

# TAX INFO

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Latest update on GST Law: Information regarding **Important Ruling that No interest liability when tax wrongly deposited under wrong head** based on the **Judgement issued by Jharkhand High Court**

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## No interest liability when IGST amount wrongly deposited as CGST

<b>Name of Petitioner</b>	Shree Nanak Ferro Alloys Pvt. Ltd
<b>Name of Respondent</b>	Union of India
<b>Court</b>	Jharkhand High Court
<b>Date of Judgement</b>	18/12/2019
<b>Order No.</b>	W.P.(T) No. 2246 of 2019

### Facts of the Case:

The petitioner dispute relates to the month of September, 2017, wherein the petitioner filed its GSTR-1 and GSTR-3B, showing tax liabilities as under

No.	Forms	Status	IGST	CGST	Total
1	GSTR-1	Real Liability	74,51,128/-	2,68,470/-	77,19,598/-
2	GSTR-3B	But Wrongly Deposit	32,52,484/-	44,67,114/-	77,19,598/-
		Thus Liability / Refundable	41,98,644/-	(-) 41,98,644/-	NIL Effects

Thus it can be concluded that the petitioner had inadvertently excess deposit CGST as against the deficient of IGST in the return for the month of September-2017.

The department informed the petitioner vide letter dated 01.11.2018 that during scrutiny of the returns in GSTR-1 & GSTR-3B, it was observed that the petitioner had made short payment of tax under IGST amounting to Rs. 41,98,644/- and accordingly, the petitioner was asked to make the payment along with the interest.

### Contention of the Petitioner:

Learned counsel submitted that it was only a bona fide mistake on the part of the petitioner, in as much as, in their return in GSTR-3B, the petitioner Company had inadvertently classified the transaction to be the intra-State supply, whereas it was actually an inter-State supply. He also submitted that under Section 77(1) of the CGST Act, the petitioner was fully entitled to get the refund of the CGST paid by him wrongly, and at the same time was not liable to pay any interest, under the provision of Section 19(2) of the IGST Act.

He has further pointed out that under Rule 92, there is provision of making adjustments, and accordingly the tax wrongly paid under the CGST head could be adjusted under the IGST head as well, which facility though not available on portal to the petitioner Company.

Learned counsel further submits that the petitioner is also ready to make payment of tax under IGST head if so directed, within a week, and to claim the refund of the tax paid by him under the CGST head, or claim the adjustment thereof against their future liabilities but learned counsel submits that in no case, interest is payable by the petitioner Company

It is submitted that since in the present case, the payment was made through 'electronic cash ledger' and not through 'electronic credit ledger', there cannot be any adjustment of the tax paid by the petitioner, from CGST to IGST head.

**Reply of the Respondent:**

Learned counsel for the department submits that Section 77 of the CGST Act, or Section 19 of the IGST Act, shall not be applicable in the case of the petitioner, due to the wordings of these provisions, which show the bona fides of the registered person who pays the tax, and the cases where the tax is paid under the wrong head **deliberately**, as in the case of the petitioner Company, **which filed the GSTR-1 correctly, and GSTR-3 B changing the stand deliberately**, these provisions shall not apply.

He also submitted that this Rule cannot be made applicable for the adjustment of the liability of tax under the IGST Act, inasmuch as, the said law was not existing on the date of coming into force of the CGST Rules, or CGST Act, as both these Acts have been enacted on the same day. Learned counsel accordingly, concluded that there can be no case of adjustment of the CGST amount deposited by the petitioner, to IGST head, and in view of the fact that under the IGST head the Central Government also receives the tax on behalf of the State, and **the concerned State has been deprived of its portion of tax, the interest is also liable to be levied** from the petitioner Company

**Judgement:**

It was **held that** the petitioner Company to deposit the amount of Rs. 41,98,644/-, under the IGST head within a period of 10 days from today, towards the liability of September, 2017. **The petitioner shall not be liable to pay any interest on the said amount.** The petitioner shall also be entitled to get the refund of the amount of Rs.41,98,644/- deposited by them under the CGST head, or they may get the amount adjusted against their future liabilities

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**GSTN enabled the facility to report a negative figure in GSTR-3B**

GSTN is planning to enable the facility to report negative figures in GSTR-3B which is a huge relief for the taxpayers but the utility has not been made functional. The changes are currently in a design mode.

**Suresh Aggarwal, Advocate**

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