INTEREST ON NET TAX LIABILITY – PROSPECTIVE OR RETROSPECTIVE?

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Interest provisions and Brief History

- Interest is on failure to pay tax within the prescribed period
- Section 49 – payment may be through cash/credit ledger

- Megha Engineering (Telegana High Court)
  - Allowed to utilize ITC once it enters the credit ledger
  - Ownership with taxpayer till such entry
  - Payment on gross tax liability

- Proviso inserted in 50(1) through Finance Act 2019
  - Where return filed after due date, interest payable on the portion payable through cash ledger only (except s.73/74)

- 39th GST Council meeting on 14/03/2020 –to be retrospective

- Not. 63/2020-CT dtd 25/08/2020 – effective from 01/09/2020

Grounds for retrospective implications

- Amendment which only clarifies the intent of the legislature is called as explanatory / declaratory statute
- Reason for passing declaratory Act is to set aside what the Parliament deems to be a judicial error [Justice G.P. Singh]
- Explanatory Act is to supply obvious omission and to clear up doubts as to the meanings of the previous Act – to apply retrospectively
  (Keshavlal Jethmal Shah vs. Mohanlal Bhagwandas – SC)
- Where legislature confers benefit on some person without detriment to some other person and such benefit is the legislator's object, the presumption is that it would have a retrospective effect (Vatika Township – SC)

Other Defenses against gross tax liability

In Adjudication/Appellate process

- Interest is compensatory in nature [Pratibha Processors (SC)]
- Fault in the nature of return filing process
- Credit availed in the books
- Credit already available with Govt -Revenue neutral process

Direct Recovery u/s 75(12)

- Opportunity of being heard u/s 75(4)
- Amount payable(unless admitted) to be determined only after adjudication process [Mahadeo Construction (Jharkhand)]
- Quantification of interest cannot be by way of unilateral action [CGST v. Daejung Moparts Pvt. Ltd. and ors]
- Assessee can still produce material that there was no delay, so opportunity mandatory [LC Infra Projects (Karnataka)]

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