

Draft Reply on Non-payment of Interest U/s 50

Dated:

The Jurisdictional Officer,

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Ref— M/s GSTMITRA Praveen Sharma (GSTIN:)

**In the matter of FORM GST DRC-07 Summary of the order
Reference No:**

Sub- Reply against non-payment of Interest u/s 50

Respected Sir/Ma'am,

This Submission is in reference to Summary of the order DRC-07 Reference No: received by us on regarding non-payment of interest for the tax period Jul-2017 to Mar-2018.

Content of the Order is as below:

1. Details of order
 - (a) Order no.....
 - (b) Order date:
 - (e) Tax period: Jul 2017 - Mar 2018
2. Issues involved - Non-payment of interest under section 50
3. Description of good/services

Sr. No.	HSN	Description
1

4. Details of demand (Amount in Rs.)

Sr. No.	Tax Rate (%)	Turnover	Place of Supply	Act	Tax	Interest	Penalty	Others	Total
1				IGST					
2				CGST					
3				SGST					

Our Reply in the above matter is as below:

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We have received the said order and noted the contents thereof. In the said order your goodself has cited that there is a non-payment of interest on a/c. of de filing of GSTR-3B Return and have called upon for the payment of interest of same.

We beg to state that the delay in the returns of GSTR-3B for the various months 18 because of various technical glitches in the GST portal, it took several attempts to upload and save the data and even after saving it due to technical faults the whole page became bank, we had faced tremendous pressure to submit it. Hence the issue was of delayed return filing. There are several instances where the department itself has accepted the technical glitches and the portal slow-down. Consequently, the due dates of the GST returns have also been extended on various occasions, the Filing of return was a procedural hardship for an assessee and Government officials themselves faced various procedural issues. It is totally unjust to charge interest for delay in return filing. We already suffered huge business losses due to the technical glitches under GST & procedural issues.

The said action of charging interest meted out to the petitioner by The Department is against The Right to Equality guaranteed by Article 14 of The Constitution of India. It is the first fundamental right assured to the people of India.

The orientation given to Article 14 which guards citizens against arbitrary action of The Govt has been explained by Bhagwati, J., in **Bachan Singh V. State of Punjab**, Rule of law which permeates the entire fabric of the Indian Constitution excludes arbitrariness. "Whenever we find arbitrariness or unreasonableness there the denial of rule of law". Article 14 enacts primarily a guarantee against arbitrariness and inhibits state action, whether legislative or executive, which suffers from the vice of arbitrariness. "Every state action must be non-arbitrary and reasonable. Otherwise, the court would strike it down as invalid."

Again due to Difficulty in filing e-return penalty was waived off in various cases also by the Government itself in the case of, 2018 (1) TMI 948 - MADRAS HIGH COURT

It was held that taking note of the fact that the penalty fee has been waived for three months i.e. July, August and September 2017.

Notwithstanding the above, as per the Press Release issued after 31 GST council Meeting, dated 22.12.2018 the Amendment of section 50 of the CGST Act provides, that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax

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credit, i.e. interest would be leviable only on the amount payable through the electronic cash ledger.

Further under clause 99 of the Finance Bill, 2019 - In section 50 of the Central Goods and Services Tax Act, in sub-section (1), provides that the interest on lay 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.

In the instant case, we had the utilised ITC balance in the electronic credit ledger available during the aforesaid period and apart from Reverse charge liability there was no liability to pay tax in cash because the Electronic Credit Ledger had sufficient balance of unutilised ITC.

It is pertinent to not here that the reverse charge liability is also just a procedural matter to track certain transactions. It has no cash impact as ITO is available as soon as the payment for reverse charge is done. However, in the interest of reducing litigation and under protest, we undertake to pay the interest on such delay in payment of reverse charge liability in cash as per the calculation below:

Calculation of Interest on a/c. of delay payment of RCM liability						
Particulars	IGST	CGST	SGST	IGST Interest	CGST Interest	SGST Interest
Total						

In view of the above, it is prayed before your honour to kindly accept our explanation in the matter of delay in filing GSTR-3B for the months of and kindly revise the Summary of Order (DRC-07) so that we can make the interest payment as per the above calculation.

For this act of kindness, you petitioner as duty bound shall always be grateful.

Thanking you

For **GSTMITRA Praveen Sharma**

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Praveen Sharma
(Authorized Representative)