

Date: 14.02.2020

To
Sh. A K Pandey
Special Secretary and Member
Central Board of Indirect Taxes & Customs
North Block
New Delhi – 110 001

Ref: CBEC-20/16/07/2020-GST dated 10.02.2020

Subject: Representation against levy of interest on gross GST liability.

Sir,

With reference to the clarification issued by CBIC in respect of levy of interest on gross tax liability under section 50 of the CGST Act 2017, we would like to make the following submissions:

1. Interest means delay in collection of money:

Interest is something which one party collects from the other due to delayed payment. It is the opportunity cost of the money which the other party has forgone due to delayed payment. Interest never has the nomenclature of penalty/fees/fines etc. It is merely the cost of money which one party charges from the other. The mode of payment can be either direct or indirect, but once the money is received, no interest is applicable. In GST Law as well, when the government has already received tax on purchases by taxpayer, levy of interest on that component is fundamentally wrong.

2. GST is a value added tax:

Value addition has been the essence of GST. The intent of the legislature is to collect tax on the value addition made by the supplier. If we continue to charge interest on the full amount including those which have been paid by the earlier suppliers in the chain, it will tantamount to government collecting interest on the tax already received by it. Section 50 does not use the term "output tax" rather it uses the term "Tax" which is liable to be paid by the taxpayer. Had the term output tax would have been used, the levy of interest on gross amount might have some substance. The government must interpret the law in right prospective keeping aside its own interest in the matter. Levying interest on amount already collected by the government is totally uncalled for.

3. Rule of Harmonious construction must be followed:

Although we understand that Income Tax Act and GST are quite different, but the government should not adopt different approaches when recovery of tax is concerned. ITC in GST is quite similar to TDS under Income Tax Act. Rather the provisions in respect of ITC are more stringent than TDS. The Income Tax Department had always been issuing cash refunds for excess TDS deducted but that is not the case under GST except in few cases. Also interest in former is recovered only on the net tax payable by the assessee and not on the gross amount. Levy of interest on tax which has already been collected by the government directly or indirectly is bad in law which puts additional burden on the taxpayer.

4. Conflict of interpretation by government on GSTR 2A.

Since the rules in respect of claim of ITC has been amended and now more or less GSTR 2A is being relied upon for Availment of ITC, there is no provisional claim by taxpayer. On the one hand government finds GSTR 2A as the conclusive evidence for taxes paid on purchase and on the other hand, if the taxpayer fails to file the return within time, department goes ahead to collect 18% interest on the amount so reflected in GSTR 2A. There is sheer conflict of opinion by the government at two different situations. Government must clarify the position of



GSTR 2A. If it is to be accepted as the conclusive evidence then it must be used constructively used in the interest of both department and taxpayer.

5. Section 50 has already been amended by the Finance Act 2019

GST council upon recommendation of Law Committee had rightly amended Section 50 to levy interest only on net cash liability of taxpayer. Though the enforcement of section 50 is yet to be notified, but that would not mean that the taxpayer would be liable to pay unjustified demand of the department merely due to delay in procedures. If the legislature had the intent of levy of interest on Gross amount, the matter would not have been sent to Law Committee for recommendation. The GST Council who is the apex body for GST implementation in India has itself recommended that interest should be levied only on net tax payable, there arises absolutely no question about the intentions of law makers.

6. Department circular cannot override the law and rules:

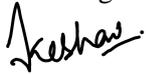
Similar to earlier laws, issuance of department circular should not have any impetus on the taxpayer. When the matter has already been considered by the GST Council, CBIC must abstain from issuance of such circulars which have direct impact on the taxpayers. It not creates confusion amongst the trade and industry but also takes away the fair chance from them to represent to the government. As a stakeholder, I would request that the decisions of the government should be well communicated and only upon discussions and deliberation with trade and industry such conclusions should be made.

7. Levy of Interest on Gross Amount will further weaken Indian businesses:

Indian business which are already facing the heat of Rule 36(4) as most of their vendors file GSTR 1 quarterly, levy of interest on gross amount will seriously dent their working capital. At the first stance, taxpayer is not getting the benefit of ITC on purchases made from small vendors and on top of it whatever ITC has been accumulated as per law, he is forced to pay interest on the amount which he has already paid to the vendor. It has tripled the working capital requirement for running business in India. The draconian position will further push down the Indian economy which is struggling to cope up.

In light of the above, you are requested to kindly intervene and take necessary action in the interest of Indian business houses which mainly comprises of MSMEs. The whole industry cannot be undermined due to some black sheep. As a stakeholder who has always believed in the policies of the government, I would request you to take this matter seriously and immediately proceed further to clarify the matter for necessary relief.

Thanking You.



Keshav R Garg

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