



March 24, 2022

# Interest liability under GST Law

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1

# Case Studies on delayed payment of tax

# Case Study 1 – Late Filing of Return



**GSTR 3B**

Particulars	Amount
April 22 month tax liability	1,00,000
ITC April Month	60,000
Due date	20-05-2022
Actual Date	11-10-2022

Case 1

**Explain the levy of interest when no notice has been issued.**

Case 2

**Explain the levy of interest when notice has been issued u/s 73.**

# Answer – Case Study 1

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Case 1: Interest would be levied on Rs. 40,000 for the period 21<sup>st</sup> May 22 till 11<sup>th</sup> October 22 (proviso to Section 50(1))

Case 2: Interest would be levied on Rs. 100,000 for the period 21<sup>st</sup> May 22 till 11<sup>th</sup> October 22 (Situation covered under exception to proviso to Section 50(1) therefore benefit of proviso will not be available in the present case).

# Case Study 2 – Late Filing & Balance in Cash Ledger



**GSTR 3B**

Particulars	Amount
April 22 month tax liability	1,00,000
ITC April Month	60,000
Balance of cash ledger (20 to 25 <sup>th</sup> May)	2,00,000
Due date	20-05-2022
Actual Date	25-05-2022

?

**Whether Interest is leviable when there was sufficient balance in cash ledger ?**

# Answer – Case Study 2

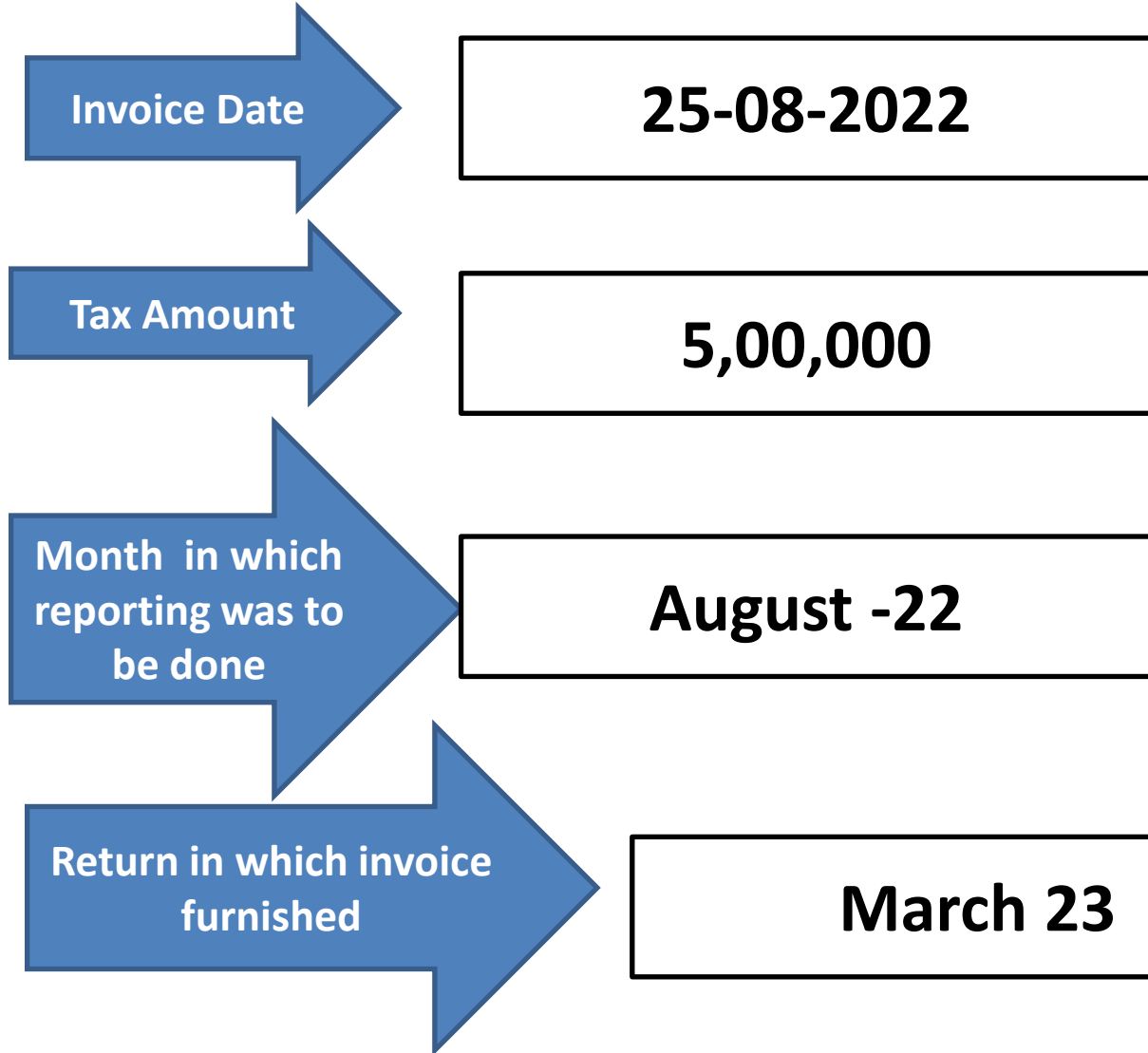
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Answer:

