

GST NEWSLETTER JUNE 2019

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ARTICLES

• **Interest on Outward Supplies under GST**

On 18th April 2019, the Telangana High Court pronounced a major verdict for M/s Megha Engineering & Infrastructures Ltd that changed the way interest was to be charged under GST laws. The verdict stated that Interest would be charged on the Total Outward GST liability before setting-off Input Tax Credit against such Output GST. The verdict was significant enough to see a rise in the number of notices to taxpayers for payment of interest due to delay in filing GSTR 3B. The High court had stated that the ITC claimed by the taxpayer in their GSTR 3B shall be available only after it's credited to the Electronic Credit ledger. The relevant provisions for the same are:

As per Section 39 (7) of the CGST/KGST Act, 2017 Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return. The returns to be furnished are GSTR 1 & GSTR 3B and the last date for furnishing the GSTR 3B returns is 20th of the succeeding month.

As per Section 49 (2) of the CGST/KGST Act, 2017 the input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

Hence, the ITC available to a taxpayer shall be the amount available in Electronic Credit Ledger.

As per Section 49 (4) of the CGST/KGST Act, 2017 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, 2017 (Act No.13 of 2017) in such manner and subject to such conditions and within such time as may be prescribed. Hence, the ITC that is credited to the electronic credit ledger can only be used for payment of Output tax and excess, if any, can be refunded.

Based on the above clauses of the GST Acts, two views emerge from the High Courts:

On 17th April 2019, The Telangana High Court pronounced that Interest is leviable on the Gross Output Tax.

On 27th May 2019, the Delhi High Court gave a stay verdict to the petitioner on the levy of Interest on Gross Output Tax.

The Telangana High Court's verdict:

"In other words, until a return is filed as self-assessed, no entitlement to credit and no actual entry of credit in the electronic credit ledger takes place. As a consequence, no payment can be made from out of such a credit entry. It is true that the tax paid on the inputs charged on any supply of goods and/services, is always But, it is available in the air or cloud. Just as information is available in the server and it gets displayed on the screens of our computers only after connectivity is established, the tax already paid on the inputs, is available in the cloud. Such tax becomes an in-put tax credit only when a claim is made in the returns filed as self-assessed. It is only after a claim is made in the return that the same gets credited in the electronic credit ledger. It is only after a credit is entered in the electronic credit ledger that

payment could be made, even though the payment could be made, even though the payment is only by way of paper entries." The high court's verdict can be explained by the way of the following example:

Let's consider the following example and assume that the ITC available is more than the Output tax and the return was filed on the 30th i.e. 10 days after the due date.

Particulars	Taxable Value	CGST @ 18%	SGST @ 18%
Outward sales	10,00,000	1,80,000	1,80,000
Input Tax Credit	NA	2,00,000	2,00,000
Net tax payable	NA	(20,000)	(20,000)
Interest at 18% p.a.	NA	887	887

The Interest of Rs. 887 ($1,80,000 \times 18\% \times 10/365$) is payable even when there is no GST Output Tax payable due to available ITC being more than the Output tax.

Hence, the Telangana High Court's verdict has made it clear that the way interest due to delay in payment of GST is calculated is different than earlier tax regimes where the interest was always calculated on net tax payable and never on the gross tax.

The Delhi High Court's verdict:

The Delhi High Court, in the case of M/s Landmark Lifestyle vs Union of India, stayed the levy of interest on the gross tax payable till further hearing. But such a stay is applicable only within the jurisdiction of the Delhi High Court (New Delhi city limits) and not to the rest of the country. Therefore, the GST department may still continue to send notices for demand of interest on the gross amount of output tax till a clear clarification is given by the government or on a favorable judgement from the Delhi High Court.

Further, the GST council, in their Press release on 22nd December, 2018 has given an In-principle approval for the amendment in GST laws that interest will be levied under Section 50 of the CGST Acts, 2017 only on the net tax payable and not the gross tax. However, this only remains as a press release and is not reflected by an amendment in law.

Conclusion:

It's not yet clear as to when the amendment to the levy of interest on gross output tax will happen by the government and hopefully, the decision to be given by the Delhi High Court will bring out a positive change in the laws as well. Further, the Telangana High Court has not stated the effect of Input Tax Credit previously available for set-off in the Electronic Credit Ledger.

In case, a taxpayer has taken a credit of Rs. 1,00,000 in the month of April 2019 without any Output Tax payable and in May 2019 the Output Tax Payable after ITC set-off is Rs. 50,000. In case of delay in filing of May 2019 returns, will the interest be levied after taking into consideration the credit already available in the excess credit ledger?

