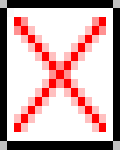


Monthly Returns - Handle with Care!

NOVEMBER 28, 2022

By B N Gururaj, Advocate



TIOL has reported the judgment of the Hon'ble High Court of Jharkhand in ***RSB Transmissions India Ltd v. UOI, 2022-TIOL-1426-HC-Jharkhand-GST***

. I was startled by this judgment for its unusual conclusion that interest is payable on delayed filing of return. Hitherto, under all the tax laws in force in India, interest liability has been fixed on the late payment of duty or tax. In fact, until 1995, in the Central Excise Act, 1944, there was no provision for recovery of interest on duty, not just the self-assessed duty, but ***even when the demands of duty were adjudged***. Interest liability was limited only to the direct taxes, perhaps on the sound principle that passing of tax incidence, which is an essential feature of an indirect tax, was not possible with respect to the incidence of interest to.

Under the indirect tax, interest liability has always been linked to the delayed payment of tax, and never to delayed filing of return. Even under the Income Tax law, an assessee pays interest on the delayed payment of advance tax for any quarter, or delayed payment of self-assessed tax or TDS. Interest liability has not been linked to the filing of return. Then, how did this bug enter the GST Regime?

Under the Central Excise law, there was a Personal Ledger Account or PLA, a rather wide and stubby register in the prescribed form, which could be bought from a stationery shop. Whenever an Excise Gate Pass or Excise Invoice was prepared, the duty had to be debited in this ledger. After the introduction of Modvat/Cenvat credit scheme, use of the PLA was limited to situation where the available credit was insufficient to cover the value of a consignment. With effect from 2000, the practice of fortnightly payment of duty was introduced, which later changed to monthly payment of duty. This has continued hitherto. Almost as a rule, no assessee deposited more money than was just sufficient for that particular day's or month's duty liability. Payment of duty was an act done at the volition of the taxpayer, never at the instance of the Revenue, or a ***"system"***

. Even under ACES, a return merely served the purpose of reporting the affairs of an assessee to the Revenue, never for actual payment of tax.

Under the GST law, there is no explicit provision which states

"tax shall be deemed to have been paid only when the monthly return is filed." As the Samskrita proverb goes ***"V achane kaa daridrata?" - "Is there any poverty of words"***

. One can verify this assertion by turning to all the extracts of statutory provisions in the judgment, and the understanding of the provisions captured by the Court in paragraphs 12 to 14. I extract below, some portion of Para 15 of the judgment, which gives the laboriously reasoned conclusions of the Court based on the extracted provisions:

"The expression 'deposit' used in Section 49(1) and the expression 'may be used' in Section 49(3) leave no room of doubt in this regard.

Further, a bare reading of the proviso to Section 50, which has been introduced by amendment in the Finance Act, 2019 and made retrospectively effective from 1st July, 2017, also goes to show that the interest on tax payable during the tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of Section 39, (except where such return is furnished after commencement of any proceeding under Section 73 or Section 74 in respect of the said period), shall be payable on that portion of the tax which is paid by debiting the Electronic Cash Ledger. This again goes to show that only on filing of GSTR-3B return, the debit of the tax dues is made from Electronic Cash Ledger and any amount lying in deposit in the Electronic Cash Ledger prior to that date does not amount to discharge of tax liability. A combined reading of Section 39 (7), 49 (1) and Section 50(1) read with its proviso and Rule 61(2) also confirms this position. Rule 61(2) provides that 'every registered person required to furnish return under Sub-Rule (1) shall subject to provisions of Section 49, discharged his liability towards tax, interest, penalty, fee or any other amount payable under the Act or under the provisions of Chapter by debiting the Electronic Cash Ledger or Credit Ledger and include the details in the return in the form GSTR 3B. 'Therefore, discharge of tax liability is simultaneous with the filing of GSTR 3B return under the scheme of GST regime'."

If one may borrow an analogy from the Criminal Law, this will be tantamount to convicting an accused based on purely circumstantial evidence.