Interest would be levied on Rs. 40,000 for the period 21<sup>st</sup> May 22 till 25<sup>th</sup> May 22 (proviso to Section 50(1)). ***TS-589-HCJHAR-2022-GST-RSB Transmissions India Limited Jharkhand HC***

# Case Study 3 – Omission of Invoice/Debit Note



Interest Liability ?

Case 1

ITC balance more than tax liability amount, maintained till March

Case 2

Insufficient ITC balance till march

# Answer – Case Study 3



Case 1: Interest would be levied on Rs. 5,00,000/- for the period 21<sup>st</sup> September' 2022 till 20<sup>th</sup> April' 2023 (proviso to Section 50(1)). Benefit of ITC may not be allowed by the department considering the provisions of Rule 37(2) of the CGST Rules, 2017. Further, the intention of the government to levy interest on late reporting of invoice and debit note can be drawn from the Agenda of 31<sup>st</sup> GST council meeting discussing the amendment in the Section 16(4) the CGST Act.

However, one may argue that where an assessee is having enough eligible credits lying in its electronic credit ledger till the date of reporting of omitted invoice/debit note belatedly, then the benefit of proviso to Section 50(1) shall be allowed. Such position is likely to be litigated.

Case 2: : Interest would be levied on Rs. 5,00,000/- for the period 21<sup>st</sup> September' 22 till 20<sup>th</sup> April' 2023



# Case Study 4 – Interest on Debit Notes



ABC Limited issues debit note dated 31.03.2022 in the month of March 22 in respect of the invoice dated 25.04.2021. Whether interest is liable to be paid on debit notes in case 1, case 2 and case 3.

## Case 1

**Reason for debit Note:** Low price charged in the invoice on account of clerical mistake in the invoice . Additional amount of consideration recovered by issuing debit note

## Case 2

**Reason for debit Note:** Tax was charged @5% in the invoice instead of 18%,. Now, additional tax recovered by issuing debit note.

## Case 2

**Reason for debit Note:** Retrospective revision in contract price on account of decision of the arbitration

# Answer – Case Study 4



GST law makes specific provision for issuance of debit note and do not take back the original invoice date as the Time of supply. Explanation to Section 12 and 13 which provides for time of supply which specifically provides supply is deemed to be made to the extent covered by invoice issued. **Section 34 also provides that “the tax liability shall be adjusted in such manner as may be prescribed via rules but no rule was made to prepone the liability to the date of the original invoice. Further, the said rule does not mean that one should undercharge and postpone the liability.**

Upon reading of the provisions of GST law, one can draw conclusion **that interest on debit note would not be levied in cases where the variation in liability was determined at later stage for the reason beyond the control of the Assessee and such variation could not be ascertained by the assessee at the time of issuance of original invoice.** The same view also can be borrowed from the provisions of Section Sec 142(2)(a) of CGST Act, 2017 read with Circular No. 76/50/2018-GST, dated 31-12-2018 relating to raising of debit note in case of revisions in contract price in the GST regime for the contracts which were entered before GST implementation. **For other cases, one may draw conclusion that the interest is liable to be paid upon issuance of debit note.**

In view of the above discussion, the answers to the case study 4 are as follows:

**Case 1:** Interest is liable to be paid for the period 20<sup>th</sup> May 2021 till 20<sup>th</sup> April 2022

**Case 2:** Interest is liable to be paid for the period 20<sup>th</sup> May 2021 till 20<sup>th</sup> April 2022

**Case 3:** No interest on issue of debit note.

2

**ITC wrongly availed and  
utilized**

# Case Study - 5



ABC limited inadvertently availed ineligible ITC in the month of Oct 22. As per recommendation by internal auditor, they wish to reverse the same in the return to be filed for the month of March 23.

