

TAX INFO

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Latest update on GST Law: Information regarding HC quash GST interest demand of Rs 5.06 crore levied by GST Department on Gross Tax Liability instead of Net Tax Liability.

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Name of Applicant	KLT Automotive and Tubular Products Limited vs Union of India
Name of Court	Bombay High Court
Writ Number	WP(L).No.983 OF 2020
Date of Judgement	27/10/2020

Facts of the Case:

Petitioner was availing ITC of the taxes charged by the suppliers and remitting GST on its output supplies after deducting the ITC. Admittedly, there was some delay in filing the monthly returns in form GSTR-3B and GSTR-1. The respondents sent email dated 14.02.2020 levying interest of Rs.5.06 crore for late payment of GST for the months from July, 2017 to December, 2019 and such interest was computed on gross liability basis but the petitioner himself calculated the interest liability on Net Cash payment basis and deposited the same and informed the department on 13.07.2020 and 14.07.2020. Despite the facts that petitioner had deposited the interest on Net Cash Liability basis, the Respondent issued Recovery (Garnishee) notice dated 16.07.2020 to various customers of the petitioner for recovery of demand as calculated by Respondent on Gross Tax liability basis as computed on 14.02.2020. Accordingly the present Writ Petition filed by the Petitioner and question raised in the Writ Petition- i.e., whether interest under section 50 of the Central Goods and Service Tax Act, 2017 is to be levied on the gross tax liability or on the net tax liability?

Observations of the Court:

GST Council in its 39th meeting recommended that interest should be charged on the Net Cash tax liability with effect from 01.07.2017. Recommendation was made for making the amendment to section 50 retrospectively with effect from 01.07.2017. A Notification No.63/2020- Central Tax dated 25.08.2020 issued and an amendment to section 50 of the CGST Act, 2017 was introduced by Finance (No.2) Act, 2019 for charging interest on the net cash tax liability prospectively from 01.09.2020. After issuance of the notification dated 25.08.2020, views were expressed by all stake holders that the said notification is contrary to the recommendation of GST Council to charge interest on the net cash tax liability with effect from 01.07.2017. To clarify this position press release was issued on 26.08.2020 and in order to implement the decision of the GST Council in its true spirit the following two instructions were issued. Firstly, for the period 01.07.2017 to 31.08.2020, field formations have been 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. Secondly, in those cases where show cause notices have been issued on gross tax payable, to keep those show cause notices in the call book till retrospective amendment in section 50 of the Central Goods and Service Tax Act, 2017 is carried out.

The Decision of the Court:

It has been answered by the Board in the administrative instructions dated 18.09.2020 by categorically stating that the interest would be on the net cash tax liability for the period prior to the amendment i.e., from 01.07.2017 to 31.08.2020. Hence, Recovery (garnishee) notices issued by the respondents on 16.07.2020 were thereby quashed and the respondents were directed to intimate the petitioner about the quantum of interest payable on account of delayed payment of GST for the period under consideration in terms of the administrative instructions dated 18.09.2020 and the same shall be paid by the petitioner, if not already paid. It was held that post amendment and instructions interest cannot be levied on gross tax liability and interest is to be levied only on net tax liability.

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