Payment of tax and filing of return are procedural matters, which ought to require no laboured discovery of law. In fact, it is the duty of the Legislature and its delegate to make the Act and the Rules unambiguous at least in procedural matters. The observation of the court, **"The expression 'deposit' used in Section 49(1) and the expression 'may be used' in Section 49(3) leave no room of doubt in this regard"**

is incongruous in the face of elaborate exercise of discovery of law indulged in by the Court itself. If the procedural laws were so obvious and explicit, the matter would not have come before the High Court nor would it have been necessary for the Hon'ble Court to wade through half a dozen provisions.

The point I wish to make is that even though Section 50 requires payment of interest on the delayed payment of tax, the payment of tax has never been linked to filing of return. Section 39 which prescribes filing of the monthly returns, or section 50 which requires payment of interest on the delayed payment of tax could have explicated it in so many words.

Section 50 has been a contentious provision and has been amended, that too retrospectively twice, once in 2021 and again in 2022. Besides the apparently inept legislative drafting practices, in the light of this legislative history of Section 50, the Hon'ble High Court ought to have been a little slow in treating the credits in the Electronic Cash Ledger as deposits, and not payment of tax. Nothing stopped the GST Council or the Government from making explicit amendment to Section 49 and Section 50 so as to allow crystallization of interest liability based on the date of filing of return.

On a more practical ground, one wonders what happens to the monies **"deposited"**

in the Electronic Cash Ledger? As the Court noted, money goes into banks, and only a credit entry appears in the ledger. Will the government simply sit on the money until the assessee files the GSTR 3B return to change that deposit into tax? Or, will the government immediately use the payment received? Doubtless, latter is the case. Our governments are already spending next years' money today by issuing Bonds. As citizens, we need not be encumbered by the ponderous and laborious accounting practices of the Government. How justified is the Government and the Court in insisting on recovering interest on the **"deposits"**

made in the Electronic Credit Ledger, when the government has full access to that money and to use it in whichever manner it pleases? On the other hand, one can rhetorically ask, in a case where the Electronic Cash Ledger had idle cash balance, will the Government honestly pay interest on the deposits? Why not? The Government has already used that money! Under the existing law, Section 35FF of the CE Act, 1944 provided for payment of interest upon refund of pre-deposits from the date of payment until the date of refund. Section 115 of the CGST Act is identical to this provision. Equity requires that on the idle cash balance in the Electronic Cash Ledger, interest be paid.

One of the basic principles of interpretation of law is **litera legis**,

or literal interpretation of law. When the plain words used in all the provisions extracted by the Court in its judgment did not clearly specify that tax was deemed to be paid only when the monthly return was filed, the Court ought to have refrained from extracting a meaning favourable to the Revenue by labouring through half a dozen provisions of law. The Government ought to have been compelled to face the consequence of making ambiguous laws.

The issue adjudged by the Hon'ble High Court of Jharkhand is not one of its kind. This issue has arisen in almost all the jurisdictions. In one case I know, the Revenue even issued an order under Section 83, without adjudication, to appropriate the bank balance of an assessee towards interest liability on the ground that the returns were filed late. Now, the Revenue will **"most respectfully"** follow this judgment and force the assessee who resisted the demand of interest to pay up. When it suits the Revenue, even the non-jurisdictional High Court judgments become binding!

What is the consequence of filing the returns late? Section 47 itself prescribes a late fee payable by the assessee who files the return under Section 39 belatedly. Now, as per the law laid down by the Hon'ble High Court of Jharkhand, the assessee has to pay late fee **and** interest. It is a double jeopardy (not in the Constitutional sense). The Court, having noted in para 12 that late fee is payable by an assessee who files the returns belatedly, did not pause to examine whether two adverse consequences ought to fall upon the assessee, especially when the law did not explicitly so provide? I am reminded of a Kannada proverb: **"One who fell from the attic was beaten with a stick!"**

There is a cynical statement: **"No one can stop a bad idea, whose time has come".**

This is very true of our public life and quite often in litigation. One has to await the judgments which may emerge from the other High Courts to see which way the collective judicial wisdom tilts.

[The views expressed are strictly personal.]

(DISCLAIMER : The views expressed are strictly of the author and Taxindiaonline.com doesn't necessarily subscribe to the same. Taxindiaonline.com Pvt. Ltd. is not responsible or liable for any loss or damage caused to anyone due to any interpretation, error, omission in the articles being hosted on the site)