

Training programme on GST

Topic : payment of tax, interest, penalty and other amount, TDS, utilization/ order of utilization/condition of utilization of ITC in payment of tax under provisions under GST.

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- Post-qualification experience of around 20 years in the field of direct & indirect tax particularly income tax, service tax and VAT ,sales tax and GST.
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- Authored the book **DNA of GST Audit and Annual return, The *DNA of TDS&TCS* (including withholding tax, advance tax and equalisation levy)** ,Background material on GST for empowerment of girl students ICAI, New Delhi
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Payment of tax

Chapter – X of CGST/SGST
Section -49 to 53A

Contents of discussion

- ☐ **Payment of tax, interest, penalty and other amounts** [Section -49]
- ☐ **Utilisation of input tax credit subject to certain conditions** [Section -49A]
- ☐ **Order of utilisation of input tax credit-** [Section -49B]
- ☐ **Interest on delayed payment of tax .** [Section -50]
- ☐ **Tax deduction at source** [Section -51]
- ☐ **Transfer of input tax credit.** [Section -53]
- ☐ **Transfer of certain amounts.** [Section -53A]

Payment of tax etc.–under GST

Section 49

Electronic ledger on
common portal

E-cash ledger

E- ITC ledger

E-Liabilities
ledger

E-Cash ledger

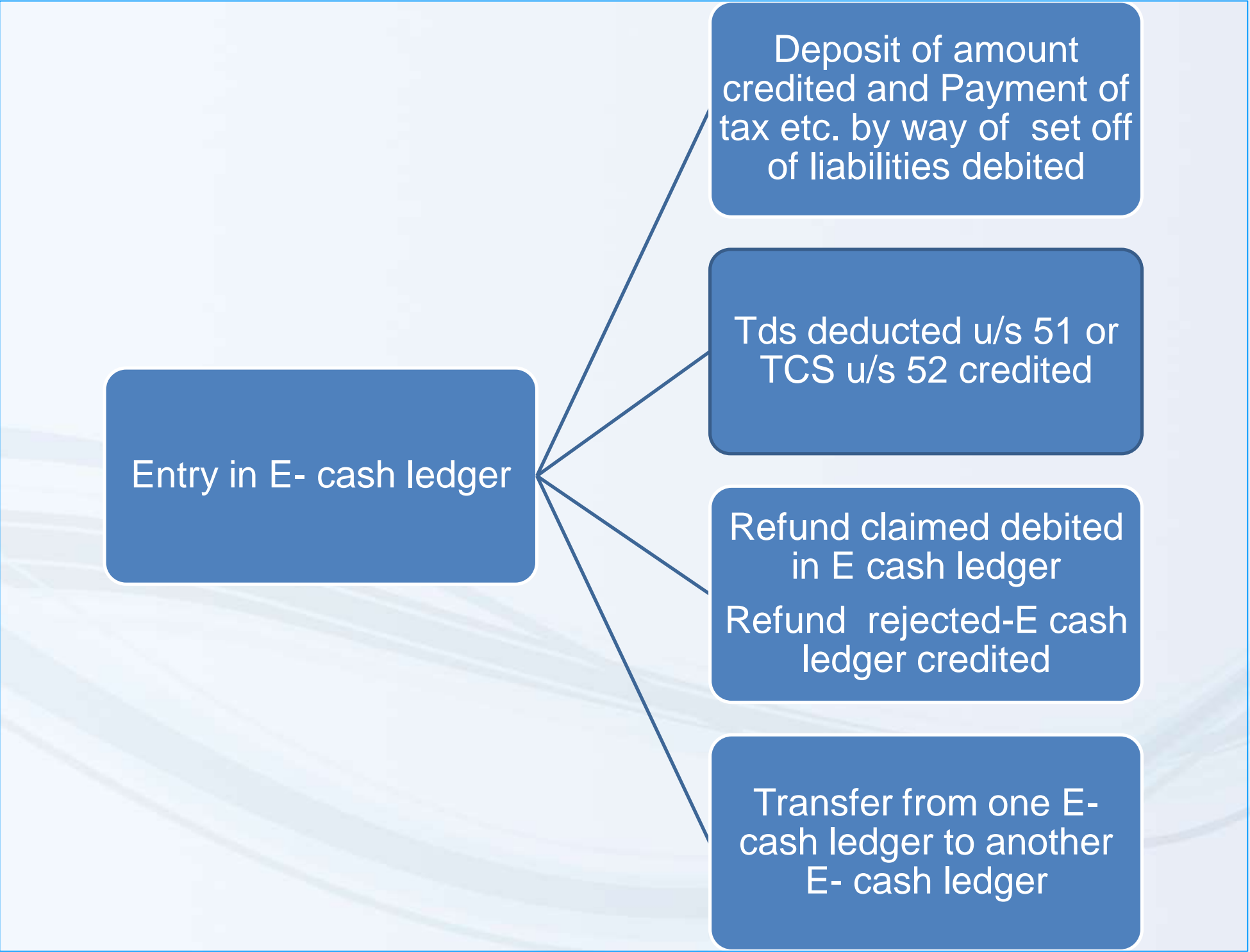
Discrepancies in E- cash ledger:

A registered person shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04. [R-87(12)]

Explanation below Rule 87

Explanation 1.—The refund shall be deemed to be rejected if the appeal is finally rejected.

Explanation 2.—For the purposes of this rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.



Payment of tax section 49(1) and rule 87(1) &(2)- E-cash ledger

E- cash ledger in Form PMT -05

- *Crediting by the amount deposited*
- *debiting by the payment therefrom towards tax, interest, penalty, fee or any other amount.*

Challan for payment –PMT -06 :

- *Challan having details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount.*
- *Challan shall be valid for a period of 15 days:*

Payment of tax – shall be made in any of the following method:

- internet banking *through authorised banks*
- debit card or credit card
- NEFT(National Electronic Fund Transfer) ,
- RTGS(Real Time Gross Settlement)
- any other prescribed mode(OTC-Over the Counter payment through authorised banks for deposits up to ₹10000/-per Challan per tax period, by cash, cheque or demand draft.

