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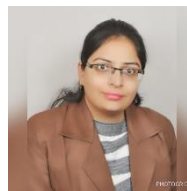
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LEVY OF INTEREST UNDER GST – COMPLEXITIES INVOLVED



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Since its inception, GST Law has been a roller coaster ride for Government Departments, Practicing Professionals and various Tax Payers. GST Law has been amended number of times and in some cases with retrospective effect. Notifications and Circular are issued by the GST Department on almost daily basis for amendment and clarificatory purpose. A recent amendment has been made in Section 50 of the CGST Act, 2017 by the Finance (No. 2) Act, 2019. Section 100 of the Finance (No. 2) Act, 2019 has inserted a new proviso to Section 50(1) of the CGST Act. However, as per Notification No. 01/2020 – Central Tax dated 1st January 2020, this amendment is yet to be enforced.

The controversy started arising when an Inter-department Circular was issued by Shri A.K. Pandey, Special Secretary & Member of Ministry of Finance dated 10th February 2020 addressing doubts that had been raised as to whether the interest on delayed payment of tax has to be paid on gross tax liability or on the net cash liability. In this regard, it has been directed in the circular that provisions of the Section 50 of the CGST are very clear that interest liability is required to be paid on the tax liability that is paid belatedly, either through cash or through utilization of input tax credit (ITC). In other words, Interest is required to be paid on total amount of tax liability as shown in Form GSTR 3B. Thereafter, department started issuing notices to the registered persons demanding the interest liability on total output tax liability who have filed GSTR 3B after the due date.

That the need to write the present article arose because of the controversy which has been created by the afore-stated inter-department letter/circular and in view of the mass scale notices issued pursuant thereto for recovery of interest. The short questions at present which I shall endeavor to address are:

- 1) Whether interest is to be charged on the gross tax amount payable on the gross tax liability paid for the due date or it is to be charged on the net amount of tax

payable after allowing the credit for the balance lying in the electronic credit ledger as well as the cash ledger?

- 2) The second issue that needs consideration is that whether the interest can be automatically demanded under Section 75(12) read with Section 79 of the CGST Act 2017 or is there a requirement for issuance of a notice before demanding the interest?

The provisions governing the levy of interest are contained in Section 50 of the CGST Act. Section 50 of the CGST Act reads as under:

Section 50. (1) *Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.*

**Provided that the interest on tax payable in respect of supplies made during a 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 proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.*

(2) *The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.*

(3) *A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.*

Vide Notification No.13/2017-CT dated 28th June, 2017 (the rate of tax under Section 50(1) has been notified @ 18% per annum and for levy of interest under Section 50(3) the rate has been notified as 24% per annum)

**The proviso has been inserted by the Finance (No.2) Act, 2019 with effect from the date yet to be notified.*

From a perusal of Section 50 it is clear that for levy of interest the following conditions need to be satisfied:

- i) The person must be liable to pay tax
- ii) Such person fails to pay tax or any part thereof to the Government.
- iii) The tax was required to be paid within the period prescribed.

- iv) The interest shall be payable at such rate as may be notified.
- v) As per Section 50(2) the interest shall be calculated in such manner as may be prescribed.

The word 'prescribed' has been defined in Section 2(87) of the CGST Act, 2017 and the same reads as under:

(87) "prescribed" means prescribed by rules made under this Act on the recommendations of the Council;

Thus for the purpose of levy of interest the first thing that needs to be ascertained is the due date prescribed for 'payment of tax'.

1. No due date for payment of tax

1.1 The law relevant to payment of taxes are contained in Section 49 of the CGST Act and the same reads as under:

49. (1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of—

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

(6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:—

(a) self-assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to the return of the current tax period;

(c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.

(9) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

Explanation.—For the purposes of this section,—

(a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;

(b) the expression,—

(i) “tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and

(ii) “other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

- 1.2** The Rules governing the ‘payment of taxes’ are contained in Chapter IX of the CGST Rules, 2017 i.e. Rule 85, Rule 86, Rule 87 and Rule 88 of the CGST Rules, 2017.

That although Section 49(3) of the CGST Act talks about making any payment towards taxes in such manner and subject to such conditions **and within such time as may be prescribed** but no such time has been prescribed in any of the rules relating to ‘payment of taxes’ i.e. in Rule 85, Rule 86 or Rule 87 of the CGST Rules, 2017.

