

Whether Interest is payable for delay in filing of returns? If interest is payable whether it should be on gross basis or on net basis?

Now a days Revenue Authorities are issuing notices for collection of Interest u/s 50(1) on gross amount of Tax. This is resulting in heavy demand though major portion of the tax payment may had been done through ITC. There may be various grounds for not paying interest as demanded by notices. We have tried to compile the grounds and way to represent the case in form of letter, before authorities. Following are the few points for consideration:

1. Computation and deposit of interest

The liability of interest (if any) works out to Rs. _____ as per the computation provided herein below:

Financial Year:

Month	Due Date	Return Filing Date	Delay in Days	Tax paid through Cash	Interest u/s 50(1)
April					
May					
June					
July					
August					
September					
October					
November					
December					
Total					

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The above interest has already been deposited sue moto as per below given Challan details:

Financial Year:

Challan Date	Challan Number (CPIN)	Interest Amount u/s 50(1)
	Total	

Copy of Payment Challans are enclosed herewith as Annexure A.

Or

In case details of interest is not available in notice than first calculation and details of interest should be asked from dept.

2. Interest is not payable:

Being legal abide assessee, we have deposited sue-moto the interest as referred supra. In our considered view at the first instance interest is not payable at all due to delay in filing of GSTR 3B. Following are the grounds of our understanding:

2.1 Absence of Methodology:

Sec.50(2) of the CGST Act provides:

“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.”

In terms of Sec.50(2), method for calculation will be prescribed.

As per Sec.2(87)

“prescribed” means prescribed by rules made under this Act on the recommendations of the Council.

We humbly submit that till date no such rules have been formulated to prescribe the manner for calculation the interest u/s. 50 (1) and in absence of methodology to calculate, interest cannot be charged. Same view is also supported by following case laws:

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- [Apex Court decisions in Govind Saran Ganga Saran v. CST \(GIB/WB/GOVIND SARAN/26-04-1985/SC-3 \)](#)
- [CIT v. B.C. Srinivasa Shetty \(GIB/KN/B.C. SRINIVASA/19-02-1981/SC-5\) &](#)
- [Suresh Kumar Bansal Vs. Union of India \[GIB/DL/SURESH BANSAL/03-06-2016/HC-48\]](#)

There is failure to prescribe the method of calculation of interest by way of the suitable rule as mandated by section 50(2). Therefore, the demanding of interest is not in accordance with Sec.50(2) in absence of any rule for determination of interest.

2.2. Whether delay in filing of GSTR-3B can be basis of calculation of interest :

We humbly submit GSTR-3B has been notified return under rule 61(5) retrospectively w.e.f 01-07-2017 vide Notification No.49/2019 CT Dated 09-10-2019.

Aforesaid retrospective amendment has been done to nullify the verdict of honorable Gujarat High Court in the case of [AAP & Co. Chartered Accountants v/s Union of India \[GIB/GUJ/A A P & CO./28-08-2019/HC-56\]](#). As the law has been retrospectively amended on 09-10-2019, interest cannot be charged on the basis of retrospective amendment. As per the cardinal principle of law, taxpayer cannot be punished due to retrospective amendment of law.

As explain in Para 1 and 2 above, we humbly submit that there should not be any interest demanded due to delay in filing of GSTR-3B, till the date of retrospective amendment and till rules are prescribed u/s. 50(2).

3. Interest on Net basis

Without prejudice to above. We humbly submit that if any interest is to be charged, it should be charged on net basis not on the gross basis on following grounds:

3.1 Interest is compensatory in nature

Interest is ordinarily claimed from an assessee who has withheld payment of any tax payable by him and it is always calculated at the prescribed rate on the basis of the actual amount of tax withheld and the extent of delay in paying it. It may not be wrong to say that such interest is compensatory in character and not penal.

3.2 Retrospective application of amendment in CGST Act

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Section 50(1) of the CGST Act reads as under:

“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.”

The GST Council in its 31st meeting held on 22 December 2018 gave-principle approval to the amendment of section 50 of the CGST Act to provide that interest should be charged only on the net(cash) tax liability of the taxpayer, after taking into account the admissible input tax credit, i.e., interest would be leviable only on the amount payable through the electronic cash ledger.

Accordingly following Proviso was added to Section 50(1) of the CGST Act, vide CGST Amendment Act, 2019 however to date this amendment is yet to be notified.

