

MONTHLY NEWSLETTER

# GST TRACKER

ISSUE: AUGUST 2021

# INDIA



# 75th YEAR of Independence

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# GST DAY



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Special Guest



Sh. Shyam Sundar Pathak  
Asst. Commissioner UPGST Noida  
Special Guest



CS Payal Kataria  
GST Consultant Noida  
Moderator

July 1, 2021, 4.00 PM

Google Meet Link:

<https://meet.google.com/mke-ohjp-atd>

**Panel Discussion: Know your GST and avoid Litigation**

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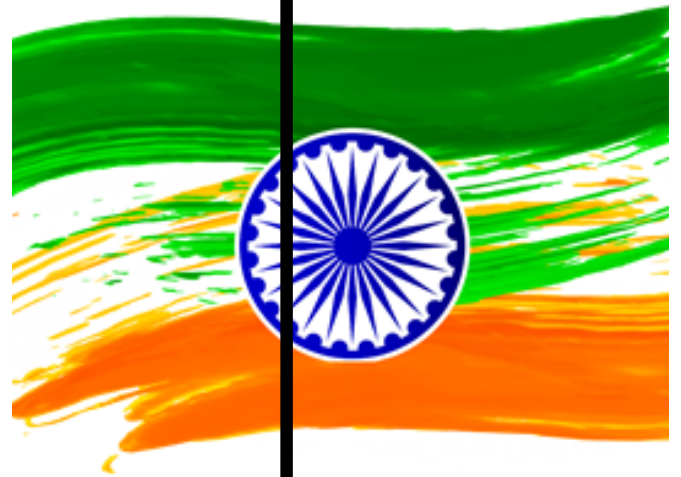
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# EDITOR'S NOTE



## Valuing Independence

India celebrated its 75th Independence Day on August 15, 2021. Let's try to understand various meanings of "Independence":

- a) Independence is a requirement to make your decisions.
- b) Independence means you add at least as much value back as you take from every transaction.
- c) Independence also makes you a creator instead of a user.
- d) Independence means one should perform his duties before asking for his rights.
- e) The value of independence is that it makes you a human being.

Because, eventually, its "Value that makes the difference".

Pankaj Kataria

(Founder Pakkabil)

# Interest liability under GST and areas of obscurity

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CA Vinamar Gupta

## Introduction

In order to understand the levy of interest, it may be relevant to re-produce judgments laying down basic canons of levy of interest. **Supreme Court of India in ACC Ltd. 1981 AIR 1887** has held that ".....Tax, interest and penalty are three different concepts. Tax becomes payable by an assessee by virtue of the charging provision in a taxing statute. Penalty ordinarily becomes payable when it is found that an assessee has willfully violated any of the provisions of the taxing statute. Interest is ordinarily claimed from an assessee who has withheld payment of any tax payable by him and it is always calculated at the prescribed rate on the basis of the actual amount of tax withheld and the extent of delay in paying it. It may not be wrong to say that such interest is compensatory in character and not penal."

Further it has been held by **Supreme Court in Pratibha Processors 1996 (88) E.L.T. 12 (S.C.) 11-10-1996** "...The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date.

## **Instances of interest liability under GST law**

### ***1. Interest for failure to pay tax in general***

As per section 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.

***Notification 13/2017-CT dated 19-06-2017 has notified interest rate of 18%. W.e.f. 01-07-2017 for the purpose of section 50(1).***

### ***Period for which Interest is required to be paid***

As per Section 50(1), interest shall be paid for the period for which the tax or any part thereof remains unpaid, if a person fails to pay tax or part thereof within the period prescribed.

Further as per section 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

However neither any time period range has been prescribed for the purpose of charging of interest, nor manner of calculation of Interest has been prescribed by the rules. Hence the charging provisions of the interest are not certain and specific.

### ***Uncertainty in levy is fatal to levy***

As per Supreme Court Judgment in **Govind Saran Ganga Saran**," ..... If components of levy are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity....."

### ***No notice can be issued without prescribing***

It has been held by **Gauhati High Court in Santosh Kumar Harlalka & Ors vs. State of Assam & Ors** where section 27 of the Assam General sales Tax Act required deduction of tax at prescribed rate and in prescribed manner, where rules did not prescribe any rate :

".....as per Rules no rate and manner have been prescribed to deduct tax at source. In the absence of any prescribed rate and manner respondent has no authority and jurisdiction to issue notice directing to deduct tax at source. Hence the letter issued by respondent is liable to be set aside as ultra vires....."