Limit of ₹ 10000/- not applicable in following cases:

1. deposit by government or authorised by commissioner
2. recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;
3. *amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any ad hoc deposit*

**NEFT/RTGST Mode- mandate form
on the common portal itself .**

Rule 87(5) :

Where the payment is made by way of National Electronic Fund Transfer(NEFT) or Real Time Gross Settlement(RTGS) mode from any bank, the mandate form shall be generated along with the challan on the common portal and the same shall be submitted to the bank from where the payment is to be made:

Provided *that the mandate form shall be valid for a period of 15 days from the date of generation of challan.*

**Challan identification number
rule 87 (6) and (7)**

- on payment to government – CIN generated
- As soon as CIN generated the amount deposited shall be credited to E-cash ledger on the common portal
- If amount deducted from bank account but CIN not generated *the said person may represent electronically in FORM GST PMT-07 through the common portal to the bank or electronic gateway through which the deposit was initiated.*

(6) On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan.

(7) On receipt of the Challan Identification Number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.

Discrepanies in E Cash ledger what to do? rule 87 (12)

- approach to jurisdictional officer
- File form no GST PMT -04

A registered person shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04. [R-87(12)]

Rule 87(9) Any amount tax deducted under section 51 or tax collected under section 52 and claimed by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be **credited to his electronic cash ledger**

*Rule 87 (10) Where a person has **claimed refund** of any amount from the electronic cash ledger, the said amount shall be **debited to the electronic cash ledger**.*

*Rule 87(11) If the **refund so claimed is rejected**, either fully or partly, the amount debited under sub-rule (10), to the extent of rejection, shall be **credited to the electronic cash ledger** by the proper officer by an **order made in FORM GST PMT-03**.*

Transfer from one E- Cash ledger to another E – cash ledger

A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be **deemed to be a refund** from the electronic cash ledger under this Act. [section 49(10)]

Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in sub-section (1). [section 49(11)]

Transfer of amount from one E-cash ledger to another E-cash ledger through GST PMT-09
[Rule 87(13)]

*A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in **FORM GST PMT-09**. [Rule 87(13)]*

- ☐ This is possible if liability of a tax but no balance in that E-cash ledger but balance is available in another E-cash ledger. In such case transfer from one E-cash ledger to another E-cash ledger.
- ☐ Transfer of tax through GST PMT-09

Payment of IGST by OIADAR(*online information and database access or retrieval services*)- Rule 87(3) -2nd proviso

Provided further *that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) may also make the deposit under sub-rule (2) through international money transfer through Society for Worldwide Interbank Financial Telecommunication payment network, from the date to be notified by the Board.*

Meaning of “non-taxable online recipient” means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.[section 2(16)]

NOTE: Special provision under section 14 of IGST Act

Meaning of OIDAR service[section 2(17) of IGST Act]

"online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,—

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming;

Utilization of balance in E-Cash ledger .[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 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.[section 49(3)]

Utilization E-Cash ledger- rule 85(4) of CGST rules

- Payment of TDS
- Payment of TCS
- Payment of RCM liabilities
- Payment tax under composition scheme
- Payment of interest, penalties, late fee or any other amount

The amount deducted under section 51, or the amount collected under section 52, or the amount payable on reverse charge basis, or the amount payable under section 10, any amount payable towards interest, penalty, fee or any other amount under the Act shall be paid by debiting the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly. [Rule 85(4)]

E- ITC Ledger
Section 49(2) read with rule 86

Maintenance of E-credit ledger in *FORM GST PMT-02* [R-86]

Debit entry	Credit entry
<i>To the extent of discharge of any liability in accordance with the provisions of section 49 [or section 49A or section 49B,].</i>	<i>each registered person eligible for input tax credit under the Act and every claim of input tax credit under the Act</i>
<i>refund claimed of unutilized amount in accordance with the provisions of section 54,</i>	<i>If refund filed is rejected, either fully or partly, to the extent of rejection, shall be re-credited by the proper officer by an order made in FORM GST PMT-03.</i>
<i>Save as provided in the provisions of this Chapter, no entry shall be made directly in the electronic credit ledger under any circumstance.[R-86((5)]</i>	
<i>A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.[R-86(6)]</i>	
<i>Q. When refund filed shall be treated as rejected?</i>	
<i>A. A refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal</i>	

INPUT TAX CREDIT in E-ITC ledger[SEC 49(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 **or section 43A**, (Registered person have to claim the ITC first then only it will be credited to electronic credit Ledger)*
- ☐ *such electronic credit ledger to be maintained in such manner as may be prescribed by rules (**prescribed rule 86 & 86 A** of CGST/SGST)*

Q. A Registered person eligible for ITC on inward supply but failed to claim in the return, letter on Department has created a demand for short payment/none payment of tax. Whether he can claim for deduction of ITC from the demand of tax?

A. No, it is essential to claim ITC in the return on self assessment basis and if the registered person failed to do so, he is not eligible to claim ITC from the demand.

Q. Can Department may give credit of ITC, even though not claimed by the registered person?

A: no,

Utilization of E-ITC ledger[section 49(4)]

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

Meaning of output tax: 2(82) *“output tax” in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;*
in other words ITC can't be used for payment of tax under reverse charge.

E- credit ledger [ledger of ITC]- Rule 86

- (1) The electronic credit ledger shall be maintained in **FORM GST PMT-02** for each registered person eligible for input tax credit under the Act on the common portal and every **claim of input tax credit** under the Act shall be **credited** to the said ledger.
- (2) The electronic credit ledger shall be **debited to the extent of discharge of any liability** in accordance with the provisions of section 49 or section 49A or section 49B,].
- (3) Where a registered person has **claimed refund of any unutilized amount** from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be **debited** in the said ledger.
- (4) If the **refund so filed is rejected**, either fully or partly, the amount debited under sub-rule (3), to the extent of rejection, shall be **re-credited** to the electronic credit ledger by the proper officer by **an order made in FORM GST PMT-03**.

