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WRONG ITC AND INTEREST LIABILITY

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ONE of the laudable decisions taken by the GST Council in its 45th meeting held today is the decision to clarify that interest under Section 50 on wrong availment of ITC would be demanded only if such wrong credit is utilised. This issue has a chequered history. Under the erstwhile Cenvat Credit regime, the Hon'ble Madras HC has held in the case of CCE VS Strategic Engineering Pvt. Ltd. that under Rule 14 of the CCR, 2004, interest can be demanded only when the wrongly availed credit was utilised. Later, the said Rule 14 was amended to specifically provide that interest would be payable only when any wrong credit is "taken and utilised". Though the issue was thus well settled, it reared its ugly head again under GST regime, as Section 50 of the CGST Act, did not make the position so explicit.

It was being argued that since interest is prescribed under Section 50 of the Act, only for failure to pay the tax, only when the wrongly availed is utilised towards payment of tax, interest liability would arise. This view also found favour with the Hon'ble Patna High Court in the case of Commercial Steel Engineering Corporation Vs State of Bihar.

Further, the rate of interest was also a thorn in the flesh, as sub-section (1) of Section 50 has prescribed a rate of 18 % and sub-section (3) prescribed a rate of 24 %. A careful reading of sub-section (3) would reveal that the same is applicable only in circumstances covered by sections 42 (10) and 43 (10), relating to mis-match, the department used to demand 24 % interest in all cases of wrong availment of ITC.

The GST Council has stepped in to clear the above controversies. To quote from the Press release,

In the spirit of earlier Council decision that interest is to be charged only in respect of net cash liability, section 50 (3) of the CGST Act to be amended retrospectively, w.e.f. 01.07.2017, to provide that interest is to be paid by a taxpayer on "ineligible ITC availed and utilized" and not on "ineligible ITC availed". It has also been decided that interest in such cases should be charged on ineligible ITC availed and utilized at 18% w.e.f. 01.07.2017.