

Interest on late payment in GST

Presentation by

Vikram Chawla
Advocate

Chairman & Co-Founder
VSG LawVision Attorneys LLP
(Delhi-NCR; Uttarakhand, Jharkhand, Uttar Pradesh, Chandigarh)
Ph: 9412233661



Section 50. Interest on delayed payment

(1) 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.

¹[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.]

(2) 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.

(3)

1. Inserted by finance (no.2) act, 2019 dated 01.08.2019 w.e.f. the date to be notified



Interest rates notified by Noti. No. 13/2017-CT (S.No.14) dated 28.06.2017

	Section	Rate of interest Per annum
1.	section 50 (1)	18 %
2.	section 50 (3)	24 %
3.	section 54 (12)	6 %
4.	section 56	6 %
5.	proviso to section 56	9 %



To be paid on own.....

50(1) 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.

- Is it automatic ?
- Is any notice required to be issued ?



To be paid on own.....

- Is it automatic ?
- Is any notice required to be issued ?

Mahadeo Construction Co Vs. U.O.I. WP(T) 3517 of 2019
Jharkhand HC order dated 21st April 2020

Section 50 , 73, 74 and 79 of the GST Act :

Held: That interest liability under section 50 is although **automatic** , **but** it's computation and demand can be raised only after initiation of Adjudication proceedings under Section 73 or 74 in case the assessee disputes the demand of interest .

Further held that **unadjudicated demand** of interest is not a sum payable under the GST act and hence no proceedings under section 79 being garnishee proceedings can be initiated for recovery of interest.



Notice for interest u/s 50(1) received.

Calculate interest.... But how ?

Sec. 50(2): “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.”

The word “prescribed” has been defined u/s 2(87) of the CGST Act, 2017 to mean prescribed by rules made under the Act on the recommendation of the Council.

However, till date no such rules have been formulated to prescribe the manner for calculating the interest u/s 50(1).

So, imposition of Interest u/s 50(1) remains inoperative.



The Controversy:

Interest demanded on late payment of tax

- Tax paid by utilisation of ITC
- Tax paid through cash ledger



Interest defined:

- Contractual Interest
 - Interest on deposit
 - Interest on loan
 - Interest on delayed payments

- Non- Contractual Interest
 - Interest as damages
 - Interest by law
 - The Interest Act, 1978
 - Interest under Tax laws



Interest defined:

CIT , Mumbai vs Anjum M.H.Ghaswala & Ors (252 ITR 1)SC

In the context of the Income Tax Act, 1961, the question of whether remittance of interest under Sections 234 A, 234B and 234C of the Income Tax Act, 1961 for belated filing of return, belated remittances of advance tax and deferment of advance tax .

Held: Interest is **compensatory** in nature.

Followed in GST by Jharkhand High Court

Mahadeo Construction Co Vs. U.O.I. WP(T) 3517 of 2019

The principle of the said judgment applies on all fours to the present case.



Period of Interest (compensation)

50 (1) 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.

Tax Due dates:

Section 39(7) : pay the tax due as per such return not later than the last date on which he is required to furnish such return.

GSTR-03B u/r 61(5)



Section 49: Payment of Tax

(3) The amount available in the **electronic cash ledger** may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the **electronic credit ledger** may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed. [See Rule 88A]



Section 49(4):

Payment through Electronic Credit ledger

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed. [See Rule 88A]

Q. Is utilization of ITC actual payment or mere adjustment of money already available to the Govt. ?

The debate starts.....



Q. Is utilization of ITC actual payment or mere adjustment of money already available to the Govt. ?

Rule 86. Electronic Credit Ledger.-

(1) The electronic credit ledger shall be maintained in FORM GST PMT-02 for each registered person eligible for input tax credit under the Act on the common portal and every claim of input tax credit under the Act shall be credited to the said ledger.

(1) The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of section 49A and section 49B.

Where does the credit come from ?

Is payment through Electronic Credit ledger a mere accounting entry ?



Is payment through Electronic Credit ledger a mere accounting entry ?

YES

Eicher Motors Ltd. v. Union of India 1999 (106) E.L.T. 3 (S.C.)

Held: the credit under MODVAT scheme is as good as the tax paid.

Collector of Excise v. Dai Ichi Karkaria Ltd. 1999 (112) E.L.T. 353 (S.C.)

The above principle was reiterated



Newly inserted Provisio to Sec. 50(1)

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.

Inserted by finance (no.2) act, 2019 dated 01.08.2019 w.e.f. the date to be notified

Refex Industries Limited Vs The Assistant Commissioner of CGST
W.P.No.23360 of 2019 order Dt. 06/01/20 Madras HC

Held: The amendment should, be read as clarificatory and operative retrospectively.



Section 49(3): Payment through Electronic Cash ledger

Date of deposit in Cash ledger Vs Payment through Cash ledger

Megha Engineering & Infrastructures Ltd. Vs The Commissioner of Central Tax
Writ Petition No.44517 of 2018 order dt:18-04-2019 by Telegana High Court

It was argued that “An amount available in the account of a person, though available with the bank itself, is not taken to be the money available for the benefit of the bank. Money available with the bank is different from money available for the bank till the bank is allowed to appropriate it to itself”

To which account the payment is to be made for the purpose of cash ledger ?



Section 49(3): Payment through Electronic Cash ledger

To which account the payment is to be made for the purpose of cash ledger ?

Rule 87 (6):

On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan.

- Who is the beneficial owner of the cash ledger ?
- Is there anything that stops the government to use the money in cash ledger ?
- Is payment through Electronic Cash ledger a mere accounting entry ?
- If Interest is compensatory in nature, is any compensation due after the date of deposit in cash ledger



Delay in Payment of Tax or Delay in filing the return

What if.....

The assessee deposits the cash element with the tax in due course, even though, there is a delay in filing of the returns.

Section 50 is applicable to delayed payment of tax and not for late filing of returns. There are state specific provisions to deal with late filing of returns.



Conclusion

1. Rule for calculation of interest not yet notified as per 50(2). Hence Imposition of Interest u/s 50(1) remains inoperative.
2. Interest liability under section 50 is automatic, but demand of interest can be raised only after Adjudication proceedings.
3. Interest in GST is compensatory in nature.
4. No interest can be levied on tax paid by utilizing available ITC.
5. The newly inserted proviso to section 50(1) is merely clarificatory and operative retrospectively.
6. Interest on tax paid through Cash ledger, should be calculated only till the date the amount is deposited in the cash ledger, and not till it is adjusted along with filing of returns.



Thankyou

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