“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”

Hon'ble [Apex court in CIT v. Vatika Township Private Limited \[GIB/DL/VATIKA TOWNSHIP/15-09-2014/SC-4\]](#) has explained the cardinal principle of law on Prospective vs. Retrospective amendment as under:

Where a benefit is conferred by legislation, the rule against the retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislator object, then the presumption would be that such a legislation, giving it a purposive construction would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. Where a law is enacted for the benefit of the community as a whole, even in absence of a provision the statute may be held to be retrospective in nature. Change is of retrospective nature.

Reliance is also placed on the decisions in the case of :

- [M/s Landmark Lifestyle Vs. Union of India and Ors. \[GIB/DL/LANDMARK/27-05-2019/HC-53\]](#)

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- [*Bharatbhai Manilal Patel Vs. State of Gujarat \(GIB/GUJ/BHARATBHAI/10-10-2019/HC-57.\)*](#) wherein on the said issue Hon'ble Courts have already granted stay.

Recently, Hon'ble Gujarat High Court in the Civil Application No.4025 of 2020, in the case of [*M/s. Amar Cars Private Limited Vs. UOI \[GIB/GUJ/AMAR CAR P.LTD/13-02-2020/HC-52\]*](#) and directed that Respondents not to take any cohesive step for the purpose of Recovery of the Interest.

In the case of [*Refex Industries Ltd. & Shreisha Technologies Pvt. Ltd. vs Assit. Commissioner \(GIB/TN/REFEX/06-01-2020/HC-50 \)*](#) Hon'ble Madras High Court has held that "The above proviso, as per which interest shall be levied only on that part of the tax which is paid in cash, has been inserted with effect from 01.08.2019, but clearly seeks to correct an anomaly in the provision as it existed prior to such insertion. It should thus, in my view, be read as clarificatory and operative retrospectively" It is important to note that decision of this case has been taken considering [*Megha Engineering & Infrastructures Ltd. v. Commissioner of Central Tax \[GIB/TN/MEGHA ENG./18-04-2019/HC-54\].*](#)

3.3 GAP between System Designed by GSTN for return filing and GST law:

GST law does not restrict to file return even when full amount of self-assessed tax is not paid. However, system designed by GSTN does not allow filing of GSTR-3B without full payment of self-assessed taxes. This has also been acknowledged in GST council meeting that it is legally possible to furnish return without full payment of self-assessed tax. However, System designed GSTN, does not allow filing of GSTR-3B unless the self-assessed tax is paid in full. This position is also been confirmed in:

- [*OCTAGON COMMUNICATIONS PVT LTD. VERSUS UNION OF INDIA \[GIB/GUJ/OCTAGON/18-04-2019/HC-49\]*](#)
- [*Madras High Court in Asean Aromatics Private Limited Vs ACGST \(GIB/TN/ASEAN AEROMATICS/22-02-2019/HC-55\).*](#)
- [*M/S Perfect Tuners Vs Union of India \(GIB/RJ/PERFECT TEURNERS/06-02-2020/HC-58\)*](#)

From the above discussion it is evident that interest to be charged (if any) should be on net amount instead of gross amount due to failure of system designing.

Charging of interest on gross amount is against the principles settled by supreme court decisions and will cast unnecessary burden on taxpayer. System of return filing could not be designed as it should have been in conformity of GST law and it is settled principle one cannot be punished because of default of others.

4. Section 79 - Recovery under of disputed interest without Show Cause Notice is illegal

We also submit that what is contemplated u/s 75(12) read with Sec. 79 of the CGST Act, 2017 permitting initiation of recovery proceedings without issuance of the SCN is only limited to the interest amount which has been self-assessed by the taxpayer. Hence the amount of interest sought to be recovered either on account of quantification or determination which is in excess of the self-assessed interest can only be done by resorting to the provisions of Sec. 73 and 74 following the principles of natural justice. Reference here is also invited to the decision of Hon'ble Karnataka High Court in the case of [LC Infra Projects Pvt. Ltd. v. Union of India\(GIB/KN/LC INFRA/22-07-2019/HC-59\)](#) In the said case the above referred principle of natural justice has been upheld by holding that the law requires the officer to issue the show cause notice even for the recovery of interest u/s 50 which has not been self-assessed by the taxpayer.

Basis on above discussions we humbly submit to provide the opportunity to the taxpayer by issuing SCN before adjudicating quantum of interest.

Note: - This draft is only the purpose of general guidance. We will not be responsible for any damage or any adverse view of revenue authorities. Before use of content of this letter please verify from relevant provisions of the law, case laws and facts of the case.