

INTEREST UNDER GST

by CA. Rajendra Kumar

As per section 50(1) of Central Goods and Service Tax Act, 2017 ("CGST Act, 2017") " 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 percent, as may be notified by the government on the recommendations of the Council."

In the 31st GST Council's Meeting held on December 22, 2018 the law committee had proposed in Agenda No. 7(xx) that

- Interest should be charged only on the net liability of the taxpayer, after taking into account the admissible credit i.e. the amount payable through electronic cash ledger.
- Interest would be charged on tax calculated on taxable value where invoices or debit notes are uploaded late.

The GST Council had accorded in principle approval for the above proposal and suitable amendment in the statute was to be carried out. The Government amended section 50 of the CGST Act, 2017 vide section 100 of The Finance (No.2) Act, 2019, wherein a proviso was inserted on August 1, 2019 as "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 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 proviso was to come into force on such date as the Central Government may by notification, appoint.

In the midst of this, the Hon'ble Madras High Court in the case of M/s. Refex Industries Limited v. The Assistant Commissioner of CGST & Central Excise [2020-TIOL-382-HC-MAD-GST] decided that the tax is to be recovered only on the cash portion of the tax liability. The Court held that "Proviso to Section 50(1), as per which interest shall be levied only on that part of the tax which is paid in cash, has been inserted with effect from 01.08.2019, but clearly seeks to correct an anomaly in the provision as it existed prior to such insertion. It should thus be read as clarificatory and operative retrospectively." The Hon'ble High Court had relied on this proviso and set aside the notices that were issued demanding interest on the ITC component. Thus, the decision in favour of the taxpayers by the Hon'ble Madras High Court settled for a retrospective consideration.

Prior to this decision, an altogether different view was taken by the Hon'ble Telangana High Court in the case of M/s Megha Engineering & Infrastructure Ltd. Vs Commissioner of Central Tax [2019-TIOL-893-HC-TELANGANA-GST] stating that "Since ownership of such money is with the dealer till the time of actual payment, the Government becomes entitled to interest up to the date of their entitlement to appropriate it. Recommendations of the GST Council in its 31st meeting that interest should be charged only on the net tax liability of the taxpayer after taking into account the admissible input tax credit as communicated in the Press Release of the Ministry of Finance are still on paper and, therefore, High Court cannot interpret section 50 of the CGST Act in the light of the proposed amendment. The claim made by the respondent for interest on the ITC portion of the tax cannot be found fault with – Writ Petition is dismissed."

Amidst the confusion on divergent rulings on the interpretation of section 50 and its amendments, The Central Board of Indirect Tax and Customs had tweeted the following statement on February 15, 2020 that 'The GST laws, as of now, permit interest calculation on delayed GST payment on the gross tax liability and such amendment will be made prospectively.' Finally, it was decided in the 39th GST Council meeting in March 2020 that the amendment to section 50 would be given a retrospective amendment. This provided the much-needed respite to the taxpayers. The Government of India, Ministry of Finance vide Notification No. 63/2020- Central Tax dated 25.08.2020 notified the date for the provision of section 100 of the Finance (No.2) Act, 2019.

The notification raised doubts about its date of applicability pursuant to which the Central Board of Indirect Taxes and Customs issued a press release dated August 26, 2020 that "the notification has been issued prospectively due to certain technical limitations and assured that no recoveries shall be made for the past period by the Central and State tax administration in accordance with the decision taken in the 39th GST Council Meeting. This will ensure full relief to the taxpayers as decided by the GST Council."

The Government of India has amended the law with an aim to provide relief to the taxpayer. However, the taxpayers who have computed and paid the interest on gross basis are in the dark with respect to refund on the portion of interest that has been computed on gross basis. Placing reliance on the press release and the decision of the GST Council it may appear that they are eligible to file refund based on the principle of Unjust Enrichment, the provisions of the Act nowhere provide shelter for taxpayers for refund on discharged liability as per the Act.

Though the above amendment was recommended to be notified retrospectively by the GST Council, the Government has taken a different

stand on notifying the same as applicable prospectively only although clarifying the issue by way of a press release.

Therefore, in order to implement the decision of the GST Council in its true spirit, the Government of India, Ministry of Finance had issued administrative instructions on September 18, 2020 (F.No. CBEC-20/01/08/2019-GST) stating that

1. For the period 01-07-2017 to 31-08-2020, field formation in concerned jurisdiction are instructed to recover interest on the net cash liability.
2. Wherever Show Cause Notice has been issued seeking interest on gross tax payable, the same may be kept in call book till the **retrospective amendment in section 50 of the CGST Act, 2017 is carried out.**

Therefore, the above instructions provided by the Government has brought out clearly mentioning that a retrospective amendment will be carried out in due course through suitable legislation. Hence, the retrospective amendment will be a welcome change providing relief to all taxpayers and also enabling the registered persons who have paid the interest on gross tax payable, to claim refund.

From the above developments of the issue, the following points can be concluded:

1. The amendment vide Notification No. 63/2020 – Central Tax dated 25.08.2020 has brought in relation to filing of returns after the due date, to pay interest on a net tax liability. However, if an invoice is missed for inclusion in the said period, interest will be liable to be paid on gross tax liability.
2. A press release issued by the CBIC cannot nullify the liability to be paid by the taxpayer as per the Act. If the taxpayer has not complied as per the provisions laid down in the Act, then a general penalty can also be leviable on the taxpayer for non-compliance.
3. The Government has clarified that the taxpayers will not be called upon to pay interest on gross basis for prior periods. Therefore, until the retrospective amendment is carried out, the taxpayers who have discharged the interest on gross value are not eligible for refund.
4. Though the above amendment was recommended retrospectively by the GST Council, the Government cannot take a different stand on notifying the same as prospectively. Therefore, the amendment can be tested through the due process relying on the press release and administrative instruction by any of those who suffered paying interest on gross basis to

the Government and such tax payers may file refund claims and test the waters.

5. When a retrospective amendment is made, the registered taxpayer will only be able to claim refund of interest within the due date specified as per section 54 of the CGST Act, 2017.
6. However, reliance can be placed on various court decisions that claim of refund cannot be barred by limitation merely because the period for claiming the refund is expired.
7. The registered person can claim refund by filing Form GST RFD-01 along with supporting documents under Any other (specify) option in GSTN portal.