- 1.3** That although the provision i.e. Act and the Rules governing ‘payment of taxes’ do not at all prescribe any time period for making of taxes, the only place where time period for making of taxes has been referred to is contained in Section 39(7) of the CGST Act and the same reads as under:

39. (7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

- 1.4** That the scheme of the Act with respect to the filing of return is contained under Section 39 of the CGST Act. The said provision merely links the due date for

payment of tax with the due date for the filing of the return but does not provide that the return can be filed only after paying the entire tax. Therefore, it is stated that due date of filing of return cannot be treated as due date for payment of tax. At present no period has been prescribed either in the Act or in the Rules within which the tax payer is liable to pay tax by debiting electronic cash ledger / electronic credit ledger. Therefore, Section 50 of the CGST Act, 2017 does not get triggered at all and becomes unworkable as the date from which interest liability is to be calculated is not prescribed in the statute.

- 1.5** That Section 39(7) was only intended to state that return cannot be filed unless the registered persons pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return. It is only if the entire tax has been paid in full then the return furnished would be

treated as 'valid return'. This even draws force from the definition of 'valid return' as stated in Section 2(117) of the CGST Act, 2017. The said definition reads as follows:

Treating the due date for filing of return as the due date for payment of taxes, by the tax authorities is misconceived and illegal. In light of aforesaid discussions it cannot be held to be the due date for payment of taxes. To create a liability on account of interest, a 'due date for payment of taxes' and a mechanism for paying taxes without linking it with the filing of the return has to be provided.

2. No mechanism is available to taxpayers for payment of tax except at the time of filing of return and stand-alone tax can't be paid

- 2.1** As per section 49(3) the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount by debiting the electronic cash ledger whereas as per Section 49(4) the electronic credit ledger can only be used for making payment towards output tax liability by debiting electronic credit ledger.
- 2.2** That both Section 49(3) as well Section 49(4) state that payment of taxes shall be made in such manner and subject to such conditions and within such times as may be prescribed. However, neither Rule 86 nor Rule 87 prescribes any mechanism for making payment of taxes. Even no such facility is provided in the portal for making payment of tax and the reflection of such tax paid in the return.
- 2.3** That even if a taxpayer wishes to make 'on account' payment of taxes by debiting his electronic credit or electronic cash ledger, the taxpayer cannot make such payment as he has been given no mechanism to pay his taxes, even though the balance is available in his electronic credit ledger or electronic cash ledger. It is relevant to mention here that the Act (Section 50) talks of even making a part payment but the common portal does not permit the same.

2.4 The delay in filing return can be attributed to many factors like finalization of any of the liabilities, viz, output liability, reverse charge liability etc. The very absence of the mechanism for making payment of tax before filing the return makes the provision for levy of interest unworkable. Thus, the very restriction on the GSTN Portal allowing the tax payer to debit the electronic credit ledger or electronic cash ledger only at the time of filing of return is *ultra-vires* as per the provisions of the statute. That had the portal provided the facility of making payment of taxes without filing of return, all the assesseees who had credit balance in their electronic credit or cash ledger would have made payment of taxes, although they were not in a position to furnish their return. As a consequence, thereof the interest could have been levied only on the short payment of taxes, if at all any. Thus without providing the mechanism for payment of taxes, demanding interest on the entire liability is illegal and against the provisions of law.

3. Law permits part payment of taxes but no such mechanism is provided on the common portal

3.1 Section 50 of the CGST Act, 2017 states tax payer is liable to pay interest on the tax or **any part thereof** that remains unpaid. Therefore, in accordance with section 50 of the CGST Act, 2017, tax payer was provided with the facility for partial payment of tax and the tax payer was liable to pay interest on only that part of the tax which remains unpaid till the due date. However, it is pertinent to note here that, at present, under GST there is no mechanism for partial payment of tax whether through electronic credit ledger or electronic cash ledger. Thus, in absence of a mechanism, it is not possible for the taxpayer to make payment to the government of any taxes by debiting his Electronic Credit Ledger and he has to wait for his return to be completed in all aspects so that such taxes can also be paid.

