

# Interest under GST- Has the debate stopped?



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Section 50 of the CGST Act imposes interest liability on the person who fails to pay tax. Even though the legal provisions are not lengthy, the same has been a subject matter of continuous discussion. Thus, it is crucial to understand the current issues revolving around this section and the amendments (made effective), since the advent of GST Act.

**U**nder the GST Law, interest is levied under Section 50 of the Central Goods and Services Tax Act, 2017 ('CGST Act'), read with Notification No. 13/2017-Central Tax dated 28<sup>th</sup> June 2017 (collectively referred to as the 'Interest Provisions'). Such interest provisions have been tested in various High Courts to analyze the applicability of interest on delayed payment of tax (e.g., Interest on Gross vs Net Tax Liability, what constitutes as payment of tax, i.e., Depositing in the Electronic Cash Ledger vs Filing of Form GSTR-3B).

The GST Council has time and again addressed this matter (based on the recommendations from industry and case laws) in its meetings notably in the 31<sup>st</sup>, 35<sup>th</sup>, 39<sup>th</sup>, and 43<sup>rd</sup> Council meetings. As a result, the Central Government has amended these interest provisions multiple times, even retrospectively.

Recently, the Hon'ble High Court of Madras in the case of **M/s Eicher Motors Limited (W.P. Nos. 16866 & 22013 of 2023 and W.M.P. No. 32200 of 2023)** (hereinafter referred to as 'case under discussion', has analyzed the Interest Provisions in its judgement dated 23<sup>rd</sup> January 2024.

Under this article, an attempt has been made to discuss the

amendments made under the Interest Provisions along with the interpretation of such provisions by various High Courts referred to in the case under discussion.

## A) Sub-section 1 and Sub-section 2 of Section 50 of the CGST Act

### 1) Interest on Gross Tax Liability or Net Tax Liability

- 1.1 As per the Interest Provisions implemented on 1<sup>st</sup> July 2017 (read with Notification No. 9/2017 dated 28<sup>th</sup> June 2017), interest was applicable on a person **who failed to pay tax** at the rate of 18%, within the prescribed period. Such interest was computed from the day immediately following the due date for payment until the tax was fully paid. Initially, it was interpreted that tax would mean gross tax liability. No relevance or importance was given to the mode of payment of such tax (whether through the Electronic Credit Ledger ('ECrL') or the Electronic Cash Ledger ('ECL')) and 18% interest was made applicable on tax short paid irrespective of its mode of payment.

- 1.2 The same resulted in a debate as to whether the interest liability would arise on Gross Tax Liability or Net Tax Liability. The said issue was deliberated by the Law Committee and in 31<sup>st</sup> GST Council meeting it was decided that amendments be made in GST Law to provide for interest on the amount paid by ECL (not on gross tax liability). Relevant extract is reproduced below:

*"6. The issue was deliberated by the Law Committee in its meeting held on 15.12.2018. The Committee observed that the proposal to charge interest only on the net liability of the taxpayer, after taking into account the admissible credit, may be accepted in principle. Accordingly, the interest would be charged on the delayed payment of the amount payable through the electronic cash ledger. However, where invoices/debit notes have been uploaded in statements pertaining to the period subsequent to the period in which they should have been uploaded, the interest shall be calculated on the amount of tax calculated on the taxable value from the date on which the tax on such invoices was due. This would require amendment to the Law."*

*Extract from Agenda of 31<sup>st</sup> GST Council Meeting*

In light of the above, amendments discussed below were introduced under the CGST Act:

- 1.3 Vide Section 100 of Finance Act, 2019, read with Notification No. 63/2020 dated 25<sup>th</sup> Aug 2020 (effective from 1<sup>st</sup> Sep 2020), a proviso was inserted to Section 50(1) of the CGST Act which states that interest shall be levied on that portion of tax that is paid by debiting the ECL (in respect of supplies made during a tax period and declared in the return for said period, furnished after the due date). It is pertinent to note that this amendment was **prospective** in nature and resulted in GST Council to further deliberate the intent of GST Law. It was decided that intent was always to charge interest on tax paid in cash and it is the inflexibility of the system that increases the interest burden by not allowing to pay tax (partly via returns) by the Input Tax Credit. The same was explained in the agenda of the 31<sup>st</sup> GST Council meeting as extracted below:

