

Interest on net cash liability

Amendment to Section 50 notified
w.e.f. 01.09.2020



TATTVAM ADVISORS
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Interest on Net Cash Liability

Section 100 of Finance Act inserting **proviso to Section 50(1)** has been notified w.e.f. **01.09.2020** vide Notification No. 63/2020-CT dated 25.08.2020.

Proviso to Section 50(1)

Interest on net cash liability where

- **Return u/s section 39 (GSTR-3B) is filed after the due-date**
- **Except when return is filed after commencement of proceedings u/s 73 and 74.**



Retrospective or Prospective: Story so far

31st GSTC meeting dated 31.12.2018

Interest be charged on net tax liability i.e. after deduction of admissible ITC

Finance Act (No. 2),2019 dated 01.08.2019

Section 100 made amendment to Section 50. Date was not notified.

Telengana HC: Megha Engineering & Infra Ltd. dated 20.08.2019

Interest to be levied on gross liability i.e. even on amount available as ITC

Madras HC: Refex Industries Ltd dated 06.01.2020

Levy of interest on delayed payment is compensatory in nature. Interest only on the net liability and not gross liability.

39th GSTC meeting dated 14.03.2020

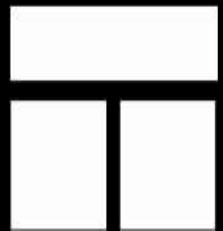
Interest for delay in payment of GST to be charged on the net cash tax liability w.e.f. 01.07.2017. Law to be amended retrospectively



Our view

- The issue of interest whether to be charged on net cash liability or gross tax liability has seen **many U turns**.
- Government has notified 01.09.2020 as the date on which amendment to Section 50(1) will take effect even after the decision of 39th GST Council meeting that amendment to be made retrospective w.e.f. 01.07.2017.
- It appears that the notification could not be made retrospective effect since 2(b) of the Finance Act (No. 2), 2019 provided that various sections including Section 100 “*shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint*”. In other words, the date could be only prospective not retrospective.
- However, since GST council has already decided, it appears there might be a subsequent amendment in Section 50 to make it retrospective.
- But the question arises what will happen to the fate of cases till the actual decision of 39th GST council comes into force. **Based on decision of *Refex Industries Ltd* and past decision, a view can be taken that interest will be levied on net cash liability even without amendment in Section 50.**

THANK YOU



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