

# No Interest under GST on delayed filing of GSTR-3B

By: Team Tax Connect

Consider a case as follows –

<i>GST Amount Payable For Jan 2024 period</i>	<i>Rs.10,00,000/-</i>
<i>Electronic Credit Ledger Balance</i>	<i>Rs.8,00,000/-</i>
<i>Electronic Cash Ledger Balance</i>	<i>Rs.2,00,000/-</i>
<i>Due Date of return for Jan 2024 period</i>	<i>20th Feb 2024</i>
<i>Return for Jan 2024 period filed on</i>	<i>25th Feb 2024</i>
<i>Interest Liability</i>	<i>NIL</i>

While Section 50 of The CGST Act was retrospectively amended to provide that there would be no interest liability on delayed filing of GSTR-3B to the extent of balance in The Electronic Credit Ledger, the Courts in the following and other cases had held that interest was payable even after there was balance in the Electronic Cash Ledger -

- (i) *Refex Industries vs. Assistant Commissioner of CGST reported in 2020 SCC Online Mad 587 - 2020-VIL-71-MAD;*
- (ii) *Manasarover Motors P Ltd vs Assistant Commissioner reported in 2020 SCC Online Mad 28155 - 2020-VIL-524-MAD;*
- (iii) *Srinivasa Stampings vs. SPT of GST & CE in W.P.No.7129 of 2021 - 2022-VIL-285-MAD*
- (iv) *P.K. Ores P Ltd vs Commissioner of State Tax reported in MANU/OR/236/2022 - 2022-VIL-365-ORI;*
- (v) *Orissa Stvedores Ltd vs. Union of India reported in MANU/OR/1116/2022;*
- (vi) *RSB Transmission (India) Ltd. vs. Union of India reported in MANU/JH/1260 - 2022-VIL-745-JHR;*
- (vii) *Haji Lal Mohd Biri Works vs. State of Uttar Pradesh reported in (1974) 3 SCC 137 - 1973-VIL-22-SC;*
- (viii) *The Sales Tax Officer vs. Dwarika Prasad Sheo Karan Dass reported in (1977) 1 SCC 22 - 1976-VIL-43-SC;*

(ix) *Khazan Chand vs. State of Jammu and Kashmir* reported in (1984) 2 SCC 456 - 1984-VIL-12-SC;

(x) *Prahlad Rai vs. Sales Tax Officer* reported in (1991) Supp (2) SCC 612 - 1990-VIL-20-SC;

(xi) *Commissioner of Sales Tax vs. Qureshi Crucible* reported in (1993) Supp (3) SCC 495 - 1993-VIL-10-SC;

However, the Madras High Court in the case of *M/s EICHER MOTORS LIMITED [2024-VIL-72-MAD]* has held otherwise. The primary grounds on which this judgement was delivered are the following -

1. Section 39(1) and 39(7) of CGST Act (Act) require that taxpayers who are required to furnish GSTR-3B return under Section 39(1), shall **"pay"** to the Government the tax due **"before"** the furnishing of The GSTR-3B return and disclose **"tax paid"** in the GSTR-3B return.

Section 39(1) and 39(7) state as below -

**"39.** <sup>6</sup>[(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of [section 10](#) or [section 51](#) or [section 52](#) shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed:

Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein...

<sup>7</sup>[(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, 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:

<sup>9</sup>[Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed, -

*(a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or*

*(b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.]*

*Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.]”*

*2. Section 49(1) requires that amounts deposited by taxpayers shall be credited to the electronic cash ledger (ECL) of the taxpayer. Rule 87(6) & 87(7) of The CGST Rules (Rules) also specifies that a CIN would only be generated after the Government’s accounts are credited.*

*Section 49(1) and Rule 87(6) & 87(7) state as below -*

*“Section 49(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.”*

*“Rule 87 (6) On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan.*

*87(7) On receipt of the Challan Identification Number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.”*

*3. The amounts of so deposited are credited by The RBI to the Government Accounts as clarified by The RBI in FAQ 8 dated 14<sup>th</sup> April 2020. Further, Explanation (a) to Section 49 read with Section 49(11) clears that the date when amounts are deposited shall be the date when the Government’s accounts are credited.*

The relevant extracts of provisions are as under -

*"FAQ 8. What is RBI's role in Goods and Service Tax regime?*

*The Reserve Bank of India is the aggregator for accounting of all GST collections in the respective government accounts. Agency banks who collect the GST for challans generated by tax payers online on the GST portal report the collections for settlement to government accounts to RBI. RBI has also facilitated payment of GST by tax payers directly into government accounts at RBI by using NEFT / RTGS payment options provided in GST portal."*

*"Section 49 (11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in sub-section (1).]*

*Explanation. --For the purposes of this section,-*

*(a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;"*

4. The GST collection figure arrived at by the Government, are prepared on the basis of the amount deposited in the electronic cash ledger and not the amount set off while filing the GSTR-3B returns.

5. Hence the Govt. utilizes the money of the ECL. There is no monetary loss to the Govt. in case money in ECL is not set off by GSTR-3B. It would be disastrous for the exchequer if such amounts are not allowed to it to be utilized.

6. As per Section 54(12) in case there is a delay by the Govt. in refunding the amount in the ECL claimed by a taxpayer beyond a time period, then it has to pay interest. In case the amounts in ECL was not utilized by The Govt., how would it pay interest on delayed refund.

*"Section 54 (12) Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent. as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund."*

However, the debate may still not be over as Going forward the Government may contest on the fact that -

*1. Section 49(3) requires that the amount available in ECL would be used for payment of taxes etc. Section 39 requires that the GSTR-3B should be filed after 'payment' of taxes by utilizing amounts available in ECL and Electronic Credit Ledger. Hence the final payment is made after filing GSTR-3B and Interest is for tax paid after due date.*

*Section 49 (3) states that "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."*

*2. Rule 61(1) of CGST Rules provide that every person must file his GSTR-3B return within 20<sup>th</sup> of the month as required by Section 39 of CGST Act. Rule 61(2) requires that while filing the GSTR-3B, the tax shall only be discharged.*

### **Rule 61(1) and 61(2) state as under –**

*"Rule 61 (1) Every registered person ... shall furnish a return in **FORM GSTR-3B**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, as specified under-...*

*(2) Every registered person required to furnish return, under sub-rule (1) shall, subject to the provisions of [section 49](#), discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in **FORM GSTR-3B**."*

## LET'S DISCUSS FURTHER!

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