Subsequently, the Government of Assam amended the law prescribing the rate but no manner was prescribed. The matter again came up before the Gauhati High Court in **Gauhati Municipal Corporation Contractor's Association Vs Gauhati Municipal Corporation, (1996) 2 GLR 172** and the High Court held as under :

*"It is a well settled law that where a power is given to do certain thing in a certain way the thing must be done in that way or not at all. In section 27(b) of the Assam General Sales Tax Act the legislature has fairly indicated that tax can be deducted at source not only on the basis of the prescribed rate but also in the manner. While making the said provision, definitely, the legislature had in its mind certain manners. It is also an established principle of law that legislature do not use any expression which is unnecessary and redundant. Taking the plain meaning from Section 27(b) of the Act, it is abundantly clear that some manner, regarding deduction of tax has to be prescribed. As this has not been done, in my opinion, no tax can be deducted at source in the present facts and circumstances of the case. Accordingly, I set aside and quash the action of respondents deducting the sales tax at source from the bills payable to the members of the petitioner-association"*

When a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself.



***Held in Nazir Ahmad vs King Emperor, AIR 1936 PC 253(2) and In State of Uttar Pradesh Vs Singhara Singh & Ors, AIR 1964 SC 358***

*where the confession recorded by First class magistrate without following the manner provided in Section 164 of Criminal Procedure Code 1898, is not tenable*

*".....it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves. The rule adopted in Taylor v. Taylor(3) is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of th act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted....."*

***Commissioner of Income Tax Vs Anjum M.H. Ghaswala, (2002) 1 SCC 633***

*"....."Then it is to be seen that the Act requires the Board to exercise the power under Section 119 in a particular manner i.e. by way of issuance of orders, instructions and directions. These orders, instructions and directions are meant to be issued to other income tax authorities for proper administration of the Act. The Commission while exercising its quasi-judicial power of arriving at a settlement under Section 245-D cannot have the administrative power of issuing directions to other income tax authorities. It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the stated itself. ...."*

**Captain Sube Singh & Ors Vs. Lt. Governor of Delhi, (2004) 6 SCC 440**

*“29. In Anjum M.H. Ghaswala [CIT v. Anjum M.H. Ghaswala, (2002) 1 SCC 633] a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit.”*

**Kunwar Pal Singh vs State of U.P & Ors, (2007) 5 SCC 85**

*".....16. Section 6(2), on a plain reading, deals with the various modes of publication and they are: (a) publication in the Official Gazette, (b) publication in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and (c) causing public notice of the substance of such declaration to be given at convenient places in the said locality. There is no option left with anyone to give up or waive any mode and all such modes have to be strictly resorted to. The principle is well settled that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed therefore in the Act.”*

Hence the above jurisprudence clearly depicts that without filling in the gaps for calculation of interest to be prescribed by making appropriate rules, the levy of interest u/s 50 can not sustain.

## ***2. Interest for tax not paid/short paid/erroneously refunded/ITC wrongly availed or utilized [S.73(1)/74(1)]***

Section 73(1): Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

Section 74(1): Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

### **Comments**

As per section 73/74, interest is payable u/s 50. As per section 50(1), interest is payable if “person liable to pay tax”, “fails to pay the tax or any part there of”. Issue arises whether interest is payable on input tax credit wrongly availed or wrongly utilized. As per Para 13 of Supreme Court Judgment in Pratibha Processors 1996 (88) ELT 12(SC), “Tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law”. Hence invocation of interest liability on ITC wrongly availed may be challenged on this ground.

### **3. Interest on Self Assessed Tax [S.75(12)]**

Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

#### **Comments**

1. The proceedings u/s 79 can be effected only in respect of amount payable by a person to the government. Without establishing that amount is payable, recovery proceedings u/s 79 can not be initiated.

2. As per Karnataka High Court in L.C. Infra Projects Pvt Ltd.,

".....the issuance of Show Cause Notice is sine qua non to proceed with the recovery of interest payable thereon under Section 50 of the Act and penalty leviable under the provisions of the Act or the Rules. Undisputedly, the interest payable under Section 50 of the Act has been determined by the third respondent-Authority without issuing Show Cause Notice, which is in breach of principles of natural justice. It is trite law that any order passed by the quasi-judicial authorities in contravention of the principles of natural justice, cannot be sustained.....The notion of the third respondent-Authority that Section 75(12) of the Act empowers the authorities to proceed with recovery without issuing Show Cause Notice is only misconceived. The said Section is applicable only to the self-assessment made by the assessee and not to quantification or determination made by the Authority....."

