

TAX FLASH NEWS

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Interest on delayed payment is to be calculated on net tax liability (cash-component) – Madras High Court

Madras High Court has recently held¹ that the levy of interest on delayed payment of GST liability is purely compensatory in nature and accordingly is liable to be charged only on the net cash payment and not on the gross liability (before tax credit).

Brief facts

For the period commencing from August 2017 to March 2018, the petitioner had belatedly filed its GST returns. Demand notices were issued by the revenue to the Banks seeking to recover arrears of interest from the account balance of the petitioner.

The petitioner objected, stating that they had sufficient input tax credit available with the revenue and thus interest could be demanded, if at all, only on the cash components of the tax admitted and paid after the due date.

Petitioner accordingly had filed writ petition before the Madras High Court against the coercive recovery of the interest.

High Court order

As per section 50 of the Central Goods and Services Tax Act, 2017, levy of interest on belated payment of tax is 'automatic' as it is intended to compensate the revenue for the remittance of tax paid beyond the time frame permitted under the law.

The use of the word 'delayed' in section 50, connotes a situation of deprivation, where the State has been deprived of the funds representing the tax component till such time the return is filed accompanied by the remittance of tax. The section specifically intends to apply to a state of deprivation and cannot apply in a situation where the State possesses sufficient fund in the form of tax credits.

Thus, the Court held that, the proper application of section 50 is one where the interest is levied only on the cash payment, which was paid late, but not on ITC available all the while with the department to the credit of the assessee.

Further, the Court observed that proviso² inserted in section 50(1), provides for payment of interest only on that part of the tax liability which has to be paid in cash, was inserted with the intention to correct the anomaly in the provision as it existed prior to such insertion. Thus, the Court held that the provision is to be read as clarificatory and operative retrospectively.

Our comments

The order of the High Court has considered two important facets on the levy of interest under the GST law, i.e. the nature of the levy of interest and the clarification proviso inserted in the CGST Act.

The Court in its order has laid down the ratio that interest is leviable only on the funds that has been deprived to the Government by the taxpayer due to delay in filing of the returns and resultant delay in payment of tax. Interest is not applicable to the extent of tax credit balance already available with the Government.

Proviso inserted in the CGST Act, though have been held by the court as clarificatory in nature, it is important to note that the said insertion has not been made effective, as few states have not yet incorporated the same in their respective State GST Act. The fact that the insertion has not been made effective, it needs to be seen whether the order can withstand appeal before the larger bench.

¹ Refex Industries Limited [TS-89-HC-2020(MAD)-NT]

² Proviso inserted on 1 August 2019

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