability. The provision so interest computation in the erstwhile tax regimes is always on the net liability, and this is a departure from the earlier laws. Initial reading and the experience from the previous tax regimes, the professionals have read it as interest is required to be paid on the net amount.

The provision clearly states that Interest has to be paid by the taxpayers on a self-assessment basis, and the Government will notify the rate of interest, and that should not be more than 18%.

The Principal Commissioner (Hyderabad) on 4th Feb 2019 has issued a Standing Order 01/2019 stating that interest has to be paid on gross liability, including the amount of input tax credit being utilized for the payment of outstanding tax liability. Accordingly, the department has started issuing notices to for the recovery of the same. The wordings used in Section 79 are

“any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount,” any amount includes interest also.

As per the provisions of GST, the input tax credit will be considered to be updated only on filing if the returns and till such time it is a provisional credit. It will not be reflected in the Electronic Credit Ledger. The same is echoed in the Honourable Telangana High Court in the case of Mega Engineering & Infrastructures Ltd, had the following observations

- i. the entitlement of a person to take credit of eligible in-put tax, as assessed in his return
- ii. the credit of such eligible in-put tax in his electronic credit ledger on a provisional basis under Section 41 (1) and on a regular basis under Section 49 (2); and
- iii. the utilization of credit so available in the electronic credit ledger for making payment of tax, interest and penalty etc., under Section 49 (3).

As per the provisions of the Act, the Input Tax Credit Ledger will be updated only on filing of the return by the taxpayer and till such point of time it is not the input tax credit for the taxpayer.

The honorable court has also observed ***until a return is filed as self-assessed, no entitlement to credit and no actual entry of credit in the electronic credit ledger takes place. As a consequence, no payment can be made from out of such a credit entry. It is true that the tax paid on the inputs charged on any supply of goods and/services, is always available. But, it is available in the air or cloud. Just as information is available in the server and it gets displayed on the screens of our computers only after connectivity is established, the tax already paid on the inputs, is available in the cloud. Such tax becomes an in-put tax credit only when a claim is 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 credit ledger. It is only after a credit is entered in the electronic credit ledger that payment could be made, even though the payment is only by way of paper entries.***

It further went on to explain that amount available in the bank is different from the amount available for the bank. Another point to be considered is the amount laying in the Electronic Credit Ledger can be under dispute, or the Government/ Department cannot unilaterally debit the Electronic Credit Ledger till the time taxpayer initiates the action of setoff for the same and the file the return. In such a case, then how can it be considered as the amount is available with the Government/Department?

Based on the inputs from the trade and industry, the GST Council, in its 31st meeting held on 22nd December 2018, has recommended the Government to make changes in Section 50(1) for payment of interest on net liability.

The changes proposed for the interest computation for Section 50(1) are provided in Section 99 of Finance Bill 2019.

“Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.”

The Honourable High Court of Madras in *Refex Industries Ltd. Vs. Ass. CCGST [2020-TIOL-382-HC-MAD-GST]* said that interest is to be paid on the net liability only based on the changes proposed in the Law on recommendations of the GST Council. The order further states that the changes proposed are with retrospective effect.

To enable the payment of interest on the amount debited to the electronic cash ledger, all the State Governments have to amend their respective SGST Act accordingly. To date, all the states have not yet amended the same, as a result of the same is not yet notified.

Till the time the Acts are not amended and notified the debate will continue, interest is to be paid on the gross liability or the amount debited to the cash ledger. As per the author's view, the interest on a self-assessment basis has to be computed by the taxpayers on the gross liability, as the same is not yet notified. The next question which will be asked by the taxpayers and professionals is, the amendment to pay interest on net liability will be retrospective or prospective? As per the Finance Bill 2019, it is not mentioned that the proposed amendment will be retrospective. This means that the said change will be prospective. In a pandemic like a situation where the business are facing a liquidity crunch. This will lead to a delay in the filing of the returns, and as per the existing provisions, interest has to be computed on the gross liability. To provide a helping hand to the trade and industry, it is requested that all the State Governments the SGST Act, who have not yet amended on priority, which in turn will enable the Central Government to notify the same.

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