(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.]

(5) **Save as provided in the provisions of this Chapter**, no entry shall be made directly in the electronic credit ledger under any circumstance.

(6) A registered person shall, **upon noticing any discrepancy in his electronic credit ledger**, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in **FORM GST PMT-04**.

Explanation.—For the purposes of this rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

Utilization of ITC under GST

Section 49

Points to be noted:

first utilize Balance of IGST in E-credit ledger fully then only balance of other credit ledger could be utilized.

Overriding effect over section 49 provisions

Conditions for Utilisation of input tax credit [section - 49A]

Notwithstanding anything contained in section 49, the ITC on account of CGST/SGST/UTGST shall be utilised towards payment of IGST,CGST,SGST, UTGST as the case may be, only after the ITC available on account of IGST has first been utilised fully towards such payment.

Points to be noted:

Order of utilization of credit:

Firstly credit balance of IGST – section 49A

Overriding effect over chapter –X (section 49 to 53 A except provisions of section 49(5)(e) and (f)

Section 49(5)(e) : CGST shall not be utilised towards payment of SGST or UTGST;

Section 49(5)(e) : SGST or UTGST shall not be utilised towards payment of CGST.

Order of utilisation of input tax credit. [Section- 49B].

Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the ITC on account of IGST,CGST, SGST, UTGST as the case may be, towards payment of any such tax.

Rule 88A prescribed.

Order of utilization of input tax credit. Rule 88A

Input tax credit on account of IGST shall first be utilised towards payment of IGST , and the amount remaining, if any, may be utilised towards the payment of CGST and SGST or UTGST , as the case may be, **in any order**:

Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.

Note : no cross utilization of CGST against SGST/UTGST or vice versa.

Order of utilization of ITC [u/s 49(5)]

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

- (a) IGST shall first be utilised towards payment of IGST and the amount remaining, if any, may be utilised towards the payment of CGST and SGST, or as the case may be, UTGST, in that order;
- (b) the CGST shall first be utilised towards payment of CGST and the amount remaining, if any, may be utilised towards the payment of IGST;
- (c) the SGST shall first be utilised towards payment of SGST and the amount remaining, if any, may be utilised towards payment of IGST :

[Provided that the input tax credit on account of SGST shall be utilised towards payment of IGST only where the balance of the input tax credit on account of CGST is not available for payment of IGST ;]

- (d) the UTGST shall first be utilised towards payment of UTGST and the amount remaining, if any, may be utilised towards payment of IGST :

[Provided that the input tax credit on account of UTGST shall be utilised towards payment of IGST only where the balance of the input tax credit on account of CGST is not available for payment of integrated tax;]

- (e) the CGST shall not be utilised towards payment of SGST or UTGST ; and
- (f) the SGST or UTGST shall not be utilised towards payment of CGST .

New system of ITC utilization[S-49,49A]

Credit of:	Allowed for Payment of		
	IGST	CGST	SGST
IGST	✓ (1)	✓ (2)/(3)	✓ (3)/(2)
CGST	✓ (1)	✓ (2)	
SGST	✓ (1)		✓ (2)

❑ **Provided** that the ITC on account of SGST shall be utilised towards payment of IGST only where the balance of the ITC on account of CGST is not available for payment of IGST ;

❑ **Provided** that the input tax credit on account of UTGST shall be utilised towards payment of IGST only where the balance of the input tax credit on account of CGST is not available for payment of IGST ;

❑ CGST, SGST or UTGST shall be utilised towards payment of IGST, CGST , SGST or UTGST , as the case may be, **only after the input tax credit available on account of IGST has first been utilised fully towards such payment**

Example of new system of set off of ITC

Head	Output Liability	Input tax Credit
Integrated tax	1000	1300
Central tax	300	200
State tax / Union Territory tax	300	200
Total	1600	1700

Option-1 of set off

Input tax Credit on account of	Discharge of output liability on account of Integrated tax	Discharge of output liability on account of Central tax	Discharge of output liability on account of State tax / Union Territory tax	Balance of Input Tax Credit
Integrated tax	1000	200	100	0
<i>Input tax Credit on account of Integrated tax has been completely exhausted</i>				
Central tax	0	100	-	100
State tax / Union territory tax	0	-	200	0
Total	1000	300	300	100

Option -2

Input tax Credit on account of	Discharge of output liability on account of Integrated tax	Discharge of output liability on account of Central tax	Discharge of output liability on account of State tax / Union Territory tax	Balance of Input Tax Credit
Integrated tax	1000	100	200	0
<i>Input tax Credit on account of Integrated tax has been completely exhausted</i>				
Central tax	0	200	-	0
State tax / Union territory tax	0	-	100	100
Total	1000	300	300	100

Balance credit of ITC in credit ledger?

[41(2), 49(6) & sec 54(3)]

Balance credit of ITC in credit ledger

For payment of self assessed
output tax[41(2)]

Refund

(i) zero rated supplies made without payment of tax;
(ii) Inverted duty structure(output tax<input tax)

