

Amount in electronic ledger does not protect the taxpayer from levy of interest in case of delayed tax payment – Madras HC

11 October 2022



Summary

The Madras High Court (HC) denied insulating the petitioner from levy of interest for belated remittances of GST. The HC ruled that until the assessee files a return and debits the respective registers, the authorities cannot be expected to presume that the available credits will be used to offset the tax due. The HC further stated that, in accordance with the interest provisions, an assessee would be protected from levy of interest only after passing the debit entry. Therefore, mere availability of credit cannot protect the petitioner from levy of interest on belated tax payments.

Facts of the case

- India Yamaha Motor Private Limited (the petitioner), a Tamil Nadu-based GST-registered business, had filed GSTR 3B for July 2017, wherein it had noticed an inadvertent error i.e., the data pertaining to its plant at Faridabad was included instead of data pertaining to the Chennai plant. The error resulted in a short disclosure of liability for the period July 2017 to October 2017, leading to the levy of interest.
- The petitioner had filed a grievance petition seeking modification of the return filed for July 2017 that had not been immediately disposed/ addressed by the authorities. The petitioner had admittedly not filed its monthly returns from August 2017 to October 2017, assuming that the resolution of its grievance petition would be necessary for the accurate determination of tax liabilities.
- The respondent passed the order, directing the petitioner to pay interest of INR 5 crore for belated remittance of GST from July 2017 to October 2017.
- The petitioner contended that there was sufficient balance in its electronic credit ledger (ECrL) and electronic cash ledger (ECL). Therefore, no loss happened to the revenue, and thus, the levy of interest was not justified.
- The respondent considered the amended section 50 of the CGST Act, and accordingly, recomputed the interest liability by considering the cash payments made by the petitioner. The petitioner argued that the GST authorities should accept a similar line of reasoning to the extent of cash payments in the context of credit balance as well.

- The issue before the HC is w.r.t. levy of interest in case of non-filing of returns for a particular period, resulting in belated remittance of taxes.

Madras HC observations and ruling (WP 19044 of 2019 and WP 18404 of 2019, Order dated 29 August 2022)

- **Language of interest provisions:** As per the provisions, there will be no levy of interest if remittance is affected by debit entry. Further, the mere availability of credit cannot protect the petitioner from a levy of interest.
- **Mere availability of credit does not insulate the petitioner against interest:** There may be a situation when credit has been availed mistakenly or erroneously. The Revenue believes that the mere availability of such credit cannot be assumed as utilisation. Therefore, the petitioner is required to file its return and debit its registers, otherwise, the authorities cannot assume such credits to be set off against output liability. However, in the instant case, the petitioner had not filed its returns, resulting in belated remittance of taxes. As a result, the HC ruled against the petitioner on the matter.

Our comments

As per the amended provisions of levying interest on delayed payment of tax, the tax liability, net of ITC, which is payable in cash by debiting the ECL is taken into consideration for computing the interest liability and not the gross liability. Interest will, therefore, be charged on the amount of tax that is paid by debiting the ECL, or the tax liability less the amount that is available in the ECrL.

Even the CBIC has also clarified that interest can be recovered only on the net cash tax liability. In the present ruling, the terms 'cash credit' and 'credit balance' appear to be swapped and the judicial authorities did not consider the amended provision of interest while delivering the judgment. Even the reasoning provided in the ruling to levy interest is unclear which may create unnecessary confusion in the mind of the taxpayers.

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