

# GST NEWSLETTER

ISSUE 24 | JUNE 2020



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**GST Newsletter:  
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## ARTICLE

### Levy of interest in GST

Interest and penalties form the first tool to bring discipline in compliance amongst taxpayers. It forms an important component of any revenue law as a stick to the erring taxpayers. They also encourage proper compliance amongst taxpayers as it can be very expensive to them if tax payments are not made with the prescribed time limit.

In the erstwhile Excise, Customs, Service Tax & VAT laws interest and penalty were a highly disputed and confusing affair with many litigations opening up due to them. The introduction of GST should have put an end to it if not for the deferment of original returns GSTR 1, GSTR 2 & GSTR 3.

The section that primarily deals with interest in GST is Section 50.

As per Section 50 of the CGST / KGST Acts, 2017

- (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.**
- (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) *A taxable person who makes an **undue or excess claim of input tax credit** under sub-section (10) of section 42 or **undue or excess reduction in output tax liability** under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.*

**Summary table:**

Type	Interest Rate
Delay in payment of outward tax	18%
Claim of excess ITC	24%
Claim of undue ITC	24%

1. In case of outward GST not disclosed or under disclosed then interest will be applicable at 18% interest per annum.
2. In case of claim of ITC ineligible, in excess or ITC not due to the taxpayer then the interest will be applicable at 24% per annum.

Hence, interest will be applicable whenever there is a delay or loss of revenue to the government. Such interest can be on account of outward tax or claim on input tax credit.

### **18% or 24% interest rate?**

There are varied opinions on the applicability of 24% interest on ITC related non-compliance. As per Section 50(3) if there is a mismatch between GSTR 1 uploaded by supplier & in GSTR 2

uploaded by taxpayer, then on failure of supplier to rectify the GSTR 1 the recipient taxpayer will be liable to repay the ITC claimed along with interest of 24%.

In the same manner, mismatch between GSTR 1 uploaded by taxpayer & GSTR 2 uploaded by customer will also make the taxpayer liable to pay the shortfall in output tax with interest of 24%.

However, section 42 & 43 require taxpayers to file GSTR 1, GSTR 2 & GSTR 3 as originally intended which were postponed indefinitely in favor of GSTR 3B and subsequently for new returns.

Hence, it can also be opinionated that in the absence of GSTR 1, 2 & 3 and amendment of section 42 & 43 the interest rate for wrongful ITC claim & mismatch in credit notes will be 18%.

However, without any clarification from the CBIC or GST council, the applicable interest rate will be 24% for claim of excess or undue ITC.

### **ITC Availed but not Utilized:**

This key difference between ITC availed and utilized is that:

1. ITC availed refers to the ITC claimed in GSTR 3B but not utilized against payment of outward tax and the same is lying in the Electronic Credit Ledger.
2. ITC utilized refers to the ITC availed in GSTR 3B and utilized for payment of outward tax.

Now it was held that in case of undue or excess ITC availed but not utilized by the taxpayers the interest rate is 18% as per M/s Commercial Steel Engineering vs The State of Bihar. In this case, transitional credit which was not eligible to the taxpayer were claimed in GSTR 3B instead of TRAN-1 but not utilized. The same was targeted for recovery by the department but the court held that since it was availed but not utilized and was merely reflected in the Electronic Credit Ledger, the interest will not be applicable till such ITC was utilized against payment of outward tax and as such the department cannot recover the interest as per Section 73.

As per Section 73 Chapter XV of the CGST / KGST Act, 2017 an officer may make a demand and recover ITC which have been wrongly availed or utilized along with the applicable interest.

**Ineligible ITC u/s 17(5):**

Ineligible ITC is nothing but the ITC not due to the taxpayer i.e. Undue ITC. As per section 50(3), the interest rate applicable is 24% for ITC that is not due to the taxpayer.

Hence, any ineligible ITC claimed by the taxpayer in GSTR 3B has to be repaid with an interest of 24% regardless of whether such ITC was used to pay output tax or only availed in the Electronic Credit Ledger.

The types of ITC ineligible u/s 17(5) are:

1. Motor vehicles & other conveyances except when used for making further supply of such vehicles, transportation of passengers or goods, imparting training for such vehicles.
2. Food & beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery.
3. membership of a club, health and fitness center
4. rent-a-cab, life insurance and health insurance
5. travel benefits extended to employees on vacation
6. works contract services for construction of an immovable property (other than plant and machinery).
7. goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery)
8. goods or services or both on which tax has been paid as a composition dealer
9. goods or services or both received by a non-resident taxable person except on goods imported by him.
10. goods or services or both used for personal consumption.
11. goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.
12. any tax paid in against any SCN for fraud, detention, seizure or confiscation.