c/f to next tax period

Utilize in next tax period

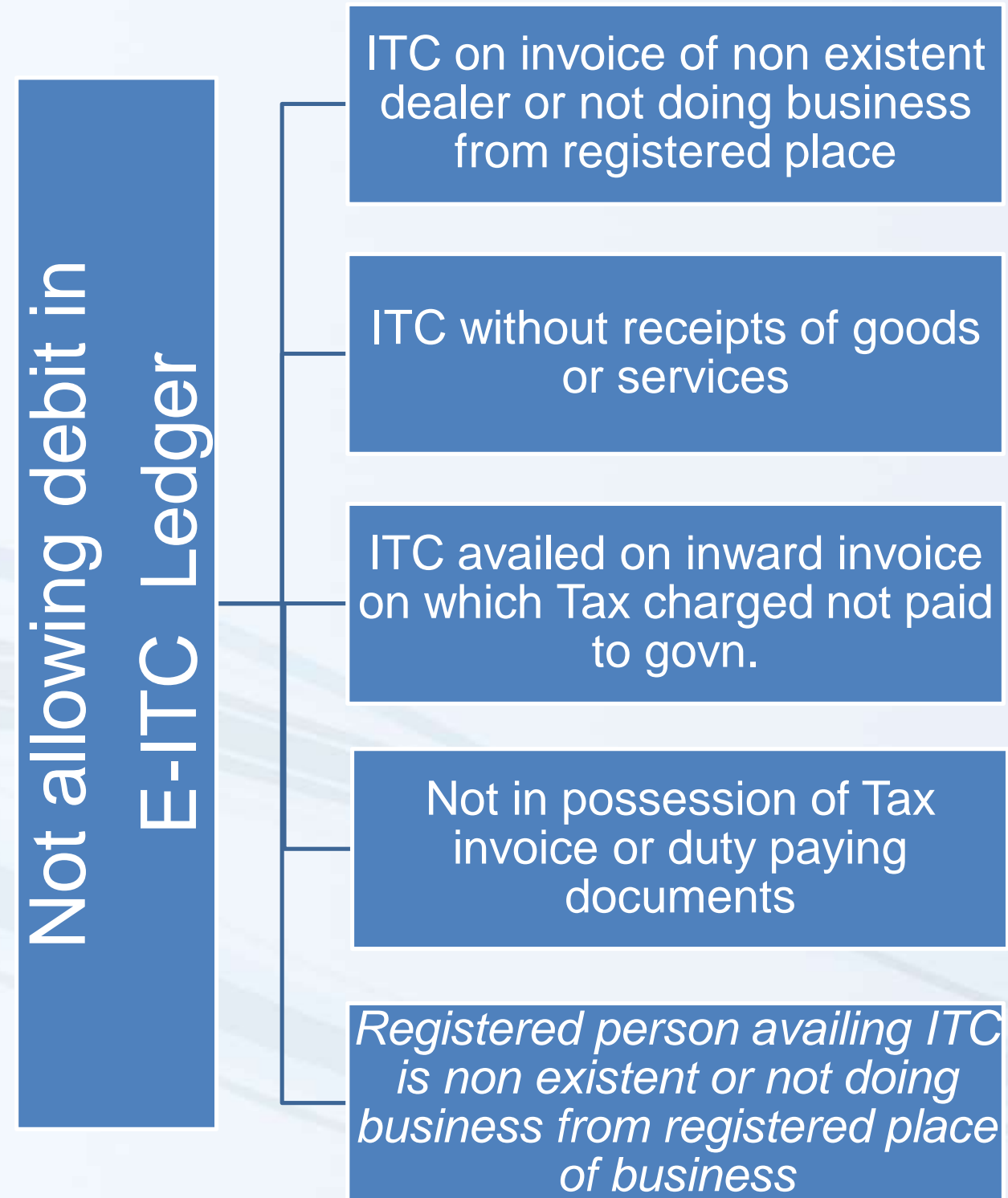
Credit lapse/no refund

Export subject to export duty
Drawback –higher rate
Refund of IGST paid on output export supply * goods
exported out of India are subjected to export duty

Restriction on debit entry in E- ITC Ledger

Rule 86A

- ❑ The commissioner or officer authorised not below assistant commissioner **has reason to believe** that any of the any of the condition exist, then
- ❑ restriction on debit entry in E-ITC ledger on reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilized amount.
- ❑ Restriction may be removed if such condition no longer exist
- ❑ Validity – 1year.



Not allowing debit in E- ITC Ledger in certain cases:

86A. (1) The Commissioner or an officer authorised **not below the rank of an Assistant Commissioner**, having **reasons to believe** that credit of input tax available in the electronic credit ledger has been **fraudulently availed** or is **ineligible** in as much as—

(a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36—

(i) issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(ii) without receipt of goods or services or both; or

(b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

(c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilized amount.

(2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.]

Restrictions on use of amount available in electronic credit ledger. Rule 86B

Notwithstanding anything contained in these rules, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of 99% of such tax liability, in cases where the **value of taxable supply** other than exempt supply and zero-rated supply, in a month exceeds ₹ 50 Lakhs:

Provided that the said restriction shall not apply where -

- (a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have **paid more than one lakh rupees** as income tax under the Income-tax Act, 1961(43 of 1961) **in each of the last two financial years** for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired; or
- (b) the registered person has received a **refund amount** of more than **one lakh rupees in the preceding financial year** on account of unutilised input tax credit under clause (i) of first proviso of subsection (3) of section 54; or
- (c) the registered person has received a **refund amount of more than one lakh rupees in the preceding financial year** on account of unutilised input tax credit under clause (ii) of first proviso of subsection (3) of section 54; or
- (d) the registered person **has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year**; or
- (e) the registered person is -
 - (i) Government Department; or
 - (ii) a Public Sector Undertaking; or
 - (iii) a local authority; or
 - (iv) a statutory body:

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.]

E- Liabilities register [Section 49(7)]

Electronic Liability Register *in FORM GST PMT-01[R-85]*

Debit entry	Credit entry
<p><i>E- Liability register shall be maintained for each person liable to pay tax, interest, penalty, late fee or any other amount payable by him as per</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>As per the return furnished by him</i> <input type="checkbox"/> <i>As determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person;</i> <input type="checkbox"/> <i>as a result of mismatch under section 42 or section 43 or section 50; or</i> <input type="checkbox"/> <i>interest that may accrue from time to time.</i> 	<ul style="list-style-type: none"> <input type="checkbox"/> <i>payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger maintained as per rule 86 or the electronic cash ledger maintained as per rule 87</i> <input type="checkbox"/> <i>The amount of TDS u/s 51, or TCS u/s 52, or RCM tax liability, or the amount payable under section 10, any amount payable towards interest, penalty, fee or any other amount under the Act shall be paid by debiting the electronic cash ledger maintained as per rule 87</i>
<input type="checkbox"/> <i>Already demand debited earlier .</i>	<input type="checkbox"/> <i>amount of demand debited earlier but reduced by the appellate authority or Appellate Tribunal or court</i>
<input type="checkbox"/> <i>Already demand debited earlier as per SCN/demand order.</i>	<input type="checkbox"/> <i>taxable person makes the payment of tax, interest and penalty specified in the show cause notice or demand order .</i>
<p><i>A registered person shall, upon noticing any discrepancy in his electronic liability ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04. [R-85(7)]</i></p>	

