

APPLICABILITY OF INTEREST: UNDERSTANDING THE INTRICACIES AND INTERPRETATION FROM JUDICIAL POINT OF VIEW



CA Susham Rambhiya
Email : susham25@gmail.com

Overview:

Interest has always been a subject matter of interest under the GST Law. There have been several interesting twists and turns with respect to applicability of interest in cases where there has been delay in payment of output tax under the GST regime. Section 50 of the CGST Act, 2017 provides for applicability of interest under the GST Law. Moreover, interest being compensatory in nature, shall arise only when there is delay in payment of tax liability to the credit of Government. In this article, an attempt is made to simplify and analyze some of the significant and interesting judicial pronouncements pertaining to applicability of interest on delayed payment of tax along with my comments.

1. **2020 (34) G. S. T. L. 588 (Mad.)**

M/S. Refex Industries Limited, M/S. Sherisha Technologies Pvt. Ltd. Versus The Assistant Commissioner Of Cgst & Central Excise, The Superintendent Of Central Tax, Bank Managar, Bank Managar, Icici Bank

Dated 06.02.2020

Facts:

M/S. Refex Industries Limited (Petitioner) had belatedly filed its GST Returns for the period involving July 2017 to March 2018. Accordingly, interest was demanded for the entire amount of outward liability belatedly discharged through cash. The question which arose before Hon'ble Madras High Court that whether interest would be applicable on entire outward liability or only on that portion which is discharged through debiting electronic cash ledger?

Analysis:

Hon'ble High Court by applying the rationale of Income tax Law stated that the purpose to levy interest is to compensate the Revenue for delay in payment of tax liability beyond the permissible time limit. Applying the same principle under GST Law, the Court observed that interest would be applicable only on that portion of tax liability which was paid through Electronic Cash Ledger. The Court highlighted the fact that amount of tax discharged through ITC is already available with the Government and there are adequate safeguards in Law for recovery of the same if it is subsequently found that ITC availed or utilized was not in consonance with the provisions of GST Law. The Court read the insertion made in proviso to Section 50(1) of CGST Act, 2017 from 01.08.2019 to levy interest on liability discharged through cash to be clarificatory and shall have retrospective application as it was inserted to cure the anomaly in the original provision.

Held:

Court held that interest shall be applicable only on that portion of output liability which was discharged through Electronic Cash ledger.

Author's Comment:

This is one of the first decisions under GST Law whereby inconsistency under GST Law was removed by Hon'ble Madras High Court. It further emphasized the fact that GST is a tax on value addition. Accordingly, it was rightly concluded that interest should be applicable only on the cash component while discharging liability.

2. 2022 (9) TMI 118 - Madras High Court

India Yamaha Motor Private Limited (Represented By Assistant General Manager, Khiroda Chandra Patra) Versus The Assistant Commissioner, The Commissioner Of Cgst & Central Excise, The Deputy Commissioner (Ct) (LTU) - III, The Goods And Service Tax Network

Dated 29.08.2022

Facts:

India Yamaha Motor Private Limited (Petitioner) had mistakenly filed GSTR 3B for July, 2017 by including the data pertaining to its Faridabad plant instead of Chennai plant. Subsequently, a grievance petition before the GST authority for redressal and while keeping the monthly returns for the months from August to October 2017 in abeyance till proper ascertainment of tax liability for the aforesaid months would rely upon the adjudication of its grievance petition. Subsequently they have filed the returns and remitted tax belatedly. The issue which arose before Hon'ble High Court was whether interest was applicable when there was sufficient balance in Electronic Cash Ledger as well as Electronic Credit Ledger.

Analysis:

The Court in its evaluation rejected Petitioner's claim stating that about adequate balance available in electronic cash ledger as well as electronic credit register without any loss to Government. Court further stated that where actual credit was not availed cannot be regarded as payment. The Court envisaged several situations where ITC may have been availed erroneously or on a mistaken interpretation of the law. Accordingly, it could be risky and prejudicial to the interest of revenue if mere availability of balance in electronic credit ledger is considered and equated with utilization for non-levy of interest liability. Moreover, Court refused to provide immunity to Petitioner from levy of interest for belated remittance of GST for the period from July 2017 to October 2017.

Held:

Hon'ble Court held that unless Petitioner actually files the returns and debits the respective registers, it would not be considered as discharge of tax liability. Accordingly, decision was pronounced against Petitioner.

Author's Comment:

This ruling brought into a unique interpretation whereby availment in GST returns is mandatory to avoid interest liability of balance in electronic credit ledger while discharging output tax liability. Further, the non-availability of mechanism to rectify the mistakes or errors committed once returns are filed had also resulted in Court deciding the case against the Petitioner.

3. *MANU/JH/1260/2022*

RSB Transmission (India) Limited Versus Union of India

Dated 18.10.2022

Facts:

RSB Transmission (Petitioner) had delayed in filing the returns under FORM GSTR-3B for the month of July 2017, October 2017, November 2017 and March 2018. However, the petitioner had deposited the tax amount in the Electronic Cash Ledger before the respective due dates of filing GSTR-3B. Therefore, the issue which arose before the Hon'ble Jharkhand High Court that whether the interest would be applicable on portion of tax liability which is being deposited in the Electronic Cash Ledger before the due date where returns are filed belatedly?