**Interest on Net tax or Gross tax payable:**

Under GST, after the adoption of GSTR 3B, ITC claim was provisional in nature and subject to

reversals if the conditions of Section 16 of the CGST / KGST, 2017 were not satisfied. In Megha Engineering & Infrastructure Limited it was held that due to its provisional nature, ITC would be considered to have accrued to the taxpayer only when the return has been filed and hence interest would be applicable on the entire gross tax payable and not the net amount paid in cash.

Further, the Finance Ministry amended section 50(1) of the CGST Act, 2017 by way of Finance Act, 2019 in order to include a proviso that interest will be applicable only on net tax payable and not gross tax. But, the section has not been notified yet.

However, after subsequent courts like the Madras High Court in Refex Industries Limited case held that interest cannot be levied on ITC already with the department as it's neither belated or delayed. And, credit will be valid till such time it's invalidated by recourse to the mechanisms provided under the Statute and Rules.

In light of this, the GST council in its 39th meeting held on 14th March 2020 reaffirmed that the interest would be applicable only on the cash component i.e. net liability and it would be a retrospective amendment.

Currently, it has been noticed in some cases, that the department has been demanding interest only on the net tax liability signifying a change in this regard.

However, the interest on net liability will be applicable only if it's paid voluntarily and not under any Show Cause Notice (SCN) u/s 73 or 74.

**Interest on non-payment of dues to suppliers for more than 180 days:**

Payment of interest is not just applicable for delay in payment of tax or wrong claim of ITC. As per Proviso to Section 16(2) of the CGST / KGST Act, 2017 if any taxpayer has not paid, fully or partly, the value of goods or services received from their suppliers within 180 days from the date of INVOICE then they have to:

1. Reverse the ITC claimed on such inward supply in proportion to the amount not paid to the supplier.
2. Pay interest at 18% per annum on the GST value of the amount remaining unpaid. Interest will be applicable from the date on which ITC was claimed till date of reversal.

3. Reclaim such ITC only after the payment for the inward supply has been made to the supplier. There is no time limit for the reclamation of such ITC.

#### **Interest applicable during the COVID crisis:**

The COVID crises led to a situation where the lockdowns forced many to shut shops, withhold payments and delay compliances. Considering the unique situation, the CBIC has reduced / waived the interest based on date of filing of returns:

1. Taxpayers having turnover exceeding Rs. 5 Crores in the previous FY need not pay any interest if filed within 15 days from due date and 9% reduced interest if filed after 15 days but within 24<sup>th</sup> June, 2020. This is applicable for April 2020 GSTR 3B returns.
2. Taxpayers having turnover not exceeding Rs. 5 Crores but exceeding Rs. 1.5 Crores in the previous financial year need not pay any interest if returns are filed within 29<sup>th</sup> June 2020. This is applicable for February, March & April 2020 GSTR 3B returns.
3. Taxpayers having turnover not exceeding Rs. 1.5 Crores in the previous financial year need not pay any interest if returns are filed within 3<sup>rd</sup> July 2020. This is applicable for February, March & April 2020 GSTR 3B returns.

# CASE LAWS

## **Facts of the case: M/S. MAARQ SPACES PVT. LTD. (Appellate AAR, Karnataka)**

The applicant is a private limited company engaged in the business of property development. They have a JDA with a land owner to develop and sell plots of land on revenue sharing basis. They have approached the AAAR, Karnataka in order to determine whether the development and sale of plots attracts GST and if Rule 31 (Residual valuation method) is applicable.

### **Provisions of the law:**

The JDA between developer and landowner states that the land will be subject to development by the developer and sale of land by the owner on a revenue sharing agreement.

Para 5 of Schedule III of CGST / KGST Act, 2017 refers to sale of land only and sale of building if occupancy certificate is received.

The Karnataka Urban Development Authorities Act, 1987 requires the land owner to obtain all the required permissions, execute transfer of civic areas and apply for modification in case of any changes.

### **Ruling:**

The AAAR held that the development services provided by the applicant to the landowner is service under GST and that the sale of land under revenue sharing as per the JDA is a different supply. Since one supply is taxable and other supply is not a supply under GST laws, they cannot be provided as a composite supply. Hence, the services by the developer is taxable to GST.