3. It has been held by Supreme Court in Madhumilan Syntex Pvt. Ltd. 1988 35 ELT 349 (S.C.) that Demand raised without notice or hearing invalid. Post facto Show Cause Notice and hearing does not make it valid

4. In Nirlon Ltd. v. Union of India, 2007 (209) E.L.T. 12 (Bom.) the issue was charging interest under the provisions of the Central Excise Act. This Court there held: "*.....The fact however remains, that principles of natural justice require that the petitioner ought to be issued a Show Cause Notice as*

*to why the interest amount should not be claimed from it and after affording a hearing that liability ought to be decided. That has not been done which is clearly contrary to the judgment of the Apex Court in Madhumilan Syntex (supra).....”*

5. Finance Act 2021 has proposed insertion of following explanation to Section 75(12) in order to expand the scope of self assessed tax as under:

*‘Explanation.—For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.*

*This amendment has not yet been implemented. However from the date of its implementation, interest on account of mismatch in GSTR 3B and and GSTR-1 can also be recovered u/s 79.*

*However MP High Court in Kabeer Reality Private Limited v. UOI has upheld the recovery of mismatch between GSTR 3B and GSTR-1 without issue of SCN, in pre amendment era also and hence it shall have impact on interest liability also.*

#### **4. Interest on amount collected as representing tax [S.76(4)]**

As per section 76(1), every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not. As per section 76(4), the person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

#### **Comments:**

While as per section 73/74, interest is payable u/s 50, as per section 76, interest is liable to be paid at the rate specified u/s 50. So, section 76 only borrows the rate of interest from section 50 and not the manner of calculation.

**5. Interest for delayed filing of return payable on tax payable by debiting cash ledger only [Proviso to Section 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.

Backdrop of Insertion:

In 31st GST Council meeting held on 22-12-2018, principal approval was granted to amend section 50, to provide that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit, i.e. interest would be leviable only on the amount payable through the electronic cash ledger.

Clause No. 100 of Finance Bill 2019 was presented in Lok Sabha on 5-7-2019 and received assent on 01-08-2019, proposed insertion of proviso to section 50(1). Notes on The Finance Bill provided that bill seeks to amend section 50 of the Central Goods and Services Tax Act so as to provide for charging interest only on the net cash tax liability, except in those cases where tax is paid subsequent to initiation of any proceedings under section 73 or 74 of the Act.

Notification 63/2020 dated 25-08-2020 made the proviso to Section 50(1) applicable from 01-09-2020.

Retrospective Application

The GST Council, in its 39th meeting, held on 14th March, 2020 had recommended interest to be charged on the net cash tax liability w.e.f. 01.07.2017 and accordingly, recommended the amendment of section 50 of the CGST Act retrospectively w.e.f. 01.07.2017.

However post notification dated 25-08-2020, making amendment applicable from 01-09-2020 instead of 01-07-2017, a press release was issued.

Press Release dated 26-08-2020, assured that no recoveries shall be made for the past period as well by the Central and State tax administration in accordance with the decision taken in the 39th Meeting of GST Council. This will ensure full relief to the taxpayers as decided by the GST Council.

Circular No. CBEC-20/01/08/2019-GST, DATED 18-9-2020 further issued administrative instructions that post issuance of notification 63/2020 - Central Tax dated the 25th August, 2020, there were apprehensions raised by taxpayers that the said notification is issued contrary to the Council's recommendation to charge interest on net cash liability w.e.f. 01.07.2017. Consequently, a press release, dated 26.08.2020 was issued to clarify the position. Further, in order to implement the decision of the Council in its true spirit, and at the same time working within the present legal framework, it has been decided to address the issue through administrative arrangements, as under:

- a) For the period 01.07.2017 to 31.08.2020, field formations in your jurisdiction may be instructed to recover interest only on the net cash tax liability (i.e. that portion of the tax that has been paid by debiting the electronic cash ledger or is payable through cash ledger); and
- b) wherever SCNs have been issued on gross tax payable, the same may be kept in Call Book till the retrospective amendment in section 50 of the CGST Act is carried out.

