

EY Tax Alert

HC holds interest not leviable on delayed filing of GSTR 3B when amount of tax is deposited in Electronic Cash Ledger

Executive summary

This tax alert summarizes a recent judgement of the Madras High Court (HC)¹ on applicability of interest where tax amount was deposited into Electronic Cash ledger (ECL) but return was not filed.

HC observed that:

- ▶ Section 39(7) of Central Goods and Services Tax Act, 2017 (CGST Act) provides that the tax should be paid to the Government before the last date for filing the GSTR-3B returns. Thus, it is immaterial whether GSTR-3B is filed within due date or not for remittance of tax to the account of Government.
- ▶ Once the amount is deposited, it should be made available to the Government for their use and the Government cannot wait or postpone the utilisation of the said amount until the date of filing GSTR-3B.
- ▶ The date when the amount is deposited or credited to the Government will be the actual date of discharge of tax liability.
- ▶ If any amount is deposited after due date, only for the said amount, the liability to pay interest would arise.
- ▶ The law laid down by Jharkhand HC in RSB Transmission² and Telangana HC in Megha Engineering³ are not in line with the provisions of the CGST Act.

Accordingly, HC held that since the tax amount has already been credited to the Government within the prescribed time limit, there will be no interest liability.

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¹ TS-19-HCMAD-2024

² MANU/JH/1260

³ MANU/TL/41/2019

Background

- ▶ The petitioner is a manufacturer of mid-sized motorcycles.
- ▶ It filed Form GST TRAN-1 on 16 October 2017. However, due to unknown reasons, the credit in entirety sought to be transitioned was not made available as Input Tax Credit (ITC).
- ▶ Consequently, it could not file Form GSTR-3B for the month of July 2017 within the prescribed due date.
- ▶ Due to non-filing of Form GSTR-3B for July 2017, it was unable to file GSTR -3B for subsequent months i.e., from August 2017 to December 2017.
- ▶ Though the petitioner was disabled from filing returns, it had discharged GST liability for the period July 2017 to December 2017 by depositing tax in the electronic cash ledger (ECL) within due date for each month.
- ▶ On filing revised TRAN-1 on 27 December 2017, the credit was transitioned and reflected in Electronic Credit ledger, which enabled the petitioner to file Form GSTR-3B for the month of July 2017.
- ▶ Post filing of return for July 2017, GST portal allowed filing of returns for the subsequent months.
- ▶ Later, Department passed an order confirming interest on belated payment of GST for months July to December 2017.
- ▶ Petitioner filed writ petition (WP) before the Madras High Court (HC) challenging the said order.

Petitioner's contentions

- ▶ The tax amounts were paid to Government through the treasury challans in Form PMT-06.
- ▶ Section 49(1) of CGST Act r.w. Reserve Bank of India (RBI) FAQ dated 14 April 2020 makes it clear that money is transferred from petitioner's account to Government's account at the time of payment into ECL.
- ▶ Further, explanation (a) to Section 49 of CGST Act clarifies that deposit into ECL is nothing but deposit in Government's account maintained with RBI.
- ▶ Once the money is deposited into the account of Government maintained with RBI, the same will not be refunded unless a suitable order is passed by the department.
- ▶ If the department wishes to recover any amount from the taxpayer, they can easily recover the same from ECL *vide* a mere entry for appropriation of amount against the pending tax demand without any recourse or knowledge or permission of the assessee.

- ▶ Therefore, the amount upon deposit into ECL belongs to the Government.
- ▶ There is no element of withholding of tax as the amount of tax has been rightly deposited into ECL on time. Hence, there is no basis to levy interest by the department.
- ▶ It relied on various Supreme Court (SC) rulings⁴ in this regard.
- ▶ As per the RTI response by Ministry of Finance, GST collection figures are prepared on the basis of the amount deposited in the electronic cash ledger.

Revenue's contentions

- ▶ As clarified in explanation to Section 49 of CGST Act r.w. Rule 87 of CGST Rules, cash deposited in ECL is only in the form of deposit.
- ▶ Such deposit in ECL is not tax paid to the Government unless the said amount is debited while filing the monthly GSTR-3B returns.
- ▶ Section 49(3) clearly states that the amount available in ECL may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of CGST Act or CGST Rules.
- ▶ Only after debiting such amount from ECL, the tax liability is said to be discharged. Otherwise, the said amount reflects as credit balance in ECL which can be claimed as refund by the taxpayer.
- ▶ Reference was made to various rulings⁵ in this regard.

HC ruling

- ▶ As per Section 39 of CGST Act, every registered person has to file returns to furnish the following details:
 - a) inward and outward supply of the goods or services or both,
 - b) input credit available,
 - c) tax payable,
 - d) tax paid,
 - e) such other particulars.
- ▶ Thus, prior to the filing of the Form GSTR-3B, the tax should have been paid by using GST PMT-06 and that is the reason why the details of the payment of tax are required to be furnished in the said form.
- ▶ Further, Section 39(7) states that the tax should be paid to the Government before the last date of filing GSTR-3B. Thus, it is immaterial whether GSTR-3B is

⁴ Munshi Ram vs. Balkar Singh [2016 SCC OnLine P&H 11166] and CIT vs. Modipon Ltd [2017 (356) ELT 481 (SC)]

⁵ Reflex Industries vs. Assistant Commissioner [2020 SCC Online Mad 587], Manasarover Motors vs Assistant

Commissioner [2020 SCC Online Mad 28155], Srinivasa Stampings vs. SPT [W.P.No.7129 of 2021]

filed within due date or not for remittance of tax to the account of Government.

