

EY Tax Alert

HC holds interest leviable on delayed filing of GSTR-3B despite amount deposited in Electronic Cash Ledger

Executive summary

This Tax Alert summarizes a recent ruling¹ of Division Bench of the Jharkhand High Court (HC). The issue involved in the writ petition was whether petitioner was liable to pay interest on delayed payment of tax (due to delay in filing of GSTR-3B) where it had deposited the tax liability in its Electronic Cash Ledger (ECL) before the due date.

HC, while dismissing the writ petition, has observed the following:

- ▶ A combined reading of Section 39(7), 49, and 50(1) of the Central Goods and Services Tax Act, 2017 (CGST Act), along with Rule 61(2), 87(6), and 87(7) of the Central Goods and Services Tax Rules, 2017 (CGST Rules) shows that mere deposit of an amount in ECL does not amount to payment of tax. It is only when GSTR-3B is filed, that the amount lying in ECL is debited towards payment of tax.
- ▶ The contention of the petitioner of having discharged tax liability by mere deposit in the ECL prior to the due date of filing of GSTR-3B return would be against the scheme of GST Law and make GST regime unworkable.
- ▶ ECL is just an e-wallet where cash can be deposited at any time by filling requisite Challans. The amount lying in the ECL can be claimed as a refund at any time, following prescribed procedures.
- ▶ There is a difference between ITC in Electronic Credit Ledger and cash in ECL. Balance available in ECL is just in the nature of deposit, whereas ITC is available to assessee on account of tax already paid. Hence, under Section 50, interest is computed only on the portion of tax paid by debiting the ECL.

¹ 2022-VIL-745-JHR

Background

- The petitioner is a company registered under the Companies Act, 2013 and had filed belated GSTR-3B returns for the period of July 2017 to December 2019.
- Revenue issued a letter to levy interest under Section 50 of the Central Goods and Services Tax Act, 2017 (CGST Act) due to delay in filing of GSTR-3B returns.
- Consequently, petitioner accepted interest levy on the amount deposited in Electronic Cash Ledger (ECL) belatedly in cash and paid such interest via GST DRC-03.
- However, it denied the liability to pay interest on the amount of tax which had already been deposited in its ECL prior to filing the return.
- Revenue issued another letter directing the petitioner to pay the balance amount of interest due.
- The petitioner paid the interest and claimed the same as refund which Revenue rejected.
- Aggrieved, the petitioner filed a writ petition before the Jharkhand High Court (HC).

Petitioner's contentions

- Interest under Section 50(1) of the CGST Act cannot be levied for delayed filing of GSTR-3B but only on delayed payment of tax i.e., when the Government is deprived of tax revenue beyond the due date.
- If Section 50(1) were interpreted in a manner that interest is leviable on the portion of tax already deposited prior to the due date of filing of GSTR-3B, the same would render the provision as confiscatory, arbitrary, unreasonable, and violative of Article 14 and 19(1)(g) of the Constitution of India.
- Section 39(7) stipulates that the due date of making payment of tax shall not be later than the last date on which GSTR-3B is required to be furnished.
- Further, Rule 87(6) and 87(7) of the Central Goods and Services Tax Rules, 2017 (CGST Rules) states that when an amount is deposited towards tax and credited in ECL, such amount is merely debited from ECL upon filing of GSTR-3B.

There is no real transfer of money from the petitioner's end, as the amount was already lying with the Government exchequer since the original deposit was made.

- Also, proviso to Section 50(1) was inserted to remove the levy of interest on tax paid through availment of Input Tax Credit (ITC). Since ITC is deemed to be tax paid, there is no real distinction between the ECL as far as amount of tax being in the hands of the Government is concerned.
- In case of Prannoy Roy², Delhi High Court had held that interest cannot be levied on tax that has already been deposited, even though the returns are filed belatedly.