*"A perusal of above provisions indicate that the law permits furnishing of a return without payment of full tax as self-assessed as per the said return but the said return would be regarded as an invalid return. The said return,*

*however, would not be used for the purposes of matching of ITC and settlement of funds. Thus, although the law permits part payment of tax but no such facility has been yet made available on the common portal. This being the case, a registered person cannot even avail his eligible ITC as he cannot furnish his return unless he is in a position to deposit his entire tax liability as self-assessed by him. This inflexibility of the system increases the interest burden. The same is illustrated as below:*

*Suppose a registered person has self-assessed his tax liability as Rs. 100/- for a particular tax period. He has an amount of Rs. 10/- as balance in his electronic credit ledger and he is eligible to avail Rs. 80/- as input tax credit (which would be credited to his electronic credit ledger only on furnishing of return). He is, therefore, required to pay only Rs. 10/- from his electronic cash ledger. The IT system will not allow the said registered person to furnish his return (and therefore the ITC of Rs. 80/- will not be credited in his electronic credit ledger) until he is in a position to discharge his complete self-assessed liability of Rs. 100/-. He would be liable to pay interest on the entire self-assessed tax liability of Rs. 100/- as he is not able to pay Rs. 10/- or part thereof from his electronic cash ledger.*

*It may be seen from the above that if the facility for part payment, as permitted under law, was available, the registered person would have been required to pay interest only on Rs. 10/- but presently he is liable for interest on entire tax liability of Rs. 100/-."*

The issue was also discussed in subsequent 35<sup>th</sup>, 39<sup>th</sup> and 43<sup>rd</sup> GST Council Meetings from a prospective v/s retrospective intent/consequence under GST Law.

- 1.4 Accordingly, the said proviso was further substituted w.e.f. 1<sup>st</sup> July 2017 vide Section



112 of the Finance Act, 2021, (read with Notification No. 16/2021 dated 1<sup>st</sup> Jun 2021) to provide that interest shall be payable on that portion of tax which is paid by debiting the ECL. It is pertinent to mention that *vide* Finance Act 2021, **the benefit introduced vide Finance Act, 2019, was retrospectively allowed** (since the inception of GST) to limit the exposure of interest to the amount that is paid through ECL.

- 1.5 Further, Rule 88B of the CGST Rules 2017 inserted w.e.f. 1<sup>st</sup> Jul 2017 *vide* Notification No. 14/2022 dated 5<sup>th</sup> Jul 2022 prescribes that interest shall be calculated @18% on the amount paid by debiting ECL, depending on the delay in filing the return under section 39 (where a registered person declares supplies made during a tax period in their return for that period, and this return is submitted after the due date). For other cases, interest @18% shall be paid starting from the day on which such tax was due to be paid till the date such tax is paid.

## Analysis

The amendments discussed above intend to settle the dispute with the GST Authorities w.r.t. the amount of tax on which interest is applicable, in case the same is paid via Input Tax Credit and Cash. Finance Act, 2021, resolves the issue (Interest on Gross Tax Liability or Net Tax Liability) by providing (w.e.f. 1<sup>st</sup> July 2017) that interest shall be applicable only on the net portion of tax, i.e., the amount that is paid by ECL.

## Another Pandora Box... debate continues

However, the interpretation of some of the provisions of the CGST Act by the Hon'ble Madras High Court (discussed later) in the case under discussion has opened another Pandora's box of litigation by ruling that merely deposit of the amount under ECL constitutes payment of tax, and delay for computing interest would accordingly be calculated (date of filing of Form GSTR-3B is not considered relevant under Section 50(1)).

## 2) Judicial Interpretations on what constitutes as payment of tax

- 1.6 Section 50(1) states that interest shall be applicable if tax is not paid within the period prescribed. Hon'ble Madras High Court in the case under discussion has referred to Section 39 of the CGST Act to determine the period prescribed.

