

Interest to be demanded only on Net Tax liability in Form DRC-07 instead of DRC-01

The Hon'ble Gujarat High Court in *M/S. Rajkamal Builder Infrastructure Private Limited v. Union of India [R/Special Civil Application No. 21534 of 2019, dated March 23, 2021]* quashed and set aside the order issued by the Revenue Department in Form GST DRC-01 for recovery of interest on delayed payment of tax on gross liability and held that, the interest on delayed payment of tax is to be charged on net tax liability and the notice for the same should have been issued in Form GST DRC-07.

Facts:

This writ application is filed against the order dated July 19, 2019 issued to M/S. Rajkamal Builder Infrastructure Private Limited ("**Applicant**") in Form GST DRC-01 under Section 50 of the Central Goods and Services Tax Act, 2017 ("**CGST Act**") for recovery of the amount towards interest on delayed payment of tax on gross tax liability.

It has been contended by the Applicant that the order has been issued without any authority of law and the demand raised by the Revenue Department ("**Respondent**") is not in accordance with law.

Issues:

- Whether interest under Section 50 of the CGST Act is to be levied on the net tax liability or on the gross tax liability?
- Whether issuance of Form GST DRC-01 under Section 50 of the CGST Act is legal and proper?

Held:

The Hon'ble Gujarat High Court in *R/Special Civil Application No. 21534 of 2019, dated March 23, 2021* held as under:

- Relied on the proposed amendment in Section 50 of the CGST Act vide clause 112 of the Finance Act, 2021 to state that the interest under Section 50 of the CGST Act can only be levied on the net tax liability and not on the gross tax liability. Thus, the demand raised by the Respondent is not in accordance with law.

- Observed that the Respondent has issued Form GST DRC-01 under Section 50 of the CGST Act, whereas Rule 142(1)(a) of the Central Goods and Services Tax Rules, 2017 (“**CGST Rules**”) 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 of the CGST Act and that too, electronically as a summary of notice.
- Stated that, Form GST DRC-01 could not have been issued for the purpose of recovery of the amount towards interest on delayed payment of tax. Further stated that, the notice should have been issued in Form GST DRC-07 as per Section 75(12) of the CGST Act read with Rule 142(5) of the CGST Rules. The notice should specify the amount of tax, interest and penalty payable by the person chargeable with tax.
- Held that, Form GST DRC-01 have been issued without any authority of law and the demand raised by the Respondent is not in accordance with law.
- Quashed and set aside the order issued in Form GST DRC-01 and reserved the liberty for the Respondent to initiate fresh proceedings against the Applicant in accordance with law.

Our comments:

It is to be noted that the proposed amendment in Section 50 of the CGST Act vide clause 112 of the Finance Act, 2021 (“**Finance Act**”) has been made so as to charge interest on delayed payment of GST on net tax liability with effect from the July 1, 2017.

To know more, kindly watch our videos on:

- “**Interest to be paid on Net Tax Liability**” by CA Bimal Jain- <https://www.youtube.com/watch?v=kPZ0V-KI4Ng&t=9s>
- “**Interest to be charged on Net Tax Liability w.e.f. July 1, 2017 – Union Budget 2021**” by CA Bimal Jain- <https://www.youtube.com/watch?v=XMvFJxoRM7o>

Relevant Provisions:

Section 50 of the CGST Act:

Flat no. 34B, Ground Floor, Pocket -1, Mayur Vihar, Phase –I, Delhi - 110091
 Email: bimaljain@a2ztaxcorp.com; Web: www.a2ztaxcorp.com; Tel: +91 11 4242 7056

“Interest on delayed payment of tax.

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 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.”

Section 75(12) of the CGST Act:

“75. General provisions relating to determination of tax.

.....

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.”

Rule 142(1)(a) and Rule 142(5) of the CGST Rules:

“Notice and order for demand of amounts payable under the Act.-

(1) The proper officer shall serve, along with the

(a) 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, a summary thereof electronically in FORM GST DRC-01

.....

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.”

We have recently released the 6th Edition of our GST Book titled **“GST LAW AND COMMENTARY – WITH ANALYSES AND PROCEDURES”**, in a set of 3 Volumes. We thank you all for the support and your enduring response.

Have a look at the complete tour of the Book at: <https://rb.gy/3hifj3>

Order your copy now and be a part of GST learning excursion in most comprehensive and lucid form !!

This book can be ordered online at: <https://rb.gy/benrpb>

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon.