



Section. 50: Levy of interest on ITC component

Maansarovar Motors Private Limited. v. The Assistant Commissioner, The Superintendent of GST & Central Excise and The Branch Manager, HDFC Bank Limited.¹

The petition was filed before the Hon'ble Madras High Court challenging the notices issued by the Goods and Services Tax ('GST') authorities to the petitioners levying interest on remittances of belated tax discharged by adjustment of available input tax credit ("ITC"), as well the action of the authorities attaching the bank accounts for recovery of the same. In this regard, the contentions of the petitioners, GST authorities and observation of the Hon'ble High Court are as follows:

Contentions of the Petitioner

- ITC was available even prior to the arising of the output tax liability and hence the question of delay does not arise.
- No opportunity was granted prior to the petitioner before raising the impugned demand and initiating the consequential proceedings.
- Interest is a measure of compensation and since ITC was already available in the electronic credit ledger, there is no question of the same being due to the revenue.

- Proviso to section 50 of the Goods and Services Tax Act, 2017 ('the CGST Act') which states that interest shall be levied only on cash paid, was inserted to do away with the anomaly and was therefore retrospective in operation.

Contentions of the Revenue

- Revenue argued that section 16(2) of the CGST Act entitles a person to take ITC and section 41(1) of the CGST Act provides for a credit entry in the electronic credit ledger, which is provisional in nature, and since section 41 of the CGST Act provides that the entitlement to ITC is only with the filing of returns on a self-assessment basis, this entitlement cannot be availed until the return is filed by an assessee.
- Revenue placed reliance on a circular² issued by the CBIC, to the extent it states that the liability to interest would arise on the total amount of GST liability as revealed in the GST return.

Observations of the Hon'ble High Court

- Notwithstanding that the proviso to section 50 of the CGST Act is effective only from September 1st, 2020, the resolution of the 31st GST Council meeting wherein the proposal to amend section 50 of the CGST Act was discussed to provide for payment of interest on net cash liability, the recommendation made at the 39th GST Council

¹ WP No. 4468 of 2020

² No.20/16/07/2020-GST dated February 10th 2020



meeting held on March 14th, 2020 in respect of charging of interest on net cash tax liability w.e.f. July 01st, 2017 with a retrospective amendment of the CGST Act, clarification vide Press Release dated August 26th, 2020 that the insertion of the said proviso will be retrospective and the decision of the GST Council meeting will be given full effect and waiver of recovery of interest for the past period vide CBIC circular in F.No.CBEC.20/01/08/2019 GST dated 18 September 2020, make it amply clear to allow the writ petition.

- The Hon'ble Supreme Court in the case of *Eicher Motors Ltd. V. Union of Indi*³ considered the validity and application of the scheme of Rule 57F of the Central Excise Rule, 1944 wherein it was held that the available credit is as good as tax paid and in the case of *Allied Motors (P) Ltd. V. Commissioner of Income Tax*⁴ it was held that the nature and object of a proviso should be taken into account when deciding whether the proviso was prospective or retrospective. Where a proviso was designed to eliminate unintended and prejudicial consequences which would cause hardship to a party, such a proviso should be seen as remedial and one that mitigated the prejudice caused from inception. This was reiterated by the Hon'ble Supreme Court in the case of *Commissioner of Income Tax V. Alom Extrusions Ltd*⁵.
- In the present case, there was no loss insofar as the revenue was in possession of the credit 'which is good as cash' as held in the case of *Eicher Motors (supra)*, and thus it cannot be said to be prejudiced in any way.

Dhruva Comments

Recently, Hon'ble Bombay High Court in the case of *KLT Automotive and Tubular Products Limited*⁶ disposed of the writ on the basis of the Board Circular dated 18 September 2020, which categorically states that the interest would be on the net cash tax liability for the period prior to the amendment, i.e., from July 1st, 2017 to August 31st 2020.

It may be noted that proviso to section 50 of the CGST Act only applies where supplies made during a tax period are declared in the returns correctly, however, the said returns are filed delayed. The proviso does not cover a situation where the supplies are reported in a tax period subsequent to the period to which the transaction pertains, and as a consequence, there is a delayed payment of tax.

Another issue that remains open is whether net cash liability can be arrived at after considering credit available in the electronic credit ledger until the date of filing the delayed return. There is currently no provision in the law as under the erstwhile Service tax regime⁷ that restricts utilisation of credit "to the extent of the amount available on the last date of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be". The GSTN system also does not restrict utilisation of credit basis tax period to which the credit pertains to.

³ (1999) 106 ELT 3

⁴ 1997 (3) SCC 472

⁵ 319 ITR 306

⁶ WP (L) NO.983 OF 2020

⁷ First proviso to rule 3(4) of the CENVAT Credit Rules, 2004





ADDRESSES

Mumbai

One World Center, 11th floor,
Tower 2B, 841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahlanagar, Corporate Road,
Ahmedabad – 380 015
Tel: +91-79-6134 3434

Bengaluru

Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560 001
Tel: +91-80-4660 2500

Delhi / NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana – 122 002
Tel: +91-124-668 7000

Pune

305, Pride Gateway, Near D-Mart, Baner,
Pune – 411 045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal – 700016
Tel: +91-33-66371000

Singapore

Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #11-05
Singapore 049319
Tel: +65 9105 3645

Dubai

WTS Dhruva Consultants
U-Bora Tower 2, 11th Floor, Office 1101
Business Bay P.O. Box 127165
Dubai, UAE
Tel: + 971 56 900 5849

KEY CONTACTS

Dinesh Kanabar

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Ritesh Kanodia

ritesh.kanodia@dhruvaadvisors.com

Niraj Bagri

niraj.bagri@dhruvaadvisors.com

Ranjeet Mahtani

ranjeet.mahtani@dhruvaadvisors.com

Dhruva Advisors has been consistently recognised as the **“India Tax Firm of the Year”** at the ITR Asia Tax Awards in 2017, 2018, 2019 and 2020.

Dhruva Advisors has also been recognised as the **“India Disputes and Litigation Firm of the Year”** at the ITR Asia Tax Awards 2018 and 2020.

WTS Dhruva Consultants has been recognised as the **“Best Newcomer Firm of the Year”** at the ITR European Tax Awards 2020.

Dhruva Advisors has been recognised as the **“Best Newcomer Firm of the Year”** at the ITR Asia Tax Awards 2016.

Dhruva Advisors has been consistently recognised as a Tier 1 firm in **India’s ‘General Corporate Tax’** and **‘Indirect Tax’** ranking tables as a part of ITR’s World Tax guide. The firm is also listed as a **Tier 1 firm** for India’s **‘Transfer Pricing’** ranking table in ITR’s World Transfer Pricing guide.

Disclaimer:

The information contained herein is in summary form and is therefore intended for general guidance only. This publication is not intended to address the circumstances of any particular individual or entity. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This publication is not a substitute for detailed research and professional opinions. Before acting on any matters contained herein, reference should be made to subject matter experts, and professional judgment needs to be exercised. Dhruva Advisors LLP cannot accept any responsibility for loss occasioned to any person acting or refraining from acting as a result of any material contained in this publication