- ▶ Hence, it is not correct to state that payment of tax to Government would occur only upon the filing of GSTR-3B return.
- ▶ The taxpayers have been maintaining said ledgers only for the purpose of accounting, while the entire tax is paid to the Government directly by using Form GST PMT-06.
- ▶ Once the tax is deposited, it should be made available to the Government for their use and the Government cannot wait or postpone the utilization of the said amount until the date of filing GSTR-3B.
- ▶ No interpretation can be made as held in the judgement of Jharkhand HC rendered in RSB Transmission⁶ stating that no payment of tax can be made until the filing of GSTR-3B.
- ▶ The date when the amount is deposited or credited to the Government will be the actual date of discharge of tax liability.

Section 50(1) deals with the interest, which has to be paid, if the tax is not paid within the prescribed period. The prescribed date mentioned in Section 50(1) refers to the last date for payment of GST in terms of the provisions of Section 39(7).

- ▶ In the present case, GST amount has been paid by generating GST PMT-06 before the due date without any delay. If any amount is deposited after due date, for the said amount alone, the payment of interest would arise.
- ▶ Proviso to Section 50(1) of CGST Act cannot go beyond the scope of provision of said Section.
- ▶ Similar view was taken by SC in case of Modipon Ltd. and Gujarat HC in case of Vishnu Aroma⁷.
- ▶ The law laid down by Jharkhand HC in RSB Transmission and Telangana HC in Megha Engineering⁸ are not in line with the provisions of the CGST Act and Rules made thereunder.
- ▶ Accordingly, HC held that since the tax amount has already been credited to the Government within the prescribed time limit, i.e., before due date, the question of payment of interest would not arise.

Comments

- a. The judgment provides much needed relief to taxpayers who could not file GSTR-3B on time but paid the tax in the Electronic Cash Ledger to prevent interest liability.
- b. Since there are divergent High Court rulings on the subject, the issue is likely to be finally settled by the Supreme Court.
- c. It may have to be analyzed whether the ruling can be applied to cases where the tax was short paid in the return, but sufficient balance was maintained in the cash ledger.

⁶ MANU/JH/1260

⁷ 2020 (38) G.S.T.L. 289 (Guj)

⁸ MANU/TL/41/2019

Our offices

Ahmedabad

22nd Floor, B Wing, Privilon
Ambli BRT Road, Behind Iskcon
Temple, Off SG Highway
Ahmedabad - 380 059
Tel: + 91 79 6608 3800

Bengaluru

12th & 13th floor
"UB City", Canberra Block
No. 24, Vittal Mallya Road
Bengaluru - 560 001
Tel: + 91 80 6727 5000

Ground Floor, 'A' wing

Divyasree Chambers
11, O'Shaughnessy Road
Langford Gardens
Bengaluru - 560 025
Tel: + 91 80 6727 5000

Chandigarh

Elante offices, Unit No. B-613 & 614
6th Floor, Plot No- 178-178A
Industrial & Business Park, Phase-I
Chandigarh - 160 002
Tel: + 91 172 6717800

Chennai

Tidel Park, 6th & 7th Floor
A Block, No.4, Rajiv Gandhi Salai
Taramani, Chennai - 600 113
Tel: + 91 44 6654 8100

Delhi NCR

Ground Floor
67, Institutional Area
Sector 44, Gurugram - 122 003
Haryana
Tel: +91 124 443 4000

3rd & 6th Floor, Worldmark-1

IGI Airport Hospitality District
Aerocity, New Delhi - 110 037
Tel: + 91 11 4731 8000

4th & 5th Floor, Plot No 2B

Tower 2, Sector 126
Gautam Budh Nagar, U.P.
Noida - 201 304
Tel: + 91 120 671 7000

Hyderabad

THE SKYVIEW 10
18th Floor, "SOUTH LOBBY"
Survey No 83/1, Raidurgam
Hyderabad - 500 032
Tel: + 91 40 6736 2000

Jamshedpur

1st Floor, Fairdeal Complex
Holding No. 7, SB Shop Area
Bistupur, Jamshedpur - 831 001
East Singhbhum Jharkhand
Tel: + 91 657 663 1000

Kochi

9th Floor, ABAD Nucleus
NH-49, Maradu PO
Kochi - 682 304
Tel: + 91 484 433 4000

Kolkata

22 Camac Street
3rd Floor, Block 'C'
Kolkata - 700 016
Tel: + 91 33 6615 3400

Mumbai

14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (W), Mumbai - 400 028
Tel: + 91 22 6192 0000

5th Floor, Block B-2

Nirlon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: + 91 22 6192 0000

Pune

C-401, 4th floor
Panchshil Tech Park, Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: + 91 20 4912 6000

Ernst & Young LLP

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