3.2 GSTN portal does not permit filing of the return showing the tax payable by cash as outstanding. The same is thus contrary to the legal provisions cited above. Said proposition has also been acknowledged by the GST Council at 31st GST Council Meeting held on 22.12.2018. Relevant agenda note reads as under:

“A perusal of above provisions indicates that the law permits furnishing of a return without payment of full tax as self-assessed as per the said return but the said return would be regarded as an invalid return. The said return, however, would not be used for the purposes of matching of ITC and settlement of funds. Thus, although the law permits part payment of tax but no such facility has been yet made available on the common portal. This being the case, a registered person cannot even avail his eligible ITC as he cannot furnish his return unless he is in a position to deposit his entire tax liability as self-assessed by him. This inflexibility of the system increases the interest burden.”

“It may be seen from the above that if the facility for part payment, as permitted under law, was available, the registered

person would have been required to pay interest only on Rs. 10/- but presently he is liable for interest on entire tax liability of Rs. 100/-.”

3.3 It is settled principle that the taxpayer cannot be made to suffer for no fault (**re: Vision Distribution Pvt. Ltd. v. Commissioner W.P.(C) 8317/2019, Del.** wherein it has been held that the tax payer cannot be made to suffer on account of failure of the Government in devising smooth GST systems). As discussed at 31st GST Council Meeting held on 22.12.2018 if the part payment facility is available to the taxpayer then in such a case the taxpayer is required to pay interest only on the unpaid output tax and not on the entire output tax liability. Even on this ground it is stated that interest demand on entire output liability is unreasonable and arbitrary. Thus, demand of interest on entire output tax liability creates undue hardship on the taxpayers.

4. Balance in electronic credit ledger (Input Tax Credit) as well as balance in electronic cash ledger is as good as tax paid

4.1 The author is of the opinion that levy of interest under Section 50 of the CGST Act on the entire portion of output tax is not tenable as input tax credit reflecting in the electronic credit ledger as well as the cash balance in the electronic credit cash ledger is as good as tax paid. In number of cases Hon'ble courts have held that the credit of tax is as good as the tax paid. The Hon'ble Supreme Court in the vase of **Collector of Central Excise, Pune v. Dai IchiKarkaria Ltd. (1999 112 ELT 353 (SC))** placed reliance on its own decision in **Eicher Motors Ltd. v. Union of India (1999 106 ELT 3 (SC))** and held that a credit availed under a taxation scheme was as good as tax paid.

4.2 It is pertinent to mention that Telengana High Court in the case of **Megha Engineering and Infrastructure Ltd. v. Commissioner of Central Tax (2019) 104 Taxmann.com 393(Telangana)** has taken a contrary view and held that interest is to be paid on the gross output tax liability. However, it is worthwhile to note that at the time of the pronouncement of the said judgement the recommendation of the GST Council as per 31st meeting was only on paper. After the same have been introduced in the Act (though yet not enforced) a review petition was filed before the Telengana High Court and the same has been accepted and an interim stay has been granted on its earlier order. Further the Madras High Court has considered the said judgement in **the case of Refex Industries Ltd. (2020) 114 taxmann.com 447.**

4.3 The Hon'ble **High Court of Madras in the case of Refex Industries Ltd. (2020) 114 taxmann.com 447** has held as under:

12. The specific question for resolution before me is as to whether in a case such as the present, where credit is due to an assessee, payment by way of adjustment can still be termed 'belated' or 'delayed'. The use of the word 'delayed' connotes a situation of deprivation, where the State

has been deprived of the funds representing tax component till such time the Return is filed accompanied by the remittance of tax. The availability of ITC runs counter to this, as it connotes the enrichment of the State, to this extent. Thus, Section 50 which is specifically intended to apply to a state of deprivation cannot apply in a situation where the State is possessed of sufficient funds to the credit of the assessee. In my considered view, the proper application of Section 50 is one where interest is levied on a belated cash payment but not on ITC available all the while with the Department to the credit of the assessee. The latter being available with the Department is, in my view, neither belated nor delayed.

- 4.4** Section 50 of the CGST Act clearly indicates that the interest should be paid only on the tax component which taxpayer fails to pay on time to the Government. As

per the above stated case laws input tax credit is considered as tax already paid to the government. Thus, on this ground alone demand of interest on tax paid through ITC is arbitrary and unreasonable. One of the pre-condition for availing the credit is stated in Section 16(2) (c) of the CGST Act. This condition stipulates that a registered person shall be entitled to input tax credit only if the tax charged in respect of such supply has been paid to the Government. As a natural corollary it implies that the person is entitled for the input tax credit only if the tax charged on such supply, on which credit has been claimed, has been paid to the Government and thus for the said amounts taxes have already been received by the Government.

