

Draft Reply/Submission against notice for recovery of interest on the gross tax dues on account of delayed filing of GSTR 3B.

To,
Commissioner,
Central/State GST,
Commissionerate _____

Respected Sir/Madam,

Re.:- Notice dated seeking recovery of interest on the gross tax dues on account of delayed filing of GSTR – 3B

We are in receipt of the above notice wherein we have been directed to pay the interest mentioned in the said notice voluntarily failing which recovery action would be initiated u/s 79 of the CGST Act, 2017. In this regard we submit as under.

OPTION – 1

We submit that we have already discharged interest on the delayed payment of tax from the electronic cash ledger. Working for the same is annexed with this letter. You are requested to drop the proceeding and oblige.

OPTION – 2

We submit that no interest is payable by us for the following reasons —

(i) It is settled principle that the Government cannot demand any tax or interest without following the principles of natural justice. Said principle has been enshrined in the CGST Act, 2017 by virtue of Sec. 73 and 74 which inter alia provides for the issuance of a show cause notice which requires the tax payer to show cause as to why the tax along with interest u/s 50 as determined by the officer should not be paid. Said provisions also provides that the tax payer can pay the tax and/or interest on the basis of his own ascertainment and in such circumstances the officer may issue the show cause notice for the amount falling short. Hence we submit that the interest paid by us on our own ascertainment of INR.....be kindly considered and if found that the said interest amount falls short of the amount determined, law requires you to issue the show cause notice giving us an opportunity of being heard. Hence the above notice without from providing any opportunity to show cause is not in accordance with the stated legal provisions.

(ii) **Sec. 50(1) of the CGST Act, 2017 reads as under:**

“SECTION 50. 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:”

A proviso has been introduced (yet to be notified) to the said sub-section which reads as under:

“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.”

- (iii) Now perusal of the agenda of the 31st GST Council Meeting held on 22.12.2018 would show that the GST Council has acknowledged the fact that the GSTN portal does not permit filing of the return with tax amount due. Further the fact that GST is a tax on value addition was also acknowledged and thus had agreed to insert the proviso as reproduced above. Relevant extract of the agenda is as under:

“It is also pertinent to mention that the liability of any registered person is related to the value addition made by him since GST is leviable only on value addition. Accordingly, input tax credit is allowed to the registered person in respect of the tax paid by him on his inward supplies. And, while making the outward supplies, the input tax credit so allowed is permitted to be utilised for discharging his output tax liability. The remaining part which is generally equivalent to the tax on value addition is discharged through electronic cash ledger. Hence, by this mechanism the registered person effectively pays tax only on the value addition made by him. If this concept is applied for interest payable, then, it appears that the interest should also be charged on the tax payable on the value addition only, i.e. the amount of tax which is required to be paid through electronic cash ledger.”

- (iv) Therefore we submit that the intent of the GST Council as well as the legislators in inserting the given proviso has to be respected and accordingly Sec. 50(1) has to be read as authorizing the imposition of interest on the basis of self-assessment only on the tax paid by way of cash right from the implementation of GST i.e. 01.07.2017 as both the factors which resulted in the proviso are persisting from the said date.
- (v) Without prejudice to above we also submit that Sec. 50(1) seeks imposition of interest by way of self-assessment on failure of pay the tax “or any part thereof”. We thus submit that Sec. 50(1) envisages a scenario wherein a part tax (i.e. the tax payable by way of cash) would remain outstanding had the portal permitted filing of the return with tax shown as due and hence interest can be imposed on such net portion which remains due. Thus we submit that Sec. 50(1) even without the notification of the proviso permits imposition of interest only on the tax payable by cash.

- (vi) **50(2) of the CGST Act, 2017** reads as under:

“(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.”

- (vii) We thus submit that Sec. 50(2) provides for the calculation of interest imposed u/s 50(1) in a manner which may be prescribed. The word “prescribed” has been defined **u/s 2(87) of the CGST Act, 2017** to mean prescribed by rules made under the Act on the recommendation of the Council. We thus submit that till date **no such rules have been formulated to prescribe the manner** for calculating the interest u/s 50(1). Therefore demanding the interest on the gross amount of tax **is not in accordance with Sec. 50(2) in absence of any rule allowing such determination of interest amount on gross dues.**

- (viii) Reliance is also placed on the decisions in the case of **M/s Landmark Lifestyle Vs. Union of India and Ors. (Case No. 6055/2019) (Del.)** and **Bharatbhai Manilal Patel Vs. State of**

Gujarat (Case No. 17642 of 2019) (Guj.) wherein on the said issue Hon'ble Courts have already granted stay.

- (ix) Madras High Court in the case of **Refex Industries Ltd (2020) 20 TUD online102(Mad)** held that the specific question for resolution before me is as to whether in a case such as the present, where credit is due to an assessee, payment by way of adjustment can still be termed 'belated' or 'delayed'. The use of the word 'delayed' connotes a situation of deprivation, where the State has been deprived of the funds representing tax component till such time the Return is filed accompanied by the remittance of tax. The availability of ITC runs counter to this, as it connotes the enrichment of the State, to this extent. Thus, Section 50 which is specifically intended to apply to a state of deprivation cannot apply in a situation where the State is possessed of sufficient funds to the credit of the assessee. In my considered view, the proper application of Section 50 is one where interest is levied on a belated cash payment but not on ITC available all the while with the Department to the credit of the assessee. The latter being available with the Department is, in my view, neither belated nor delayed. In the light of the above discussion, these Writ Petitions are allowed and the impugned notices are set aside.
- (x) We therefore submit that the recovery initiated u/s 79 based on the amount determined by your good-self is not in accordance with law for the reasons cited above. Hence we request you to kindly adjudicate the matter based on the present submissions before initiating any other proceedings.

Thanking You,

Yours Sincerely,

For _____