Analysis:

The Hon'ble High Court construed that as per Scheme of GST Law, Section 39(7) of CGST Act, 2017 specifies that the payment of tax should happen simultaneously with filing of GSTR 3B Returns. The Court based on its reading of Section 49(1) of CGST Act, 2017 stated that amount deposited in electronic cash ledger is merely in the nature of deposit and would not be considered as the payment made to Government. The Court further observed that Explanation to Section 49(11) that date of deposit in the Electronic Cash Ledger does not amount to payment of the tax liability to the Government. The Court on perusal of Rule 61(1) and Rule 61(2) of CGST Rules, 2017 mentioned that the tax, interest and penalty is discharged only by debiting the Electronic Cash Ledger and by furnishing the details under Form GSTR-3B. Moreover, the Court highlighted that proviso to Section 50(1) of CGST Act, 2017 makes it amply clear that interest liability would arise on the portion of tax which is paid by debiting the Electronic Cash Ledger.

Held:

The Hon'ble High Court held that no person could make the payment of tax prior to filing of GSTR-3B return as such amount will always be lying in the Electronic Cash Ledger and does not amount to the payment of tax due to the Government exchequer. It further held that the any deposit in the electronic cash ledger prior to due date of filing of GSTR 3B return does not amount to discharge tax liability. Therefore, the interest would be levied on the portion of tax liability deposited in the Electronic Cash Ledger even on the amount debited before the due date of filing of returns.

Author's Comment:

In this verdict, Court while arriving at the decision has missed out an important fact that GST Law nowhere mandates that payment of GST ought to go hand in hand with filing of returns. As per legal position payment of tax can be made anytime before the filing of GST returns. It is in fact the mechanism of the GST Portal which does not allow to file GST returns without discharging the GST liability. Moreover, it appears that Court has given more weightage to the nomenclature rather than substance by treating the amount deposited in electronic cash ledger as deposit rather than payment. Also, surprisingly the Court in its decision has given preference to Rules over Section where there is inconsistency between the two. Additionally, proviso goes beyond the main provision by considering that payment of tax can be made only through debit of Electronic Cash Ledger. Moreover, there are separate provision under GST Law enabling taxpayer for filing refund application for balance under electronic cash ledger which in itself shows that such amount is already paid to Government.

4. (2024) 14 Centax 323 (Mad.)

Eicher Motors Versus Superintendent of GST and Central Excise

Dated 23.01.2024

Facts:

Eicher Motors (Petitioner) had transitioned the CENVAT Credit to GST regime through GST TRAN-1. However, due to some technical glitches on the portal, the GST TRAN-1 was not filed on time and subsequently, the petitioner was unable to file the monthly return in Form GSTR-3B for the months July 2017-December 2017. However, the petitioner ensured that the tax dues are paid before the due dates without any delay by depositing the tax amount in Electronic Cash ledger. Therefore, the issue which arose before the Hon'ble Madras High Court that whether the interest would be applicable on portion of tax liability which is being deposited in the Electronic Cash Ledger before the due date where returns were filed after due date?

Analysis:

The Hon'ble High Court noted that once the amount is deposited through GST PMT-06, the said amount is said to be credited to the account of the Government by equating the same with payment of tax. Moreover, the Court on interpreting the Explanation (a) to Section 49 of CGST Act, 2017 which specifies that the date of credit to the account of Government shall be deemed to be the date on which the amount is deposited in the Electronic Cash Ledger stated that the amount credited to the Electronic Cash Ledger is for the purpose of accounting only whereas in substance the amount is already credited to Government's Account. The Court stated on bare perusal of the proviso inserted in Section 50(1) of CGST Act, 2017, inferred that even though interest liability would arise on the portion of the amount of tax which is paid by debiting the Electronic Cash Ledger, yet proviso cannot override and contradict the main provision of Section 50(1) of CGST Act, 2017.

Held:

The Hon'ble High Court had deviated from the decisions of Jharkhand High Court in the case of *RSB Transmission (India) Ltd. v. Union of India (MANU/JH/1260)* and the decision held by Telangana High Court in the case of *Megha Engineering and Infrastructures Ltd. v. CCT (MANU/TL/41/2019)* and relied on the decision of Gujarat High Court in the case of *Vishnu Aroma Pouching (P.) Ltd. v. Union of India (2020 (38) G.S.T.L. 289 (Guj.)*. It concluded that the amount deposited in the Electronic Cash Ledger is to be treated as credited to the Government on the date of such credit. Therefore, the interest would not be applicable on the amount of tax deposited in the Electronic Cash ledger before the due date of filing of return.

Author's Comment:

This is the most recent decision pertaining to interest which has been widely welcomed by various taxpayers and GST experts across the country. Madras High Court after thorough analysis has rightfully deviated from the reasoning given and conclusion arrived by Hon'ble Jharkhand High Court in *RSB Transmission (India) Limited Versus Union of India MANU/JH/1260/2022*. Also, this decision emphasizes the fact that substantial compliance requirement for payment of taxes is done then interest should not be levied for procedural delay of filing the returns. It further reiterates the fact

that as per the legal position, return filing and payment of taxes are distinct from each other. However, one factual difference which needs to be taken into account in the decision of *Eicher Motors Versus Superintendent of GST and Central Excise (2024) 14 Centax 323 (Mad.)* there were issues pertaining to GST Portal in transitioning credit of erstwhile laws in which was not the case in *RSB Transmission (India) Limited Versus Union of India MANU/JH/1260/2022*. Nonetheless, with divergent decisions by two different High Courts, it is likely that matter would go to Supreme Court for putting the debate to rest.

Parting Remarks:

Even though some of the issues pertaining to interest have been resolved there exists a lot of ambiguity with respect to the provisions pertaining to Interest under the GST Law. It is recommended that Government should bring clarity with respect to various provisions impacting under the GST Law and resolves the inconsistencies and ambiguity surrounding the provisions of Interest. Further, taxpayers need to be aware with respect to their potential exposure to interest liability and accordingly comply with GST Law. It is advisable to take due care and assistance of GST Consultants based on the applicable facts before relying on the favourable judgments given by the judiciary.