#### **6. *Interest on account of mismatch of ITC with the return of supplier***

As per section 42(5) read with rule 71, mismatch in ITC with return of supplier which is communicated to him in GST MIS-2 and is not rectified by supplier in the month in which discrepancy is intimated shall be added to the output tax liability of the recipient in the return Form GSTR-3 for succeeding month. For example if mismatch is communicated in the month of July which is not rectified by the supplier in the return for the month of July to be filed on 20th August shall be added to the output tax liability of the recipient in the return for the month of August to be filed on 20th September.

As per section 42(8), interest in this case shall be payable u/s 50(1) i.e. interest shall be payable @ 18%.

**Comments:**

However, since Form GST MIS-2 and GSTR-3 are not operational, the applicability of interest itself on account of mismatch can not be dealt u/s 42. Applicability of Section 73/74 is invoked only in respect of ITC wrongly availed or utilized. Mere mismatch of ITC can not be said to be ITC wrongly availed.

***7. Interest on Reclaim of mismatched ITC without supplier accepting liability***

As per section 42(7), the recipient shall be eligible to reduce, from his output tax liability, the mismatched ITC added to output tax liability at earlier point of time in GSTR3- if the supplier declares the details of the invoice or debit note in his valid return.

Further as per section 42(10), if reduction from output tax liability on account of reclaim of mismatched ITC is made by recipient without supplier declaring the details in his valid return, then this reclaimed ITC shall also be added to the output tax liability of the recipient.

Further as per section 42(10), recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

As per section 50(3), A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42, shall pay interest on such undue or excess claim at such rate not exceeding twenty-four per cent, as may be notified by the Government on the recommendations of the Council

Notification 13/2017-CT dated 19-06-2017 has notified interest rate of 24%. W.e.f. 01-07-2017 for the purpose of section 50(3).

**Comments:**

However, since the form GSTR-3 and other relevant forms GST MIS-1 and GST MIS-2 are not in operation, hence invocation of section 42(10) and Section 50(3), does not appear to be possible.



## ***8. Interest on account of duplication of ITC***

As per section 42(6) read with rule 72, the amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated in Form GST MIS -1.

As per section 42(8), interest in this case shall be payable u/s 50(1) i.e. interest shall be payable @ 18%.

### **Comments:**

Due to non operation of GST MIS-1, if interest on duplicate ITC can not be dealt in Section 42(8), still it can be dealt in section 73/74 because duplicate ITC shall fall under category of ITC wrongly availed.

## ***9. Interest on account of mismatch of credit notes of supplier with the reduction of ITC by the recipient***

As per section 43(5) read with Rule 73, mismatch in credit notes of supplier with reduction of ITC by the recipient in which is communicated to recipient in GST MIS-1 and is not rectified by recipient in the month in which discrepancy is intimated shall be added to the output tax liability of the supplier in the return GSTR-3 for succeeding month. For example if mismatch is communicated in the month of July which is not rectified by the recipient in the return for the month of July to be filed on 20th August shall be added to the output tax liability of the supplier in the return for the month of August to be filed on 20th September.

As per section 43(8), interest in this case shall be payable u/s 50(1) i.e. interest shall be payable @ 18%.

### **Comments:**

Due to non-operation of section GST MIS-1 and GSTR-3, applicability of interest u/s 43(8) is also doubtful. Further except as required by section 15(3)(b) in case of post supply discount, there is no requirement u/s 34 for the recipient to reverse his ITC. Hence while the system of matching of credit notes has not been put in place, the supplier can not be alleged to have not paid tax or short paid tax u/73, only because recipient has not reversed ITC. Hence in the opinion of author such cases may not be dealt u/s 73/74 also.

## **10. Interest on Reclaim of mismatched credit notes without recipient reducing ITC**

As per section 43(7), the supplier shall be eligible to reduce, from his output tax liability, the mismatched credit notes added to output tax liability at earlier point of time if the recipient declares the details in his valid return.

Further as per section 43(10), if reduction from output tax liability on account of reclaim of mismatched credit notes is made by supplier without recipient reducing ITC in his valid return, then this reclaimed credit notes shall also be added to the output tax liability of the supplier.

Further as per section 43(10), supplier shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

As per section 50(3), A taxable person who makes an undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess reduction at such rate not exceeding twenty-four per cent, as may be notified by the Government on the recommendations of the Council

Notification 13/2017-CT dated 19-06-2017 has notified interest rate of 24%. W.e.f. 01-07-2017 for the purpose of section 50(3).

