

GIB/TN/REFEX/06-01-2020/HC-50**High Court Category :** INTEREST**State :** Tamil Nadu**Order No.:** GIB/TN/REFEX/06-01-2020/HC-50**Name of Entry :**
REFEX INDUSTRIES LIMITED**Date :** 06-01-2020**Breif Issue :****Facts & Issue Involved:**

The Petitioners are registered and have admittedly filed Returns of Income belatedly for the period 2017-2018. The Respondent have issued two Communications dated May 7th, 2019 (in W.P .No. 23360 of 2019) and May 15th, 2019 (in W.P.No.23361 of 2019) computing the delay in filing of Returns and consequently the interest to be remitted on the tax amount shown in the Returns.

Demand notices were issued to the Banks of the Petitioners seeking to recover the arrears of interest from the balances in their accounts. The petitioners objected stating that they had sufficient Input Tax Credit (ITC) available with the Department and thus interest could be demanded, if at all, only on the cash component of the tax remitted belatedly. This amounted to a sum of ? 1,21,701/- (in W.P.No.23360 of 2019) and ? 1,25,751/-(in W.P.No.23361 of 2019) and the amounts have been remitted on 14.06.2019.

Though the petitioners have raised other grounds as well, including one of the violation of principles of natural justice, the only issue agitated is the legal issue as to whether interest would at all be payable on the component of ITC that was, admittedly, available with the Department throughout and that has been adjusted towards the tax demands for the period August, 2017 to March, 2018.

Whether Interest Liability in GST arises only on net tax liability, which was paid in cash?

Decision of Advance Ruling Authority :**Decision:**

The above proviso, as per which interest shall be levied only on that part of the tax which is paid in cash, has been inserted with effect from 01.08.2019, but clearly seeks to correct an anomaly in the provision as it existed prior to such insertion. It should thus, in my view, be read as clarificatory and operative retrospectively.

The conundrum on issue of taxability of interest on gross tax liability or net tax liability seems not to be settling, more so because there has been a humongous delay in implementing the provision itself, which was envisaged as a relief for taxpayers. As of now, Section 50(1) of the CGST Act mandates calculation of interest on gross tax liability only. But, ideally, the interest must be applied on net tax liability only as rightly discussed and held by the Hon'ble Madras HC and the above amendment to Section 50(1) of the CGST Act, being clarificatory in nature, must be given retrospective effect.

In the light of the above discussion, these Writ Petitions are allowed and the impugned notices are set aside. No costs. Connected Miscellaneous Petitions are closed