

## **Form GST DRC 07 to be issued for Recovery of Interest, rules Gujarat High Court**

### **Fact of the Case**

The two questions raised in the writ petition filed by M/S Rajkamal Builder Infrastructure Private Limited were

1. Whether interest under Section 50 of the Central Goods and Service Tax Act, 2017 is to be levied on the net tax liability or on the gross tax liability?
2. Whether issuance of DRC 01 under Section 50 of the CGST Act, 2017 is legal and proper?

### **Decision of the Case**

Levy of interest under Sec.50 of the Central Goods and Services Tax Act, 2017, the Division Bench held that as per the amendment proposed in Section 50 of the CGST Act, 2017 vide clause 103 of the Finance Bill, 2021, the interest under Section 50 of the CGST Act, 2017 can only be **levied on the net tax liability and not on the gross tax liability**. In such circumstances, the demand raised by the revenue is not in accordance with law.

Considering the legality of issuance of DRC 01 under Sec.50 of CGST Act, 2017, the Court observed that plain reading of Sec.50 of CGST Act,2017 and Rule 142(1)(a) of the Central Goods and Service Tax Rules, 2017 would indicate that "Form GST DRC 01 can be served by the proper officer along with the notice issued under Section 52 or Section 73 or Section 74 or Section 76 or Section 122 or Section 123 or Section 124 or Section 125 or Section 127 or Section 129 or Section 130 and that too, electronically as a summary of notice". **Thus, DRC 01 could not have been issued for the purpose of recovery of the amount towards interest on delayed payment of tax.**

The court so as to bring clarity regarding the Form to be issued in case where any amount towards interest on delayed payment of tax is to be recovered, that notwithstanding anything contained in section 73 or Section 74, if there is any amount of interest payable on tax and which had remained unpaid, the same has to be recovered under the provisions of Section 79.

The term "order" falling under Rule 142(5) of the CGST Rules shall be treated as notice for recovery. The Court concluded that the notice for recovery of interest under Section 50 of CGST Act should have been issued under GST DRC 07.

***The division bench of the Gujarat High Court held that Form GST DRC 07 shall be issued for recovery of interest under Sec.50 of the Central Goods and Service Tax Act, 2017.***