*"50(1) 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.*

*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 [or section 74A] in respect of the said period shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger."*

- 1.7 Section 39(7) of the CGST Act states that tax shall be paid to the Government not later than the last date on which the registered person is required to furnish the return. The relevant extract is reproduced below:

*"Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:"*

- 1.8 On a combined reading of the above provisions, Hon'ble Madras High Court has interpreted that the tax paid to the Government before the date on which Form GSTR-3B is required to be furnished, would constitute as sufficient compliance for non-charging of interest.



- 1.9 Thus, the Hon'ble Court has held that there is no linkage between the filing of Form GSTR-3B and the payment of tax to the Government. It has said that *"for payment of tax to the Government filing the monthly returns is not the matter but the last date for furnishing the monthly return is important. Thus, whether the monthly return is filed in time or not but the GST has to be remitted not later than the last date for filing the monthly returns."*
- 1.10 To analyse 'payment of tax to the Government', the court referred to the Explanation to Section 49 and Form GST PMT-06 (form for depositing amount in the ECL). Hon'ble Court mentioned that Form GST PMT-06 refers beneficiary as RBI wherein the GST account of Government is maintained and Explanation to Section 49 states that the date of credit to the account of the Government in the Authorised bank shall be deemed to be the date of deposit in the ECL. It has been interpreted that *vide* depositing the amount in ECL, the amount is first credited to the account of the Government and thereafter it is reflected in the ECL, meaning that the tax has reached the kitty of the Government once it is deposited in ECL.
- 1.11 It further stated that the amount once deposited in the ECL is made available to the Government for their use and at any cost, the exchequer cannot be deprived of its right to utilize the amount deposited into the Government account under the pretext of non-filing of GSTR-3B monthly returns.
- 1.12 Further, placing reliance on Section 39(1), the court stated that while filing GSTR-3B, it is mandatory to provide details about the **tax paid**, which means that prior to the filing of any such form, tax should have been paid to the Government. Also, it said that the Government follows a prescribed procedure (which includes proper verification) for granting refunds under the GST Law, and also it pays interest in case of delay, which would not be the case if the amount has not been paid to the Government already.
- 1.13 Additionally, the Hon'ble Court mentioned that it is not that the discharge would be treated only when debit entries are made in ECL (while filing Form GSTR-3B). It is treated as a mere accounting entry that does not have any relation with the actual payment of tax to the Government.
- 1.14 The Hon'ble High Court has also distinguished the timeline interpreted by the Jharkhand High Court in the case of **M/s RSB Transmissions India Limited (W.P(T) No. 23 of 2022)** under

proviso to Section 50(1) of the CGST Act (date of debiting ECL). The Hon'ble Madras High Court relied on the judgement of the Hon'ble Apex Court in the case of Romesh Kumar Sharma, stated that normally a proviso does not travel beyond the provision to which it is a proviso.

- 1.15 Based on the above interpretation of various provisions of the GST Act, the Hon'ble Madras High Court has held that the deposit of the amount in ECL would be treated as payment of tax to the Government. Alternatively, it can be said that there would be no interest (even if Form GSTR-3B is delayed) if the amount is deposited in ECL before the due date.
- 1.16 Interestingly, other High Courts have interpreted the provisions differently and have given importance to filing of Form GSTR-3B, credit/debit entries in ECL and ECL. Some of the contrary rulings on the Interest Provisions are mentioned below:
- High Court of Telangana in the case of **M/s Megha Engineering & Infrastructures Ltd (WP. No. 44517 of 2018)**.
  - High Court of Jharkhand in the case of **M/s RSB Transmissions India Limited (W.P(T) No. 23 of 2022)**

## Analysis

The above judgement/interpretation of the Madras High Court (in the case under discussion) opened a Pandora's box of litigation while dealing with the GST Authorities wherein the taxpayer would tend to rely on the case under discussion and GST Authorities would rely on other contrary rulings. Thus, it became crucial for the GST Council to take cognizance of the matter and the same was taken up in 53<sup>rd</sup> GST Council Meeting held on 22<sup>nd</sup> June 2024. Therein, the GST Council recommended an amendment in Rule 88B of the CGST Rules providing that the amount available in ECL on the due date of filing Form GSTR-3B shall not be included while calculating interest under Section 50 of the CGST



Act (in line with the interpretation of the Madras High Court in the case under discussion).

