

TAX FLASH NEWS

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Interest is payable on the gross GST liability – High Court, Telangana

Recently, the High Court of Telangana¹ dismissed the writ petition filed against the interest demand raised by revenue on the gross tax liability. The court held that tax paid on inputs becomes an input tax credit only when a claim is made in the returns filed as self-assessed. In case of a delay in filing of returns, the payment of tax liability, partly in cash and partly in form of claim of input tax credit (ITC) also happens belatedly. Thus, liability to pay interest arises automatically on the gross amount.

Facts of the case

Megha Engineering & Infrastructures Ltd., (the petitioner) is engaged in the manufacture of MS Pipes and in the execution of infrastructure projects. The petitioner had delayed in filing the returns in GSTR-3B for the period from October 2017 to May 2018. They had paid tax liability (net of ITC) along with interest calculated on the net tax liability at the time of filing of its returns. The revenue thereafter, had issued a letter demanding interest to be calculated on the total tax liability (gross). In response to the said demand, the petitioner filed a writ before Telangana High Court.

Order by the High Court

After considering the various provisions under the GST law, the court observed and held as under:

Until a return is filed as self-assessed, no entitlement to credit and no actual entry of credit in the electronic credit ledger takes place. As a consequence, no payment can be made from out of such a credit entry. Tax paid on the inputs charged on any supply of goods and/services, is always available, but, the same is available in the air or cloud. Such tax becomes an input tax credit only when a claim is

made in the returns filed as self-assessed. It is only after a claim is made in the return that the same gets credited in the electronic ledger. It is only after a credit is entered in the electronic credit ledger that payment could be made, even though the payment is only by way of paper entries.

Consequent to the delay in filing of the returns, the payment of tax liability, partly in cash and partly in the form of claim of ITC was made beyond the period prescribed and thus, the liability to pay interest on gross amount arose automatically. The petitioner thus, cannot escape from this liability.

Our comments

This is an important judgment as the Court has determined that tax paid on inputs shall be considered as input tax credit only when the returns are filed. Though the GST council had previously recommended² levy of interest on net tax liability after taking into consideration admissible ITC, the amendment to that effect has not been given effect in the GST law.

It is important that Central Board of Indirect Taxes and Customs (CBIC) considers the recommendation and issues the necessary notification to avoid huge liability/ litigation for assesseees in the future.

¹ Megha Engineering & Infrastructures Ltd [Writ Petition number 44517 of 2018]

² 31st GST Council meeting held on 22 December 2018

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