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TREADING THE GST PATH - 52 WHAT IS THE INTEREST PAYABLE FOR ITC DEMANDS?



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Section 50 of the CGST Act, 2017 deals with demand of interest in various circumstances and the said section is reproduced below.

SECTION 50. Interest on delayed payment of tax. – (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

Notification 13/2017 Central Taxes Dt. 28.06.2017 prescribes the rate of interest for various situations.

In exercise of the powers conferred by sub-sections (1) and (3) of section 50, sub-section (12) of section 54 and section 56 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby fixes the rate of interest per annum, for the purposes of the sections as specified in column (2) of the Table below, as mentioned in the corresponding entry in column (3) of the said Table.

Sl No.	Section	Rate of interest(in per cent)
1	2	3
1	Sub-section (1) of section 50	18
2	sub-section (3) of section 50	24
3	sub-section (12) of section 54	6
4	section 56	6
5	proviso to section 56	9

2. This notification shall come into force from the 1st day of July, 2017.

It may be noted from the above that the rate of interest for Section 50 (1) is 18 % p.a. and for Section 50 (3) it is 24 % p.a. It may be noted that 24 % interest prescribed under Section 50 (3) would apply only for undue / excess claim of input tax credit under Section 42 (10) and 43 (10). Hence, it has to be understood as to what is contemplated under Sections 42 (10) and 43 (10).

Let us first deal with Section 42.

SECTION 42. Matching, reversal and reclaim of input tax credit. – (1) The details of every inward supply furnished by a registered person (hereafter in this section referred to as the “recipient”) for a tax period shall, in such manner and within such time as may be prescribed, be matched –

(a) with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the “supplier”) in his valid return for the same tax period or any preceding tax period;

(b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 (51 of 1975) in respect of goods imported by him; and

(c) for duplication of claims of input tax credit.

(2) The claim of input tax credit in respect of invoices or debit notes relating to inward supply that match with the details of corresponding outward supply or with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 (51 of 1975) in respect of goods imported by him shall be finally accepted and such acceptance shall be communicated, in such manner as may be prescribed, to the recipient.

(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

(4) The duplication of claims of input tax credit shall be communicated to the recipient in such manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.

(7) The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (9) of section 39.

(8) A recipient in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.

(9) Where any reduction in output tax liability is accepted under sub section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed :

[**Provided** that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.]

(10) The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

It may be observed from the above that Section 42 deals with “matching, reversal and reclaim of ITC” and Section 43 deals with “matching, reversal and reclaim of reduction in output tax liability”.

This deals with matching of ITC being availed by the recipient with the tax paid details of the supplier, by means of filing of GSTR 1 by the supplier, communication of the same to the recipient through GSTR 2 A and filing of GSTR 2 by the recipient. If there is any mismatch in this regard, the same shall be communicated to both the parties by the GSTN. If the problem is rectified in the same month, there is no further consequence {sub sections (1) to (3)}.

But, if the problem is not rectified in the same month the discrepancy was communicated, the recipient who has availed ITC is liable to add the unmatched credit, to his output tax liability of the succeeding month and pay the same {sub section (5)}.

From the date of availing the credit, till the date of payment of the same, interest @ 18 % is payable {sub section (8)}.

Even after such payment, the rectification can still be done till the recipient files his monthly return for the month of September in the next year {sub section (7)}.

As and when the rectification is done, the recipient shall be eligible to reduce his output tax liability by that extent. In such case, the interest paid as per sub section (8) shall also be refunded {sub section (9)}. If the reduction of output tax liability as permitted under sub section (7) is done, in contravention of sub section (7), then interest @ 24 % is payable {sub section (10)}.

It may be observed from the above, in case of mis match of credits, from the date of taking credit, till the same is paid by way of addition in output tax liability, interest is payable @ 18 %. The date of taking credit shall be the date of filing of GSTR 3 B in which the credit is availed. The date of payment thereof would be the date on which GSTR 3 B is filed for the month in which the output tax liability is increased towards reversal of such credit.

Interest @ 24 % would be attracted only in cases, where re-credit of earlier reversal is availed, by way of reduction in output tax liability, consequent to rectification of the mis-match and such recredit / reduction in output tax liability has not been properly done.

Section 43 contains similar provisions with regard to reduction in output tax liability due to raising of credit notes.

Whenever any ineligible credit is taken the same shall be paid by way of reversal of the same, for which action needs to be taken under Section 73 or Section 74 as the case may be. For such reversals interest @ 18 % is payable.

If the payment of consideration along with GST thereon is not made within 180 days, the ITC availed needs to be reversed. In such case, interest @ 18 % is payable from the date of taking credit, till the date of its payment (Rule 37 of the CGST Rules, 2017).

Rule 42 and 43 of the CGST Rules deals with availment of proportionate credit on common inputs and input services, where they are used for effecting both taxable and exempt supplies. The final amount to be paid in terms of these rules has to be determined not later than the filing of monthly return for the month of September next year and in case the final amount payable is more than the amounts already paid month on month, interest is payable @ 18 %, from 1st April of the succeeding year to the date of payment (Rule 42 and 43 of the CGST Rules).

From the above, it may be noted that all ITC reversals attract 18 % interest, except where the reclaim / recredit is wrongly taken, under Section 42 (10) and 43 (10).

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