Particulars	Amount
Ineligible ITC availed in the month of Oct 22	1,00,000
ITC to be reversed in 20 <sup>th</sup> April 23 (March 23 Return)	100,000
<b>Case 1</b> – ITC balance maintained till 20 <sup>th</sup> April 23	ECL balance - Above 2,50,000
<b>Case 2</b> - ITC balance maintained till 20 <sup>th</sup> April 23	ECL balance - Nil Balance
<b>Case 3</b> - ITC balance maintained till 20 <sup>th</sup> April 23	ECL balance -80,000
<b>Case 4</b> - ITC balance maintained till 20 <sup>th</sup> Dec 22	100,000 -20 <sup>th</sup> December 15,000 - After 20 <sup>th</sup> December 1,25,000 – 20 <sup>th</sup> Feb

Whether interest is leviable and for which period ?

# Case Study - 5



Section 50(3) of CGST Act, 2017

At what rate the AMC Ltd shall pay the interest on ITC wrongly availed and utilized ?

24% or 18% ? Answer: **FA 2022 Amended Not 13/2017 w.e.f. 01.07.2017 to notify the rate of interest @18% on ITC wrongly availed and utilized. Therefore, the rate of interest on reversal of ITC wrongly availed and utilized is 18%.**

# Answer- Case Study 5



Particulars	Amount	Answer
Ineligible ITC availed in the month of Oct 22	1,00,000	
ITC to be reversed in 20 <sup>th</sup> April 23 (March 23 Return)	100,000	
<b>Case 1</b> – ITC balance maintained till 20 <sup>th</sup> April 23	ECL balance - Above 2,50,000	No interest
<b>Case 2</b> - ITC balance maintained till 20 <sup>th</sup> April 23	ECL balance - Nil Balance	Interest on Rs. 1 lac for the period 21 <sup>st</sup> Nov to 20 <sup>th</sup> April 23
<b>Case 3</b> - ITC balance maintained till 20 <sup>th</sup> April 23	ECL balance -80,000	Interest on Rs. 20,000 for the period 21 <sup>st</sup> Nov to 20 <sup>th</sup> April 23
<b>Case 4</b> - ITC balance maintained till 20 <sup>th</sup> Dec 22	100,000 -20 <sup>th</sup> December 15,000 - After 20 <sup>th</sup> December 1,25,000 – 20 <sup>th</sup> Feb	No interest till 20 <sup>th</sup> December Interest on Rs. 85,000 (ITC wrongly availed and utilized) for the period 21 <sup>st</sup> Dec to 20 <sup>th</sup> April 23

**3**

**Interest on ITC reversal on account of non-payment to vendor**

# Case study 6



Particulars	Amount				
Invoice date	30.04.2022				
Tax and Invoice Amount	100,000 +18000 =1,18,000 Full ITC availed				
	IT Availed Month	Amount & date of payment	Return in which ITC is to be reversed	Amount of ITC reversal	Period of interest payment
Case 1	June	1,18,000 – 25.01.2023	?	?	?
Case 2	May	- Rs. 50,000 on 28.09.2022 and Balance 68,000 on 31.03.2023	?	?	?
Case 3. –	April	Rs. 1 lac paid in full and final settlement on 31.03.2023. Rs. 20,000 Discount.	?	?	
Case 4. ITC not reversed till 25.01.2023. During the audit in March 23 department is asking to reverse the ITC along with interest ? Please advice	June	1,18,000 – 25.01.2023	ITC not reversed	?	?



