

Interest to be charged on Net Tax liability w.e.f July 01, 2017

The Hon'ble Madras High Court in the case of *M/s. Maansarovar Motors Private Limited v. The Assistant Commissioner and Others [W.P. No. 4468 of 2020, dated 29 September, 2020]* has set aside orders for levying interest on input tax credit ("ITC") as applied on delayed payment in line with GST Council's resolution of levying interest on net cash liability only with effect from July 1, 2017 and held that the proviso to Section 50 of the Central Goods and Services Tax Act, 2017 ("**CGST Act**") Act is retrospective in operation notwithstanding the notification bringing it into effect from September 1, 2020.

Facts:

The batch of writ petitions was filed which revolved around the interpretation of Section 50 of the CGST Act, particularly on effective date of application of the proviso inserted vide Section 100 of Finance (No.2) Act of 2019.

That, Section 50 of the CGST Act deals with levy of interest on delayed remittance of the output GST liability. Section 100 of the Finance (No.2) Act, 2019 inserted a Proviso to Section 50 which stated that interest is leviable only on that portion of output liability which is discharged by way of cash and the effective date of the amendment was not specified, which was later discussed in 39th GST Council held on March 14, 2020 meeting where the recommendation was made for retrospective applicability of interest on net cash liability only with effect from July 1, 2017. Subsequently, the said amendment was notified vide **Notification No. 63/2020-Central Tax, dated August 25, 2020**, mentioning, September 1, 2020, as the date on which the Proviso would come into force.

Then, the Central Board of Indirect Taxes and Customs ("**CBIC**") issued a **Press Release dated August 26, 2020** stating that the above notification, dated August 25, 2020, was issued prospectively only to get over technical limitations and the decision of the GST council in the 39th meeting held on March 14, 2020 would be given full effect, which led to the legal issues concerning the determination of effective date of the proviso.

Issue:

Whether proviso to Section 50 of CGST Act is applicable retrospectively?

Held:

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The Hon'ble Madras High Court in **WP.No.4468 of 2020, dated 29 September, 2020** held as under:

- Held that entire controversy has now been settled by the CBIC vide its **Circular in F.No. CBIC 20/01/08/2019-GST dated September 18, 2020** where it has reiterated that the amendment by insertion of Proviso of Section 50 of the CGST Act is intended to be retrospective and thus, **recovery of interest will only be on net cash tax liability from July 1, 2017.**
- The Hon'ble Court observed that it is clear that there is a meeting of minds of the Centre, the State of Tamil Nadu and the Board to the effect that the proviso to Section 50 is operative effective July 1, 2017, and no interest is liable to be levied on tax remitted by reversal of available ITC. And the GST authorities have adopted a contradictory stand by issuing orders, styled as notices, levying interest for allegedly belated remittance of tax by reversal of ITC. No opportunity appears to have been granted in most of the matters calling for explanation from the assesseees prior to raising of the impugned demands of interest and coercive recovery action by attachment of bank accounts have been resorted to by the respective Assessing Officers.
- That, this Court had dealt with this very issue and held in favour of the taxpayers. The Department is **enriching itself doubly** by, on the one hand, holding in its coffers the available credit and on the other, seeking the payment of interest upon the same sum. It is settled that where a **Proviso was designed to eliminate unintended and prejudicial consequences** which would cause hardship to a party, such a Proviso should be seen to be remedial and one that mitigated the prejudice caused **from inception**. Moreover, that interest is a measure of compensation, and since ITC is already available in the electronic ledger, there is no question of the same being due to the revenue.

Comments:

The above decision provides a much-needed relief to the taxpayers who were in the delimita whether proviso to Section 50 is operative retrospectively or prospectively. Though the CBIC press release dated August 26, 2020 stated that the notification was issued due to technical limitations, the Hon'ble HC, Madras through judicial intervention

has settled the retrostivity of the proviso which was the intention as expressed in the GST Council meetings, press releases, etc.

Similarly, the petitioner in ***Prasanna Kumar Bisoi v. Union of India [W.P.(C) NO.13190 of 2020 dated August 21, 2020]*** argued on the retrospective application of the proviso to Section 50 of the CGST Act wherein the Hon'ble HC, Orrisa held that the petitioner is liable to be paid on net cash tax liability in view of the decision taken by the GST council in its 39th Meeting held on March 14, 2020.

Relevant Provisions:

Section 50 of the CGST Act:

“Interest on delayed payment of tax-

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 levied on that portion of the tax that 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 <http://www.judis.nic.in> may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.”

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