In light of the above recommendation, a proviso was inserted in Rule 88B of the CGST Rules vide Notification No. 12/2024 dated 10<sup>th</sup> Jul 2024 (reproduced below for ease of reference):

*“Provided that where any amount has been credited in the Electronic Cash Ledger as per provisions of subsection (1) of section 49 on or before the due date of filing the said return, but is debited from the said ledger for payment of tax while filing the said return after the due date, the said amount shall not be taken into consideration while calculating such interest if the said amount is lying in the said ledger from the due date till the date of its debit at the time of filing return.”*

The above amendment would be beneficial to taxpayers who have deposited the amount in ECL on or before the due date of filing Form GSTR-3B, but have filed the said return belatedly.

Even after the above amendment, it would be premature to conclude that the debate around the interest provisions has settled. However, it would be interesting to see the interpretation from the following perspective:

- **Prospective vs Retrospective application:** Though the above amendment in Rule 88B is applicable w.e.f 10<sup>th</sup> July 2024 (prospectively), it will be interesting to see whether a plea is taken by taxpayers to extend the benefit for prior period(s) too (considering that the mechanism of making payment and filing return has been the same since the advent of GST)
- **Will the benefit be extended to the amount lying in ECL based on the number of days:** The proviso states that the amount would be excluded from the computation of interest if the amount is deposited on/before the due date and keep lying till the date of its debit at the time of filing return. However, it will be interesting to see whether this benefit is extended based on the number of days an amount keep lying in the ECL. For example, if a taxpayer has a cash liability of INR 1,00,000 for Aug and deposits the said amount in ECL on 20<sup>th</sup> Sep but fails to file the return till 30<sup>th</sup> Sep. In the meantime, say, he utilises INR 60,000 to pay any other outstanding liability (via Form DRC-03) on 28<sup>th</sup> Sep and deposits the same again on 30<sup>th</sup> Sep while filing Form GSTR-3B for Aug, will INR 60,000 be exempted from interest for 8 days?

Though the current provisions does not seem to extend the benefit of excluding INR 60,000 from

interest for 8 days it will be interesting to observe the arguments of taxpayers and position of the Authorities going forward.

## B) Sub-section 3 to Section 50 of the CGST Act

### 1) Making the provisions relevant as per the current schema of GST Returns

- 1.1) As per the CGST Act implemented on 1<sup>st</sup> July 2017 (read with Notification No. 9/2017 dated 28<sup>th</sup> Jun 2017), a taxable person who makes an undue/excess claim of input tax credit or undue/excess reduction in output tax liability u/s 42(10) or 43(10) respectively was required to pay interest at the rate of 24% (as notified) under section 50(3). However, since the complete matching and reversal introduced vide the Forms GSTR-1, GSTR-1A, GSTR-2, GSTR-2A, and GSTR-3 was not made effective, the suitable amendment was necessitated.
- 1.2) Vide Section 111 of the Finance Act, 2022, (read with Notification No. 09/2022 dated 5<sup>th</sup> Jul 2022, sub-section 3 of Section 50 was retrospectively substituted w.e.f. 1<sup>st</sup> Jul 2017. As per the substituted provisions, interest at a rate not exceeding 24% may be levied on the amount of input tax credit wrongly availed and utilized by the registered person.
- 1.3) Also, vide Section 116 of the Finance Act, 2022 (read with Notification No. 13/2017-Central Tax dated 28<sup>th</sup> June 2017), the interest rate under Section 50(3) was notified as 18% (reduced from 24%) retrospectively w.e.f. 1<sup>st</sup> Jul 2017.
- 1.4) Further, Rule 88B of the CGST Rules 2017 inserted w.e.f. 1<sup>st</sup> Jul 2017 vide Notification No. 14/2022 dated 5<sup>th</sup> Jul 2022 (read with Circular No. 192/04/2023 dated 17<sup>th</sup> Jul 2023) provides clarification on what would construe as wrong availment and utilization of Input Tax Credit along with the method of charging interest in cases where IGST credit has been wrongly availed by a registered person.

## Analysis

Amendments discussed above substitutes the erstwhile provision of Section 50(3) in line with the compliances in force under the GST Law. Further, it is pertinent to highlight that Central Government still has the power to increase the rate of interest on such wrong availment and utilization under this subsection from 18% to 24%.



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