It remains to be seen.

Case laws:

1. Facts of the Case: M/S. Safari Retreats Private Limited and Another Versus Chief Commissioner of Central Goods & Service Tax & Others

The petitioner has approached the Orissa High Court stating that they have constructed an immovable property, a shopping mall, for the purpose of letting it out for the sake of business and not with the intention to sell it or use it for their own business. However, as per Section 17(5) of the CGST Act, 2017 they are ineligible to claim the Input Tax Credit on such construction as it's a building. This has led to a substantial increase in the expenses incurred by them for the business. Hence, they have sought direction from the court for the same.

Provisions of the GST Acts:

Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service and goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Ruling:

The High Court has ruled that the narrow construction of interpretation put-forward by the Department is frustrating the very objective of the Act, inasmuch as the petitioner in that case has to pay huge amount without any basis. Further, the petitioner would have paid GST if it disposed of the property after the completion certificate is granted and in case the property is sold prior to completion certificate, he would not be required to pay GST. But here he is retaining the property and is not using for his own purpose but he is letting out the property on which he is covered under the GST, but still he has to pay huge amount of GST, to which he is not liable. Hence, the petitioner is granted ITC on such immovable property

2. Facts of the case: M/S. Kindorama Healthcare Private Limited – Kerala Advance Ruling Authority:

The applicant has approached the Advance Ruling Authority to obtain clarification if whether supply of medicines, consumables, surgical items, items such as needles, reagents etc used in laboratory, room rent used in the course of providing health care services to in-patients for diagnosis or treatments which are naturally bundled and are provided in conjunction with each other are exempt under GST as well.

Provisions of the GST Acts:

As per Sl.No.74 of Notification No.12/2017-CT(R) dated 28th June, 2017, Health Care services are exempt from GST. As per Section 2 (30) of the CGST Acts, 2017. Composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Ruling:

The learned authority has ruled that The supply of medicines, consumables, surgical items, items such as needles, reagents etc used in laboratory, room rent used in the course of providing health care services to in-patients and patients admitted for a day procedure such as IVF for diagnosis or treatments which are naturally bundled and are provided in conjunction with each other, would be considered as “Composite Supply”. The in-patient is under continuous monitoring of the doctors and nursing staff and administration and dosage of medication is all under the control of the doctor and the nursing staff. The entire treatment protocol is documented and recorded. Thus, it is clear that

in case of an inpatient, the hospital provides a bundle of supplies which is classifiable under health care services eligible for exemption.

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF MAY 2019

- **Two Central Tax Notification.**
- **One Central Tax Rate Notification.**
- **One Integrated Tax Rate Notification.**
- **One Union Tax Rate Notification.**

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to extend the due date for furnishing FORM GSTR-3B for the month of for the month of April, 2019 for registered persons in specified districts of Odisha till 20.06.2019.	24/2019-Central Tax, dt. 11-05-2019
2.	Seeks to extend the due date for furnishing FORM GSTR-1 for taxpayers having aggregate turnover more than Rs. 1.5 crores for the month of April, 2019 for registered persons in specified districts of Odisha till 10.06.2019.	23/2019-Central Tax, dt. 11-05-2019
3.	To amend notification No. 11/ 2017- Central Tax (Rate) so as to extend the last date for exercising the option by promoters to pay tax at the old rates of 12%/ 8% with ITC	10/2019-Central Tax (Rate), dt. 10-05-2019
4.	To amend notification No. 8/ 2017- Integrated Tax (Rate) so as to extend the last date for exercising the option by promoters to pay tax at the old rates of 12%/ 8% with ITC	09/2019-Integrated Tax (Rate), dt. 10-05-2019
5.	Seeks to amend notification No. 11/ 2017- Union Territory Tax (Rate) so as to extend the last date for exercising the option by promoters to pay tax at the old rates of 12%/ 8% with ITC	10/2019- Union Territory tax(rate), dt. 10-05-2019

DUE DATES OF GST FOR THE MONTH OF JUNE 2019

JUNE							2019
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	
						1	
2	3	4	5	6	7	8	
9	10 *GSTR-7 & GSTR-8	11 *GSTR-1	12	13	14	15	
16	17	18	19	20 *GSTR-3B/5/5A	21	22	
23	24	25	26	27	28	29	
30 GSTR-9/9A/9C							

*Monthly return for taxpayer with Annual turnover more than Rs.1.50 Crores or Taxpayer who has opted Monthly return option.

Disclaimer:

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