## **Facts of the case: M/S WEWORK INDIA MANAGEMENT (Appellate AAR, Karnataka)**

The applicant is a private limited company engaged in providing shared workspace/Office Space. They have approached the AAAR, Karnataka in order to determine whether sliding glass partition is movable or immovable property.

### **Provisions of the law:**

As per Section 17(5) of the CGST / KGST Act, 2017 Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely: -

(d) 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.

Section 3(26) of the General Clause Act, 1897 defines immovable property as including land, benefits arising out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."

### **Ruling:**

The AAAR held that by applying the tests of extent and object of annexation on the glass partitions it can be understood that these sliding doors are only fastened to the building and not embedded in a manner that it needs to be destroyed in order to remove it. They are not permanently attached to the floors but only fastened in order to hold them in place. Further, the sliding is there only to provide a sense of privacy and not a permanent fixture to the immovable property. The appellant has also capitalized the glass sliding under 'Furniture and Fixtures' as a movable asset and not under immovable asset. Therefore, the glass sliding is movable in nature and thus is not restricted from ITC claim as per Section 17(5) of the CGST/ KGST Act, 2017.



## NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF MAY 2020

- **Six Central Tax Notification.**
- **One Central Tax Circulars.**

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to bring into force Section 128 of Finance Act, 2020 in order to bring amendment in Section 140 of CGST Act w.e.f. 01.07.2017.	43/2020- Central Tax, dt. 16-05-2020
2.	Seeks to extend the due date for furnishing FORM GSTR-3B, Jan-March, 2020 returns for the taxpayers registered in Ladakh.	42/2020- Central Tax, dt. 05-05-2020
3.	Seeks to extend the due date for furnishing of FORM GSTR 9/9C for FY 2018-19 till 30th September, 2020.	41/2020- Central Tax, dt. 05-05-2020
4.	Seeks to extend the validity of e-way bills till 31.05.2020 for those e-way bills which expire during the period from 20.03.2020 to 15.04.2020 and generated till 24.03.2020.	40/2020- Central Tax, dt. 05-05-2020
5.	Seeks to make amendments to special procedure for corporate debtors undergoing the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016.	39/2020- Central Tax, dt. 05-05-2020
6.	Seeks to make fifth amendment (2020) to CGST Rules.	38/2020- Central Tax, dt. 05-05-2020
7.	Seeks to clarify 'issues in respect of challenges faced by the registered persons in implementation of provisions of GST Laws'.	138/08/2020, Circular no, dt 06-05-2020

## DUE DATES OF GST FOR THE MONTH OF JUNE 2020

JUNE 2020						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
7	8	9	*GSTR-7 & GSTR-8 10	*GSTR-1 11	12	*GSTR-6 13
14	15	16	17	18	19	*GSTR-5/5A 20
21	22	23	24	25	26	*GSTR-3B 27
28	29	30				

\* For taxpayers with Annual Turnover more than Rs.1.50 Crores or who has opted for monthly return.

## RELAXATION IN LATE FILING OF RETURNS AND LATE PAYMENT OF TAX:

Turnover > 5 Crores	Turnover >1.5 Crores and <5 Crores	Turnover < 1.5 Crores
No late fees on GSTR 3B if filed within <b>27<sup>th</sup> June 2020</b>	No late fees on GSTR 3B if filed within <b>12<sup>th</sup> July 2020</b>	No late fees on GSTR 3B if filed within <b>12<sup>th</sup> July 2020</b>
No interest on GSTR 3B if filed within <b>27<sup>th</sup> June 2020</b>	No interest on GSTR 3B if filed within <b>12<sup>th</sup> July 2020</b>	No interest on GSTR 3B if filed within <b>12<sup>th</sup> July 2020</b>
Interest of 18% p.a. if filed after <b>27<sup>th</sup> June 2020</b>	Interest of 18% p.a. if filed after <b>12<sup>th</sup> July 2020</b>	Interest of 18% p.a. if filed after <b>12<sup>th</sup> July 2020</b>
No late fee on GSTR 1 if filed within <b>30<sup>th</sup> June 2020</b>	No late fee on GSTR 1 if filed within <b>30<sup>th</sup> June 2020</b>	No late fee on GSTR 1 if filed within <b>30<sup>th</sup> June 2020</b>

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