- 4.5** It is important to note that as per Rule 87(6) of the CGST Rules, whenever a person makes a payment after generating a challan in Form GST PMT-06, only on successful credit of the amount to the concerned Government account maintained in authorised bank, a challan identification number is generated. Further as per Rule 87(7) it is only thereafter that the amount is credited to the electronic cash ledger of the person. Thus it is evident from above that the amounts deposited by a person in his electronic cash ledger stands transmitted to the authorised bank of the Government.

- 4.6** It is important to note that the balance lying in the electronic credit ledger or cash ledger cannot be withdrawn or transferred to any person for any other purposes except for payment of taxes. That even for seeking a refund of the balance lying in the electronic cash ledger, an application has to be moved by the tax payer to his proper officer. This implies that the balances in the electronic credit ledger as well as in the electronic cash ledger are in full control of the Government and these tantamounts to nothing else but payments made to the Government. Thus till such time a valid balance is held by the assessee either in his electronic credit ledger or electronic cash ledger, no liability on account of interest on these amounts can be created. The law mandates payment of interest only on the tax which is not paid to the credit of the Government. As stated *supra* the balances in the electronic credit ledger as well as cash ledger are nothing but payments lying to the credit of the Government, charging of any interest without giving the credit for such payments would be illegal.

5. Interest is compensatory in nature and not penal

- 5.1** The term ‘interest’ has been explained in various judgments by Hon’ble Supreme Court. Interest is considered as compensatory in nature different from penalty which is penal in nature. With the above background we refer to the decision of Hon’ble Supreme Court in the case of **Pratibha Processors v. Union of India 1996 (88) E.L.T. 12 (S.C.)** wherein the word “interest” has been explained as under:

13. In fiscal Statutes, the import of the words — “tax”, “interest”, “penalty”, etc. are well known. They are different concepts. Tax is the amount payable as a result of the charging provision. It is

a compulsory exaction of money by a public authority for public purposes, the payment of which is enforce by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty — which is penal in character.

- 5.2** It is further stated that Hon’ble Supreme Court in the case of **Central Bank of India vs. Ravindra 2002(1) SCC 367** observed that interest is compensatory in nature and not penal therefore the liability to pay interest can arise only if an actual loss is caused to the other party by virtue of deprivation of monies due to it. It was held by the Hon’ble court as under:

The levy of interest is compensatory in nature and consequently liability to pay interest can arise only if an actual loss is caused to the other party by virtue of deprivation of monies due to it. Since they always had an unutilized cenvat balance in excess of the credit wrongly availed, the exchequer was not deprived of any amount due to it and consequently no interest was leivable.

- 5.3** Hence the interest can be imposed only on the “actual amount of tax withheld” by delayed filing of the return. In case of output tax liability paid through electronic credit ledger department was never deprived of any money in respect of tax as input tax credit was always available with the department. If at all any interest can be demanded it can only be levied on that portion of tax that is paid belatedly through cash.

6. Amendment in section 50 of the CGST Act is clarificatory in nature

- 6.1** A proviso has been inserted (yet to be notified) in Section 50(1) of the CGST Act, 2017 which states that the interest shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.

It is stated that the agenda of the 31st GST Council Meeting held on 22.12.2018 shows that the GST Council has acknowledged the fact that the GST portal does not permit filing of return with the tax amount due. Further the fact that GST is a tax on value addition was also acknowledged and thus had agreed to insert the proviso as stated above. Relevant extract of the agenda is as under:

“It is pertinent to mention that the liability of any registered person is related to the value addition made by him since GST is leviable only on value addition. Accordingly, input tax

credit is allowed to the registered person in respect of the tax paid by him on his inward supplies. And while, making the outward supplies, the input tax credit so allowed is permitted to be utilised for discharging his output tax liability. The remaining part which is generally equivalent to the tax on value addition is discharged through the electronic cash ledger. Hence, by this mechanism the registered person effectively pays tax only on the value addition made by him. If this concept is applied for interest payable, then, it appears that the interest should also be charged on the tax payable on the value addition only, i.e. the amount of tax which is required to be paid through electronic cash ledger. ”

- 6.2** The newly inserted proviso to Section 50(1) is only clarificatory in nature and seeks to correct an anomaly in the provisions which existed prior to such insertion. Therefore, in our opinion, the statute even before the amendment provides that interest shall be levied only on that portion of the tax that is paid belatedly by debiting the electronic cash ledger. The Hon’ble **High Court of Madras in the case of Refex Industries Ltd. (2020) 114 taxmann.com 447** has further cleared the above stated proposition and held as under:

15. 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.