E- Liabilities register/order of discharge of liabilities

E- Liabilities register : 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.[section 49(7)]

order of discharge of tax liabilities : 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; .[section 49(8)]

Payment of liability as per return by using E- ITC ledger or E- cash ledger- rule 85(3)]

Subject to the provisions of section 49, [section 49A and section 49B,] payment of every **liability by a registered person as per his return** shall be made by

- debiting the electronic credit ledger maintained as per rule 86 or
- debiting the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly.

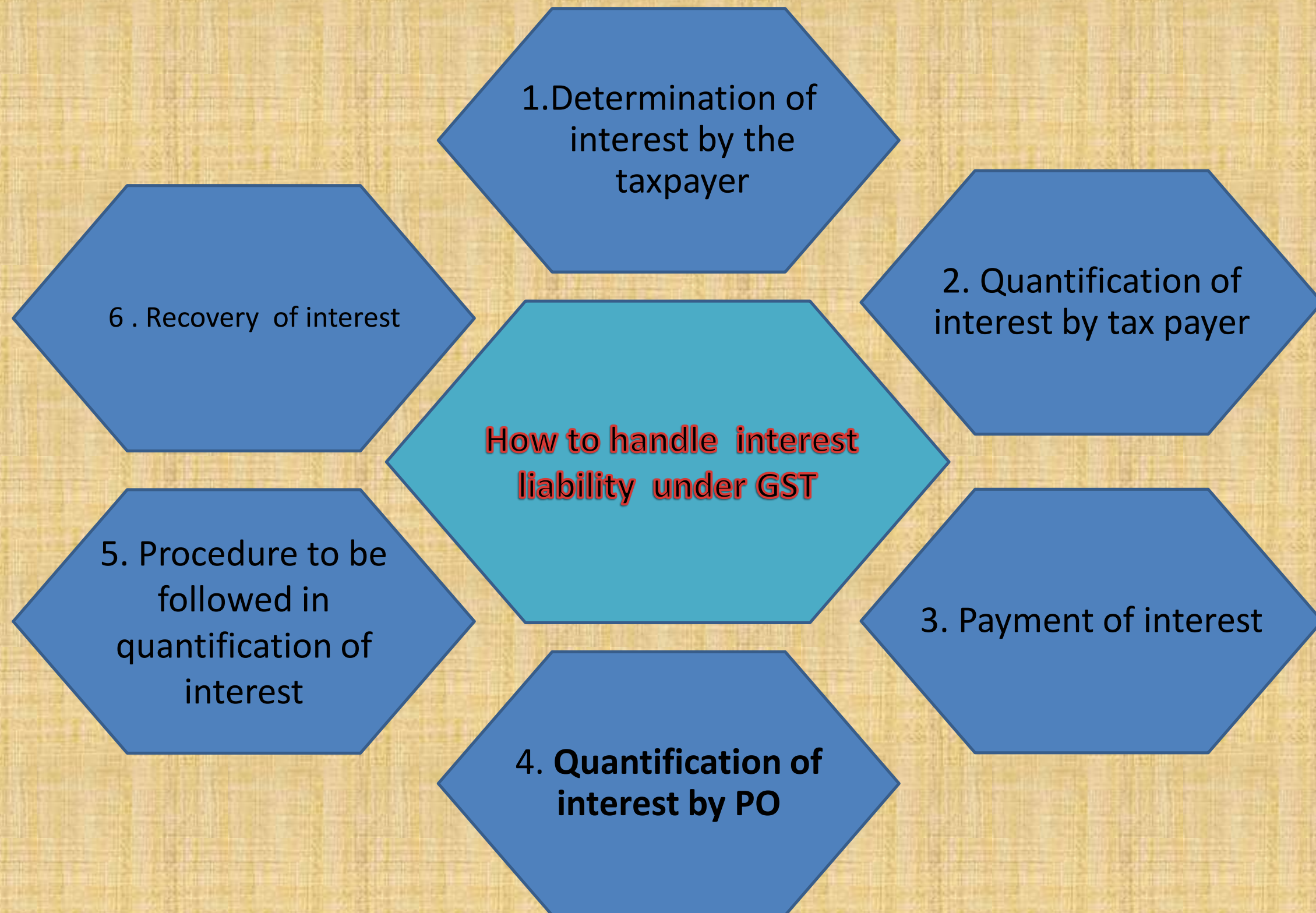
Interest on delayed payment—under GST

Section 50

Comparison of tax, interest & penalty

Tax	Penalty	Interest
<p>Tax is the amount payable as a result of the charging provision .</p> <p>It is a compulsory extraction of money by a public authority for public purposes, the payment of which is enforced by law.</p>	<p>Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute.</p>	<p>Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax 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.</p>

Pratibha Processors Vs.Union of India [1996 taxmann.com 72 (SC)/[1996] 88 ELT 12 (SC)]



Liability of interest u/ s 50

Every person who is liable to pay tax, 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 18% , as may be notified by the Government on the recommendations of GST Council [S-50(1)]

A taxable person who makes an undue or excess claim of input tax credit under section 42 (10) shall pay interest on such undue or excess claim, at such rate not exceeding 24% , as may be notified by the Government on the recommendations of the GST Council.[S-50(3)]

A taxable person who makes undue or excess reduction in output tax liability under section 43(10), shall pay interest on such undue or excess reduction,, at such rate not exceeding 24% , as may be notified by the Government on the recommendations of the GST Council.[S-50(3)]

Rate of interest – notified

For rate of interest refer below notifications:

Notification No. 13/2017-Central Tax,
dated 28-6-2017

Notification No. 6/2017-Integrated Tax,
dated 28-6-2017.