# Answer- Case study 6



Particulars	Amount				
Invoice date	30.04.2022				
Tax and Invoice Amount	100,000 +18000 =1,18,000 Full ITC availed				
	IT Availed Month	Amount & date of payment	Return in which ITC is to be reversed	Amount of ITC reversal	Period of interest payment
Case 1	June, 22	1,18,000 – 25.01.2023	20 <sup>th</sup> November since 180 days ends on 27/10/2022	18,000	20 <sup>th</sup> July to 20 <sup>th</sup> Nov
Case 2	May, 22	- Rs. 50,000 on 28.09.2022 and Balance 68,000 on 31.03.2023	Same as Above	10,372 (proportionate amount calculated on unpaid amount of Rs. 68,000 considering it as inclusive of tax.	20 <sup>th</sup> June to 20 <sup>th</sup> Nov
Case 3. –	April, 22	Rs. 1 lac paid in full and final settlement on 31.03.2023. Rs. 20,000 discount.	Same as Above	18,000	20 <sup>th</sup> May to 20 <sup>th</sup> Nov
Case 4. ITC not reversed till 25.01.2023. During the audit in March 23 department is asking to reverse the ITC along with interest ? Please advice	June, 22	1,18,000 – 25.01.2023	Reverse ITC in GSTR 3B of March 23 and re-avail the ITC in the same period. No impact on tax liability Since right to re-avail ITC already arised on 25.01.2023	Reverse and re-avail ITC in the month of March 23	20 <sup>th</sup> July to 20 <sup>th</sup> Feb 23 (Interest is liable to be paid till 20 <sup>th</sup> Feb' 23 since the right to re-avail ITC already arised on 25.01.2023

4

**Non-payment of tax by the supplier**

# Case Study – 7 ITC reversal upon tax not paid by vendor



**Case 1.** MJ enterprises availed credit in respect of the goods supplied by the vendor SD enterprises in the month of October 21 in respect of the invoice dated 28<sup>th</sup> October 2021. However, SD enterprises failed to file its GSTR 3B return for the month of October 21 till 30<sup>th</sup> September 2022. SD enterprises had furnished GSTR 1 in October itself.

MJ enterprises is now finalizing their form 9 and 9C in the month of December 22 and they are seeking advice following advice from the tax consultant ?

- Whether they need to reverse the ITC along with interest ? Period for which interest is payable ?
- Whether such ITC can be re-availed or not in case supplier file his GSTR 3B ?

**Case 2.** What if in the above case SD enterprises filed the GSTR 3B and GSTR 1 but failed to disclose and pay tax with respect to the invoice for supplies made to only MJ enterprises in GST returns.

# Answer – Case Study 7



**Case 1:** Section 41 has been introduced w.e.f. 1<sup>st</sup> October 2022 therefore one may take an argument that such provision may not be applicable for credit availed before 1<sup>st</sup> October 22. Further, one may argue that there is no requirement to reverse ITC in light of the judgment of HCs in case of DY Bethel (Mad.) and LGW Industries Limited and Ors (Cal.).

For the transaction entered after 1<sup>st</sup> October 2022, ITC is liable to be reversed in form GSTR 3B before 30<sup>th</sup> November of the succeeding FY, if supplier does not file return till 30<sup>th</sup> Sep of the succeeding FY. In case ITC is not reversed till 30<sup>th</sup> Nov then the same is liable to be reversed along with interest u/s 50. The assessee can re-avail such credit once the supplier furnishes his GSTR 3B belatedly.

**Case 2:** In case ITC is availed by buyer in respect of the invoice which is not uploaded in form GSTR 1 as well as tax has not been paid by the supplier in form GSTR 3B, then in such cases ITC is liable to be reversed on account of violation of Rule 36(4)/16(2aa). Such ITC is liable to be reversed from the date of availment and utilization till the date of reversal. Section 41 is not applicable in such case.

**5**

**Interest on payment of tax under  
wrong head**

# Case study 8 - Payment under wrong head of tax



Particulars	Amount
Amount of tax wrongly paid as IGST instead of CGST and SGST in the month of 20-08-2022	1,00,000
Amount deposited in correct head on 30.09.2023	CGST – 50,000 and SGST 50,0000
Period for which interest is leviable	?
Whether refund can be claimed for tax already paid under wrong head	?
Time limit to claim such refund	?

# Answer – Case Study 8

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No interest is liable to be paid in terms of the provisions of Section 77 of the CGST Act and Section 19 of the IGST Act.