- 6.3** Thus, the very basis of this amendment was the infirmity of the procedure and the contradiction of Section 50 with the very basics of the GST i.e. tax should be charged only on the value addition. The amendment was brought to clarify an

anomaly. Even otherwise the proviso to Section 50(1) has been worded in such a manner that by its wording itself it is clarificatory and retrospective in nature.

7. No mechanism is provided for calculation of interest:

- 7.1** Section 50(2) of the CGST Act states that the interest under section 50(1) shall be calculated in such manner as may be prescribed. Section 50(2) of the CGST Act reads as under:

50(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

It is pertinent to note here that no rules have been prescribed under section 50 of the CGST Act. Therefore, at present no manner has been prescribed for the calculation of interest liability. However, department is calculating interest by his own mechanism with is neither stated in the GST Act nor in the CGST Rules.

8. Some relevant cases where High Court has granted stay from recovery of interest demanded on gross GST liability

- 8.1 M/s. Landmark Lifestyle Vs. Union Of India & Ors. (High Court of Delhi) WP(C) No. 6055/2019 dated 27.05.2019:** In this case Delhi High Court has granted stay from recovery of interest demanded on gross GST liability.
- 8.2 Parmanand and Sons Foods Pvt. Ltd. vs. UOI (High Court of Delhi) W.P.(C) 1953/2020:** In this case court granted stay on payment of interest on output tax paid through electronic credit ledger by utilizing ITC. However, court declined to stay payment of interest on output tax paid through electronic cash ledger.
- 8.3** In the case of **Amar Cars Pvt. Ltd. v. Union of India (Special Civil Application No. 4025 of 2020)** the Hon'ble Gujarat High Court has directed not to take any coercive steps for recovery of interest.

9. Whether interest can be demanded straight away without issuing any notice

- 9.1** It has been noticed that in many cases order directing payment of interest has been issued by resorting to Section 75(12) with a rider that if payment is not made by the date prescribed in the letter, the provisions of recovery of tax under Section 79 shall be initiated. In our opinion, this is not the correct approach by the department.

9.2 Although it is not in dispute that interest is automatic in nature, but this does not imply that where there is a dispute on the amount on which interest is to be levied even then the principle of natural justice is not to be followed. It is a trite law that in case of any dispute regarding the total amount of tax payable to the Government or the calculation / arithmetic to be followed, the principle of natural justice i.e. *audi alteram partem* must be followed and a fair hearing has to be granted to the assessee. This doctrine is well recognised in various judicial pronouncements which goes to the root of the matter and has to be followed. This view has already been expressed by Karnataka High Court in the case of **LC Infra Projects Pvt. Ltd. Vs Union of India [2019] 109 taxmann.com 141 (Karnataka)**.

9.3 In this case interest on late payment was demanded, without issuing a show cause notice but the Hon'ble High Court upheld the principle of natural justice

by holding that the law mandates issuance of show cause notice under Section 73 of the CGST Act, even for recovery of Section 50. It was held by the Court as under:

'Thus, the issuance of show cause notice is sine qua non to proceed with the recovery of interest payable under section 50 and penalty leviable under the provisions of the Act or the Rules. Undisputedly the interest payable under section 50 has been determined by the Competent Authority without issuing show cause notice, which is in breach of principles of natural justice. It is trite law that any order passed by the quasi-judicial authorities in contravention of the principles of natural justice cannot be sustained. Similarly after determination of the interest liable to be paid by the assessee, no notice has been issued before attaching the bank account of the assessee. There is a lapse on the part of the Competent Authority. The notion of the Competent Authority that section 75(12) empowers the authorities to proceed with recovery without issuing show cause notice is only misconceived. The said section is applicable only to the self-assessment made by the assessee and not to quantification or determination made by the authority.'

The author is of the opinion that the said judgment squarely applies on the present letters / intimations being sent by the department. Section 79 of the CGST Act only deals with recovery of any amounts payable by a person. However the adjudication of the amounts payable has to be done by following the principle of natural justice. Thus, in our opinion quantifying and demanding interest on the gross amount without affording any opportunity of being heard would be unjustified.