Rate of interest

Short payment / non payment –
interest u/s 50(1)

18% p.a

undue or excess claim of input
tax credit under section 42 (10)
– interest- 50(3)

24% p.a

undue or excess reduction in
output tax liability under section
43(10)— interest- 50(3)

24% p.a

In case of short payment/ non payment of tax – whether interest on gross amount of tax liability or interest on net liability equal to Output tax – input tax ?

In GST ITC could be claimed only in self assessed return u/s 16 & 41. it could not be adjusted against demand of tax in assessment or adjudication order. A change from the VAT law.

Some persons are continuously keeping the balance of ITC and paying tax if there will any demand the same could be paid from ITC , it is myth , in GST demand to be paid in cash only.

What was Position in pre GST regime?

- In VAT of Gujarat:

State of Gujarat v. Dashmesh Hydraulic Machinery [\[2015\] 55 taxmann.com 65/50 GST](#)

assessee had surplus balance of input credit, which has been adjusted against the demand of tax upon reassessment. Under these circumstances, the element of avoidance of tax could be said as lacking. Consequently, the deletion of the penalty and interest on the part of Tribunal could not be said as unjustifiable. [Para 8]

[234 \(Guj.\)](#), and another in ***State of Gujarat v. Nishi Communication*** [\[2015\] 55 taxmann.com 249/50 GST 517 \(Guj.\)](#).

Where Assessing Authority made assessment of assessee and raised tax demand and also levied penalty and interest upon it, since input tax credit was already available to assessee and after adjustment of same against demand of tax principal amount of tax was not recoverable, levy of penalty and interest was liable to be deleted

Post GST regime: In case of short payment/ non payment of tax – whether interest on gross amount of tax liability or interest on net liability equal to Output tax – input tax ?

Megha Engineering & Infrastructures Ltd. Vs. Commissioner of Central Tax [2019] 104 taxmann.com 393 (TELANGANA) (HC)].

In view of the above, the claim made by the revenue for interest on the ITC portion of the tax cannot be found fault with. Hence, the writ petition deserved to be dismissed. [Para 45]

- **Facts:** late filing of GSTR-3B, total output tax liability was Rs. 1014 crore, and input tax credit available Rs. 968 crore and thus there was a short fall of Rs. 46 crore only. Tax payer view interest on net amount, department view tax on gross liability so huge amount of interest .
- **Held:**
- scheme of the GST Act makes a distinction between (i) the entitlement to take credit according to section 16 read with GST rules, which comes first, (ii) the actual entry of credit in the electronic credit ledger as per provision of section 41 by claiming in self assessed return, which comes next, and (iii) the actual payment from out of the credit from the ITC as per section 49 read with GST rules, which comes last. [Para 26]
- liability to pay interest under section 50(1) is **self-imposed** and also automatic without any determination by any one. Hence, the stand taken by the revenue that the liability is compensatory in nature appears to be correct. [Para 31]
- until a return is filed as self-assessed, no entitlement to credit and no actual entry of credit in the electronic credit ledger takes place;
- Only when the payment is so made, the Government gets a right over the money available in the ledger. Since ownership of such money is with the dealer till the time of actual payment, the Government become entitled to interest upto the date of their entitlement to appropriate it. [Para 40]

GST COUNCIL VIEW ON INTEREST LIABILITY IN THE CASE OF LATE PAYMENT OF TAX

Considering the recommendation of GST council in 31st meeting, First proviso added to the section 50(1) by Inserted by the Finance (No. 2) Act, 2019, where under interest would be leviable only on the amount payable through the electronic cash ledger.

But this provision shall be applicable with effect from a date yet to be notified.

The GST Council in its 31st meeting held today at New Delhi gave in principle approval to the following amendments in the GST Acts:

1. Creation of a Centralised Appellate Authority for Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue.
2. **Amendment of section 50** of the CGST Act to provide that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit, i.e., interest would be leviable only on the amount payable through the electronic cash ledger.

INTEREST IN THE CASE OF NON PAYMENT OR SHORT PAYMENT OF TAX – AMENDMENT IN SECTION 50(1)

- First proviso added to the section 50(1) by Inserted by the Finance (No. 2) Act, 2019.
- being a beneficial provisions not notified so far
- If provisions notified interest on amount of amount paid from cash ledger debit and not on the gross tax liability
-

First proviso added to the section 50(1):

- *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. [1st proviso to S-50(1)]*

By Finance Act 2021 new proviso inserted w.e.f 1-7-2017 to provide tax on net amount(total liability – ITC)

FINANCE ACT 2021

In section 50 of the Central Goods and Services Tax Act, in sub-section (1), for the proviso, the following proviso shall be substituted and shall be deemed to have been substituted **with effect from the 1st day of July, 2017**, namely:—

“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 payable on that portion of the tax which is paid by debiting the electronic cash ledger.”.

**DIRECT RECOVERY WITHOUT SCN
&
PROVISIONAL ATTACHMENT OF BANK ACCOUNT
FOR ENFORCING PAYMENT OF INTEREST**

Direct recovery without following principles of natural justice is illegal.

