

Madras HC quashes levy of interest on ITC portion

19 November 2020



Summary

The Madras High Court (HC) has recently, in a batch of writ petitions, quashed the levy of interest on delayed payment of the Goods and Services Tax (GST), including the GST paid through utilising input tax credit (ITC). The HC further quashed the orders of the assessing officer directing coercive recovery by attachment of bank accounts. The HC directed the appropriate authority to compute the interest liability for belated remittances of cash and refund the balance of the amount collected from the petitioner within four weeks from date of uploading of this order.

Facts of the case

- The petitioner¹ had filed a writ before the Madras HC challenging the interest provisions under the GST law².
- The petitioner argued that interest is a measure of compensation and since ITC is already available in the electronic ledger, there is no question of the same being due to the revenue.
- It further argued that the amendment, which provides that interest shall be levied only on that part paid in cash, has been inserted to set right an

anomaly and is therefore retrospective in operation.

Madras HC's observations and ruling³

- **No loss to revenue:** The Madras HC observed that interest is intended to compensate the revenue for loss of capital⁴. In the present case, there is no loss in so far as the revenue is in possession of the credit which is as good as cash and cannot thus be said to be prejudiced in any way⁵.

¹ M/s. Maansarovar Motors Private Limited

² Section 50 of the CGST Act, 2017

³ W.P.Nos.28437 of 2020 etc. batch dated 29 September 2020

⁴ SC in the case of Commissioner of Income Tax Vs. Anjum H Ghaswala, [252 ITR 1]

⁵ SC in the case of Eicher Motors (supra)

- **CBIC's circular⁶:** The CBIC reiterated that the amendment⁷ is intended to be retrospective. The Centre, the state and the CBIC are in agreement that the operation of the amendment should only be retrospective. The interpretation to the contrary by the authorities constituted under the CBIC is clearly misplaced as is the consequential coercive recovery.
- **Recovery for past period extended due to technical difficulties:** The Madras HC observed that the CBIC has extended a waiver of recovery for the past period in line with the decisions of the GST Council through the administrative instructions that cemented the long line of assurances of the GST Council and the CBIC. While promising that the amendment in question will be clarified to be retrospective, the CBIC has indicated certain difficulties in carrying out the stated amendment at this juncture.
- **Petitions allowed and direction to refund excess amount collected:** Thus, the HC allowed the writ petitions and directed the appropriate authority to compute the interest liability for belated remittances of cash and refund the balance of the amount collected from the petitioner within a period of four weeks from date of uploading of this order.

⁶ Circular No.F.No.CBEC.20/01/08/2019 GST dated 18 September 2020

⁷ by insertion of proviso of Section 50 of the CGST Act

Our comments

The GST Council, in its 39th meeting, had recommended that the interest on delay in payment of the GST should be charged on the net tax liability and the same shall be made applicable retrospectively from 1 July 2017.

In accordance with the decision taken by the GST Council, the provisions relating to computation of interest liability in case of delay in paying the GST were amended and further, it was also clarified that no recoveries shall be made for the past period.

The CBIC has also issued administrative instructions, wherein the authorities have been instructed to recover interest only on net cash tax liability (i.e. the portion of the tax that has been paid by debiting the electronic cash ledger or is payable through cash ledger) from 1 July 2017.

Further, it was also clarified that in cases where SCNs have been issued on gross tax payable, the same shall be kept in the call book till retrospective amendment in the provision is carried out.

Accordingly, the present decision by the Madras HC seems to be in line with the above changes announced by the government and is a welcome ruling which shall hopefully provide big relief to taxpayers.

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