- Reliance was also placed on Supreme Court (SC) ruling in case of Pratibha Processors³ to state that interest is compensatory and not penal, and in case of J.K. Synthetics Limited⁴ and Dwarka Prasad⁵ on how taxing statutes have to be interpreted.
- Reference was made to the definition of "Ledger" to submit that expression used in the statute, i.e., ECL cannot create a liability to pay interest when the amount of tax already stood deposited in the ECL before filing of the GSTR-3B.
- It was also submitted that under the Quarterly Return Monthly Payment (QRMP) Scheme, taxpayer may opt to pay tax in deferred manner. This shows that even though there is a delay in filing GSTR-3B, deposit of tax in ECL is treated as payment of tax and does not attract interest under Section 50(1).
- If tax paid through ECL is only appropriated at the time of furnishing of GSTR-3B, then proviso to Section 50(1) which seeks to levy interest on unpaid tax portion beyond the prescribed period, would be rendered ineffective.

Respondent's contentions

- Delay in filing of return by the petitioner was neither due to any technical glitches in filing GSTR-3B, nor it was intimated to the jurisdictional officer and Goods and Services Tax Network (GSTN) help desk in a timely manner.
- Further, when the petitioners make deposits, it is initially reflected in their ECL, and stays in ECL till GSTR-3B is filed. Only on filing of return, the cash ledger is debited, and that amount is deposited in Government account as tax under Section 49, Rules 86 and 87.
- Moreover, deposit of an amount in ECL does not make it a tax payment to a government account.
- Further, the proviso to Section 50 makes it clear that the interest shall be calculated only on the net GST liability, i.e., only on the tax portion paid through debit in the ECL.
- Thus, the set off of tax amount after the due date of filing of return attracts levy of interest.

HC ruling

- The tax liability gets discharged only upon filing of GSTR-3B and it can be filed prior to the last date. However, mere deposit of amount in the ECL on any date prior to filing of GSTR-3B, does not amount to payment of tax due to the state exchequer.
- Further, explanation(a) to section 49 also makes it clear that the date of credit to the account of government in the authorized Bank shall be deemed to be the date of deposit in ECL.

² (2001) SCC 1362

³ (1996) 11 SCC 101

⁴ (1994) 4 SCC 276

⁵ (1976) 1 SCC 128

- A combined reading of Section 49(1), explanation (a) to Section 49, Rule 87(6) and (7) suggest that deposit in ECL does not mean that the amount is appropriated towards the Government exchequer.
- There is a difference between ITC in Electronic Credit Ledger and cash in ECL. Balance available in ECL is just in the nature of deposit, whereas ITC is available in favour of the assessee on account of tax already paid. Hence, under Section 50, interest is computed only on the portion of tax paid by debiting the ECL.
- The aforesaid mechanism is the only manner in which provisions of Section 39(7), Section 49, Section 50, and Rule 62 (1), Rule 87(6) and 87(7) can be harmoniously interpreted.
- Contention of the petitioner that the tax liability is discharged by mere deposit in the ECL prior to the due date of filing of GSTR-3B would be against the scheme of GST Law and make GST regime unworkable.
- It can be said that ECL is just an e-wallet where cash can be deposited at any time by filling requisite Challans. The amount lying in the ECL can be claimed as a refund at any time, following prescribed procedures.
- The decision of Delhi High Court in *Prannoy Roy (supra)* was dealing with the provisions of Income Tax Act and cannot be borrowed while interpreting CGST provisions.
- Applying the principles of interpretation laid down by the SC in case of *J.K. Synthetics Limited (supra)* and *Dwarka Prasad (supra)*, liability to pay interest arises on delayed filing of GSTR-3B and debit of tax due from the ECL. Any deposit in ECL prior to due date of filing GSTR-3B does not amount to discharge of tax liability by the taxpayer.
- Therefore, HC dismissed the writ petition and ruled that the Revenue had rightly computed the interest on such delayed payment of tax due to delay in filing of GSTR-3B.

Comments

- a. This ruling is likely to impact taxpayers who have taken a position that deposit in electronic cash ledger is treated as payment of tax.
- b. Earlier, Gujarat HC had held that interest would not be applicable when GST liability was deposited in cash ledger, but return could not be filed owing to technical challenges in GST portal.
- c. Various appellate forums under earlier IDT regime have concluded that amount lying in Personal Ledger Account (PLA) is a deposit over which the Government has no right.

However, Supreme Court under Income Tax has held that the amount deposited in PLA would be treated as payment of tax and allowed as deduction.

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