Hon'ble SC in case of
Dabur India Ltd. v.
State of Uttar
Pradesh 1990
taxmann.com 101

Threatening for recovery or coercive action of those demand where appellant not agreeing and matter is subject to sub-judice: Before we part with this case, two aspects have to be adverted to - one was regarding the allegation of the petitioner that in order to compel the petitioners to pay which the petitioners contended that they were not liable, the **licence was not being renewed** for a period and the petitioners were constantly kept under threat of closing down business in order to coerce them to make the payment. This is unfortunate. We would not like to hear from a litigant in this country that the Government is coercing citizens of this country to make payment which the litigant is contending not to be leviable. Government, of course, is entitled to enforce payment and for that purpose to take all legal steps but the Government, Central or State, cannot be permitted to play dirty games with the citizens of this country to coerce them in making payments which the citizens were not legally obliged to make. If any money is due to the Government, the Government should take steps but not take extra-legal steps or manoeuvre. Therefore, we direct that the right of renewal of the petitioner of licence must be judged and attended to in accordance with law and the occasion not utilised to coerce the petitioners to a course of action not warranted by law and procedure." para 30

Notices from Department for direct recovery of interest without SCN u/s 73 or 74.

Section 75(12) of the CGST Act 2017.

invoked by the Department.

what could be recovered under section 75 (12) is self assessed tax and interest on self assessed tax.

Since the tax of self assessed tax already paid because without payment of tax return could not be filed so no question of pendency of self assessed tax for recovery u/s 75(12)

Yes, if interest on self assessed tax after adjustment ITC not paid for delay period the same could be recovered u/s 75(12) but not the interest on gross liability .

Except self assessed tax and interest on that any recovery could be made only after SCN and opportunity of being heard and not before that.

- Whether action of department is valid ?

Section 75(12) ?

- Notwithstanding anything contained in section 73 or section 74, where any amount of **self-assessed tax** in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

Provisional attachment of properties including bank account in terms of Section 83 for recovery of interest

- issuance of Show Cause notice is an essential condition to proceed with the recovery of interest payable thereon under Section 50 of the Act.
 - without issuing Show-cause notice, breach of the principles of natural justice.
 - Further, the attachment of bank account without issuance of any notice by invoking the provisions of Section 75(12) of the CGST Act was totally misconceived.
- In the case of **LC Infra Projects (P) Ltd v. Union of India [2019] 109 taxmann.com 141 (Karnataka)**, the Single Bench of Karnataka High Court held that the issuance of Show Cause notice is an essential condition to proceed with the recovery of interest payable thereon under Section 50 of the Act and penalty leviable under the provisions of the Act or the Rules. Further, interest payable as determined by the Departmental authority being without issuing Show-cause notice, it was in breach of the principles of natural justice. Thereby the order passed by the authorities could not be sustained. Further, the attachment of bank account without issuance of any notice by invoking the provisions of Section 75(12) of the CGST Act was totally misconceived. Further, it was concluded that such section was applicable only to the self-assessment made by the assessee and not to quantification or determination of interest made by the Authority.

QUANTIFICATION OF INTEREST IS NOT UNILATERAL

even though the liability to pay interest under Section 50 is an automatic liability, still the quantification of such liability, certainly, cannot be by way of an unilateral action, objections raised by each petitioners shall have to be, certainly, considered.

- Further to the above, the Madras High Court while delivering its judgment dated **19th December 2019** *Daejung Moparts Pvt. Ltd.* [2020] 116 **taxmann.com 372 (Madras)** that even though the liability to pay interest under Section 50 is an automatic liability, still the quantification of such liability, certainly, cannot be by way of an unilateral action, more particularly, when the assessee disputes with regard to the period for which the tax alleged to have not been paid or quantum of tax allegedly remains unpaid. In order to decide and determine such quantum, the objections raised by each petitioners shall have to be, certainly, considered.

Godavari Commodities Ltd. v. Union of India [W.P. (T) No. 1786 of 2019, 5-12-2019]

tax not paid within due date is also a case of non payment of tax. So section 73 proceeding shall be applicable even in the case of late payment of tax.

- A plain reading of this provision shows that this provision shall be fully applicable in cases where the tax was not paid for any reason other than fraud. In the present case, though it is submitted by learned counsel for CGST that since the tax was paid, section 73(1) of the Act shall not be attracted in the case of the petitioner, but the fact remains that the tax was not paid by the petitioner Company in the Government account within the due date, and accordingly it is a case of tax not being paid, within the period prescribed, or when due. In that view of the matter, we are unable to accept the contention of learned counsel for CGST that no show-cause notice was required to be given in this case. Even otherwise, if any penal action is taken against the petitioner, irrespective of the fact whether there is provision under the Act or not, the minimum requirement is that the principles of natural justice must be followed. In the present case admittedly, prior to the issuance of letter dated 6.2.2019, no show-cause notice or an opportunity of being heard was given to the petitioner and no adjudication order was passed"

in case of *Mahadeo Construction Co v. Union of India* [2020] 116 taxmann.com 262 (Jharkhand) (HC), the Jharkhand High Court gave a landmark judgment mandating the issuance of show-cause notice before recovery of interest amount.

Jharkhand High Court referred its own judgment in the case of Godavari Commodities Ltd. v. Union of India and ors., reported in 2019 SCC Online Jhar 1839 wherein it implied that 'tax not paid or short paid' in terms of Section 73 would **also include tax not paid within the due date.** Thereby, show-cause notice should be issued even in such cases. Even otherwise if Section 73 is not applicable, if any penal action is taken against the petitioner, irrespective of the fact whether there is provision under the Act or not, the minimum requirement is that the principles of natural justice must be followed.

- Jharkhand High Court gave a landmark judgment mandating the issuance of show-cause notice before recovery of interest amount. It had been contended that provisions of Section 79 of the CGST Act for recovery of tax could be adopted only when "any amount payable by a person to the Government under the provisions of the Act and the Rules is not paid". It has been submitted that the words "any amount payable" is to be interpreted in the context in which it has been used and the amount payable (unless admitted) can only be determined by initiating adjudication process as provided under Section 73 or 74 of the CGST Act. In absence thereof, initiation of garnishee proceedings is not sustainable in the eyes of law and even amounts to taking extra legal steps for recovery of the amount from an assessee.

Meaning of amount payable u/s 79

Till amount of interest is adjudicated and determined, it cannot be considered as amount payable under Section 79 and therefore automatic recovery cannot take place.

