

## Interest liability arises on delayed filing of return, irrespective of payment mode – Patna HC

26 April 2024



## Summary

The Patna High Court (HC) held that the interest liability should arise on any delay in filing the GSTR-3B return, irrespective of whether the output tax liability has been discharged by way of electronic cash ledger (ECL) or electronic credit ledger (ECrL). The HC emphasised that tax payment occurs only upon furnishing the return and not at the time of deposit in the ECL or payment of tax to the government by the supplier. The HC also rejected the plea made by the petitioner that interest liability shall arise only on that portion of the tax paid by the ECL in terms of proviso to Section 50(1) of the Central Goods and Services Tax Act, 2017 (CGST Act).

### Facts of the case

- M/s. Sincon Infrastructure Pvt. Ltd. (the petitioner) delayed furnishing the Form GSTR-3B return (return) for FY 2017-18 and FY 2018-19.
- However, the petitioner discharged the output tax liability during the said period through DRC-03 by way of the balance available in ECrL and via ECL.
- A demand notice was issued to the petitioner, levying interest on the delay in payment of the tax to the government due to a delay in furnishing the return.

### The issue raised before the Patna HC:

- Does the interest liability arise in case of a delay in furnishing the return where the output tax liability has been discharged by offsetting the balance available in ECrL?

### Petitioner's submissions

- Proviso to Section 50(1) stipulates interest liability only when a payment is debited in ECL.
- The ITC represents the tax that the recipient pays to the supplier on account of procurement of inward supplies made from such supplier.

- The said tax amount has already been paid to the government by the supplier. Therefore, interest liability should not arise, as there is no delay in paying the tax amount to the government.

### Patna HC's observations and judgement [Order No. CWJC No.11621 of 2023 dated 19 April 2024]

- **ITC is available in the ECrL only upon furnishing the return:** The HC stated that the supplier's remittance of tax to the government does not result in automatic credit to the ECrL. The said amount is credited to the ECrL only when the eligible ITC availed in the return is filed by the purchaser. Although the remittance of tax by the supplier to the government results in the said amount being available to the government, it is transformed into the ITC only when the purchaser furnishes the relevant return.
- **An offset of ITC against the output tax liability occurs only on the furnishing of return:** The HC observed that the set-off of ITC against the output tax liability occurs only when such set-off is claimed by way of the furnishing of return. Therefore, interest shall be payable when there is a delay in furnishing the

return, even when the output tax liability has been discharged by way of balance available in the ECrL, as no offset of the ITC has occurred until the return is not furnished.

- **Proviso to Section 50(1) does not prohibit levy of interest, where the payment of tax has been made by way of balance available in ECrL:** The HC noted that when there is a delay in the furnishing of return, it also results in a delay in the ITC being credited to the ECrL and a consequent delay in the remittance of such amount to the government. The HC further held that the proviso to Section 50(1) does not intend to prohibit the levy of interest where the output tax liability has been discharged by way of the balance available in the ECrL. The said proviso only indicates that where the tax amount has been deposited in the ECL, it does not result in the payment of tax to the government, and interest liability would arise in case of a delay in filing the return. On the said grounds, the HC rejected the petitioner's claim that interest liability shall not occur when the output tax liability has been discharged by way of the balance available in the ECrL.

### Our comments

The imposition of interest on delayed filing of return has been a contentious matter since the inception of GST, with various high courts interpreting the provisions differently.

The Madras HC has issued conflicting judgements on a similar issue, wherein in the case of M/s. Reflex Industries Limited, it held that the interest shall not be levied where the output liability is discharged by way of the ECL on the ground that such amount is already available with the government and there is no delay in payment of such amount to the credit of the government.

On the contrary, in the case of M/s. India Yamaha Motor Pvt. Ltd, it was held that the ITC could not be assumed to be utilised to pay output tax unless the relevant return had been filed.

Recently, in the case of Eicher Motors, the HC ruled out interest liability, where payment is made in the ECL within the due date, but the return is filed late.

Notably, the CBIC had already clarified the retrospective applicability of the proviso to Section 50(1), meaning the recovery of interest on the net cash liability. The decision rendered by the Patna HC is expected to increase the litigation and is likely to be challenged.

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