## **11. Interest on account of duplication of credit notes**

As per section 43(6), The amount in respect of any reduction in output tax liability that is found to be on account of duplication of claims shall be added to the output tax liability of the supplier in his return for the month in which such duplication is communicated..

As per section 42(8), interest in this case shall be payable u/s 50(1) i.e. interest shall be payable @ 18%.

### **Comments:**

Interest on Duplicate claim of credit notes, if could not be dealt u/s 43 can still be dealt u/s 73/74 as interest on tax not paid/short paid

**12. Interest on ITC reversed for failure to make payment in 180 days  
[S.16(2) 2nd Proviso]**

Where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed

**Comments:**

1. In this provision, there is no reference to rate, manner and period of calculation. Hence this levy is an uncertain levy as per principals propounded by Supreme court in Govind Saran Ganga Saran.

2. In CGST amendment bill 2018, the levy of interest for ITC reversal on account of delayed payment was abolished but restored in the CGST Amendment Act 2018 effective from 01-02-2019

The levy of interest in this case is on account of creation of output tax liability retrospectively. As per Supreme Court in Star India (P) Ltd (2005) 7 SCC 203, if liability to pay tax is created retrospectively, such liability could not entail the punishment of payment of interest with retrospective effect.

**13. Interest on excess credit received from Input service Distributor  
[S.21]**

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

#### ***14. Interest due to Rectification of Omission and Incorrect particulars in returns***

GSTR-1: As per section 37(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period.

GSTR-2: As per section 38(5) Any registered person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period.

GSTR 3B/GSTR-4/GSTR-5/GSTR-6/GSTR-7: As per section 39(9), Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in such form and manner as may be prescribed, subject to payment of interest under this Act.

GSTR-8: As per section 52(6), (6) If any e-commerce operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50

### ***15. Interest on Failure to deposit the tax deducted[S.51(6)/(7)]***

If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted. The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74.

#### **Comments:**

Interest is chargeable for tax deducted but not deposited and not where tax is not deducted at all.

### ***16. Interest on tax paid on provisional assessment being short than tax payable on final assessment [S.60(4)]***

The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under sub-section (7) of section 39 or the rules made thereunder, at the rate specified under sub-section (1) of section 50, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

#### **Comments:**

Section 60(4) only borrows rate of interest from section 50(1). It has its independent manner of calculation i.e. , from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment. Hence obscurity u/s 50(2) regarding manner of calculation shall not impact the interest payable u/s 60(4). Section 76(4) also has independent manner of calculation of interest but precise rate of interest to be picked from section 50 is not specified.

**17. No Interest on tax paid under wrong head [S.77(2) of CGST and S.19 of IGST]**

S.77(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of Central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.

S.19(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.

**18. Interest on payment of tax in instalments [S.80]**

On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed.

**19. Interest for non compliance of the provisions of LUT [R.96A]**

Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of:

- a) fifteen days after the expiry of three months 3, [or such further period as may be allowed by the commissioner] from the date of issue of the invoice for export, if the goods are not exported out of India; OR
- b) fifteen days after the expiry of one year, or such further period as may be allowed by the commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in (convertible

foreign exchange) 3a [or in Indian rupees, wherever permitted by the Reserve Bank of India].

***20. Interest on retraction of refund on export of goods where sale proceeds are not realized within time allowed under FEMA [R.96B]***

Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50

S.16(3) proposed to be substituted by Finance Act 2021 (not yet implemented).

A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

## **Comments:**

Non-realization of export proceeds does not make the refund already granted erroneous but rule 96B says that amount refunded shall be recovered in accordance with provisions of S.73/74, as is applicable for recovery of erroneous refund, along with Interest u/s 50.

The amendment proposed vide insertion of proviso to S. 16(3) of IGST in Finance Act 2021 (not yet implemented) also only requires deposit of amount refunded only in case of refund of unutilized ITC against exports and not IGST paid on exports.

Rule 96B requires deposit of amount refunded along with applicable interest within 30 days from the period allowed under FEMA for realization of proceeds. It implies if interest u/s 56 is paid on account of delayed refund, it has also to be deposited back along with refund amount.

But aforementioned proviso to S.16(3) requires deposit of refund along with interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

Hence there is again complete obscurity in the language of law and rules there under.

Further mere non realization of export proceeds can not be said to tantamounting to erroneous refunds, specially when proviso of S.16(3) also does not declare the same to be an erroneous refund.