For recovery of interest first SCN, quantifications and consideration of reply and the order for making amount payable then recovery proceeding u/s 79

- **Without issuance of show-cause notice(SCN), recovery of interest liability cannot be carried out by the department automatically:** interpretation of Section 73(7) of the CGST Act 2017 is that even in a case where an assessee files his return as per his own ascertainment, pays the tax and even pays interest, but if the said amount paid by the assessee is falling short of the amount actually payable, the Proper Officer is required to initiate proceedings under Section 73(1) for recovery of the said amount of tax and interest. If an assessee disputes the liability of interest *i.e.* either disputes its calculation or even the levability of interest, then the only option left for the Assessing Officer is to initiate proceedings either under Section 73 or 74 of the Act for adjudication of the liability of interest.

**CONSEQUENCES OF NON PAYMENT
OF INTEREST OR SHORT PAYMENT OF
INTEREST LATE PAYMENT OF TAX**

- There is specific penalty for non payment of tax within 3 months after collection of tax
- Penalty for non payment of self assessed tax within 30 days
- No specific penalty for non payment or short payment of tax
- General penalty upto ₹25000(CGST)& upto ₹25000 (SGST) u/s125
- For quantification of interest proceeding u/s 73 or 74 is irrelevant except that in 74 quantification may be 5 years.
- In GSTR-3B mentioning of interest is not mandatory
- In GSTR-9 interest quantification required but for small tax payer no need to file even GSTR , so section 75(12) self assessed interest no applicable
- Quantification of interest disclosed in GSTR 9C by GST auditor is not the self assessed because it is the view of auditor may not be the same view as of tax payer.

Credit balance in ITC but not utilised – if later it was found wrong in the view of department – any interest liability -no

Patna High Court in case of M/s Commercial Steel Engineering [TS-553-HC-2019(PAT)-NT].

Mere wrong reflection of transitional credit in electronic credit ledger could not be treated as an act of availment or utilization of credit for drawing a proceeding under section 73(1). In other words no interest liability if ITC not utilized.

It is rightly argued by the assessee that even if the Competent Authority was of the opinion that the assessee was not entitled to such transitional credit at best, the claim could be rejected but such rejection of the claim for transitional credit does not bestow any statutory jurisdiction upon the Competent Authority to correspondingly create a tax liability especially when neither any such outstanding liability exists nor such credit has been put to use.

**Interest on late payment of
tax**

3. Interest on delayed payments

Now, the interest for delayed GST payment will be calculated on the net tax liability. This amendment will apply retrospectively from 1st July 2017.

Tax deduction at source—under GST

Section 51

Tax deduction at source

51. (1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,—

- (a) a department or establishment of the Central Government or State Government; or
- (b) local authority; or
- (c) Governmental agencies; or
- (d) such persons or category of persons as may be notified²⁷ by the Government on the recommendations of the Council,

(hereafter in this section referred to as "the deductor"), to deduct tax @ 1% from the **payment made or credited to the supplier** (hereafter in this section referred to as "the deductee") of **taxable goods or services or both**, where the **total value of such supply**, under **a contract**, exceeds ₹ 2.50 lakh:

Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Explanation.—For the purpose of deduction of tax specified above, the **value of supply** shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess **indicated in the invoice.**

Important points -TDS

location of supplier in Delhi

Place of supply in Delhi

Recipient registration in Mumbai

No TDS .

- Rate of tds: 1% CGST , 1% SGST/UTGST, 2% IGST
- Amount on which tax to be deducted: value of supply shall be exclusive of GST and GST cess mentioned on invoice .
- Threshold limit : ₹ 2. 50 lakh per contract may be in single FY or multiple Fys
- No TDS, if location of supplier and place of supply is in different state from state of registration of recipient

Section 51

Payment of TDS within 10 days of the next month:

(2) The amount deducted as tax under this section shall be paid to the Government by the deductor within 10 days after the end of the month in which such deduction is made, in such manner as may be prescribed.

Issuance of TDS certificate:

(3) A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.]

After acceptance by deductee, balance increased by amount of TDS in E-cash ledger

(5) The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.

Failure to deposit TDS/ late deposit: Interest u/s 50

(6) If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.

non deduction/ deduction but non payment/short deduction/ short payment: demand u/s 73/74.

(7) The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74.

Refund of excess amount paid : (1) refund to deductor if excess tax paid but not passed on the deductee and no reflection in deductee E cash ledger. (2) if reflection in deductee E cash ledger refund to deductee only.

(8) The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54:

Provided that no refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.

Tax collection at source—under GST

Section 52



Transfer of ITC—under GST

Section 53

When section come into operation ?

Utilization of balance of CGST credit against payment of IGST

Such utilization must be valid according to section 49(5)

Amount collected as CGST shall be reduced

Central government shall reduce CGST and transfer balance so reduced to IGST

Similar provision and treatment for utilization of SGST credit balance for payment of IGST

Transfer of input tax credit. On utilisation of input tax credit availed under this Act for payment of tax dues under the Integrated Goods and Services Tax Act in accordance with the provisions of sub-section (5) of section 49, as reflected in the valid return furnished under sub-section (1) of section 39, the amount collected as central tax shall stand reduced by an amount equal to such credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the central tax account to the integrated tax account in such manner and within such time as may be prescribed.[section 53]

Transfer of other amount—under GST

Section 53A

When section come into operation ?

Transfer of amount from CGST E- cash ledger to SGST/UTGST E- Cash ledger

Amount collected as CGST shall be reduced

Central government shall reduce CGST and transfer balance so reduced to SGST/UTGST equal to amount transferred from one E-cash ledger to another E-cash ledger

Similar provision and treatment for utilization of SGST credit balance for payment of IGST.

Now in the case of payment of tax in wrong head could be transferred to correct head of E- cash ledger, no need to refund of wrong tax and payment of correct tax .

53A. Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the Government shall, transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time as may be prescribed.

Section 53A inserted by Inserted by the Finance (No. 2) Act, 2019, w.e.f. **1-1-2020**.

THANK YOU

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