Still further Rule 16(3) proviso is silent on whether interest is applicable u/s 50(1) or 50(3). Moreover section 50(1) is invited for failure to pay tax and 50(3) is applicable for contraventions u/s 42(10)/43(10) and neither are applicable to deposit of refund amount or erroneous refunds.

It may also be observed that Section 73/74 is applicable only to erroneous refund of tax and hence can not be applied to refund of unutilized ITC which is sought to be covered by S.16(3) proviso. Hence Rule 96B is not being supplemented by the provisions of the Act and exceeds its delegation



## ***21. Interest on non return of goods by Job worker to the principal manufacturer [R.45(4)]***

As per Section 45(4), Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143, it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in FORM GSTR-1 and the principal shall be liable to pay the tax along with applicable interest.

### **Comments:**

In this case interest is being sought by the legislature for transaction deemed supply retrospectively. Deeming supply retrospectively can not be said to be failure of the part of person liable to pay tax as is covered in the ambit of S.50(1).

Further the provisions of Rule 45(4) are not supplements by the provisions of S.143(3)/(4), in so far as interest part is concerned.

Rule 45(4) neither lays down any reference to interest nor provides manner of calculation, hence the provisions of Rule 45(4) also appear to be obscure, in so far as interest is concerned.

The levy of interest in this case is on account of creation of output tax liability retrospectively. As per Supreme Court in Star India (P) Ltd (2005) 7 SCC 203, if liability to pay tax is created retrospectively, such liability could not entail the punishment of payment of interest with retrospective effect.

## ***22. Interest for short reversal of ITC on exempt supplies on final calculation [R.42(2)]***

As per Rule 42(2), ITC to be reversed shall be calculated finally before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates and if the aggregate of ITC reversed during financial year falls short of amount of reversal finally calculated, registered person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment

### ***Mode of Payment of Interest***

As per section 49(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

Further as per section 49(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  
Hence payment of Interest can be made through cash ledger only.

### ***Mention of Interest in the SCN is not mandatory***

As per section 75(9), The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

### **Conclusion >>**

Interest liability under GST is principally governed by the provisions of section 50. But the provisions of section 50 as well applicability of interest in other provisions is not defined in precise manner.

## GSTN updates July 2021

Date of Issue	Subject
06/07/2021	Important changes related to QRMP Scheme implemented on the GST Portal for the taxpayers
09/07/2021	Module wise new functionalities deployed on the GST Portal for taxpayers
09/07/2021	Upcoming functionalities to be deployed on GST Portal for the Taxpayers in the month of July, 2021
22/07/2021	Filing of Annual returns by composition taxpayers. - Negative Liability in GSTR-4
27/07/2021	New functionality on Annual Aggregate Turnover (AATO) deployed on GST Portal for taxpayers.
29/07/2021	Functionality to check and update bank account details.

Source: [www.gst.gov.in](http://www.gst.gov.in)

## Notifications/Circulars/Orders issued in the month of July 2021

### Ø Central Tax Notifications July 2021

Notification Nos.	Date of Issue	Subject
31/2021	30/07/2021	Seeks to exempt taxpayers having AATO upto Rs. 2 crores from the requirement of furnishing annual return for FY 2020-21.
30/2021	30/07/2021	Seeks to amend Rule 80 of the CGST Rules, 2017 and notify Form GSTR 9 and 9C for FY 2020-21. Rule 80 provides for exemption from GSTR-9C to taxpayers having AATO upto Rs. 5 crores.
29/2021	30/07/2021	Seeks to notify section 110 and 111 of the Finance Act, 2021 w.e.f. 01.08.2021.

### Ø Central Tax (Rate) Notifications July 2021

No Central Tax (Rate) notification was issued in the month of July 2021

### Ø Integrated Tax Notifications July 2021

No Integrated Tax notification was issued in the month of July 2021

### Ø Integrated Tax (Rate) Notifications July 2021

No Integrated Tax (Rate) notification was issued in the month of July 2021

## Notifications/Circulars/Orders issued in the month of July 2021

### Ø Circulars

Circular Nos.	Date of Issue	Subject
157/2021	20/07/2021	Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021.

### Ø Orders

No Orders issued in the month of July 2021

### Ø Removal of Difficulty Orders July 2021

No order was issued in the month of July 2021

Source: [www.cbic.gov.in](http://www.cbic.gov.in)

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