**6**

**Interest on ITC availed under  
wrong head**



# Case study 9 – ITC availed under wrong head



Particulars	Amount
Amount of ITC wrongly availed as IGST instead of CGST and SGST in the month of 20-08-2021	1,00,000
GST auditor has pointed out the same and asked to reverse ITC under wrong head along with interest and penalty.	Reversal of IGST on 31.01.2023  Whether recovery of interest and penalty justified ?
Whether we can avail the ITC in correct head after 31.03.2023	Whether credit can be re-availed in correct head now. CGST Rs. 50,000/- and SGST Rs. 50,000/-.

# Answer – Case Study 9



Interest on reversal of ITC in incorrect head is disputable since there is no specific section which provides for waiver of interest unlike Section 77 which specifically provides for waiver of interest for payment of tax under wrong head.

Considering the over all objective of the GST regime of one nation one tax and the concept of revenue neutrality one may argue that the interest and penalty may not be demanded upon reversal of ITC availed under wrong head. Further, there was no intension for wrongful utilization of the ITC.

Eligibility of re-availing the ITC in correct head after the time period of Section 16(4) is also disputable. Since act is silence on time limit for such type of re-availment of ITC. One may avail the ITC in correct head and shall not utilize the same till the date any clarification or amendment is provided by the Government in this regard.

# 7

## Interest on Erroneous Refund

# Case Study 10 - Interest on erroneous refund



- ADJ Limited took refund of tax paid on account of export of goods. However such refund claim was in contravention of the provision of Rule 96(10) of the CGST Rules.
- Refund for the export for the month of March 22 was received on 30<sup>th</sup> April 2022. Now, the Company has received a notice dated 30<sup>th</sup> September 2022 from the GST department for payment of tax along with interest claimed as refund in contravention of the provisions of Rule 96 of the CGST Rules.
- Whether interest is leviable on repayment of refund amount as per Section 50 ?
- What is the rate at which interest shall be paid on such refund ?
- Period for which the in interest should be paid ?

# Case Study 11 – Consideration not realized in foreign exchange



- ADJ Limited took refund of unutilized ITC on account of export of goods for the tax period Feb 21 and March 21 on 30th May 2021. However, the export proceeds for the same were not realized with the time limit as prescribed under the FEMA.
- Now the Company has received a notice dated 30<sup>th</sup> September 2023 from the GST department for recovery of refund along with interest.
- Whether interest is leviable on repayment of refund amount as per Section 50 ?
- What is the rate of interest at which interest shall be paid on such refund ?
- Period for which the in interest should be paid ?

# Answer – Case Study 10 & 11



- No charging (i.e., substantive) provision for levy of interest in case of erroneous refund under Section 50,
- However, Section 73 provides for a machinery provision for recovery of interest in case of inter alia erroneous refund. Unless there is a charging provision by which a liability is created or fixed, there cannot be a machinery provision for the recovery of such liability.
- The issue is disputed and decision is to be taken after appropriate legal opinion and clarification from the government.
- For all practical purpose, one may consider to repay the amount of erroneous refund along with interest. Further, payment of interest can be made under protest to satisfy the condition of Rule 86(4B) for re-credit of ITC in ECL and contest the interest liability.

8

## Interest on reversal of common ITC

# Case Study 12 – Reversal of Common ITC



- APJ Limited reversed common ITC of Rs. 50 lacs as per Rule 42 of the CGST Rules in monthly return filed during FY 2021-22. However, the amount of total reversal calculated finally for the whole FY 2021-2022 is Rs. 65 lacs. The Company wishes to reverse the same in form GSTR 3B to be filed for the Month of Sep 22.

Case. 1 The Company has maintained the ITC balance of above 15 lacs till 20<sup>th</sup> October.

Case 2. The Company has maintained Rs. 2 lacs till 20<sup>th</sup> October.

- Period for which the interest should be paid ?
  - Date of utilization or
  - 1<sup>st</sup> April of succeeding FY or
  - Date of utilization or 1<sup>st</sup> April of succeeding FY, whichever is later

**Whether interest is payable u/s 50(1) or 50(3) of the CGST Act ?**



# Answer – Case Study 12



- Interest is liable to be paid u/s 50(1) as per Rule 42 of the CGST rule for the period starting from 1<sup>st</sup> April of the succeeding FY till the date of ITC reversal. Further, the benefit of Section 50(3) would not be available in such case.

9

**Recovery of Interest without  
Adjudication**

# Case Study 13 – Interest recovery 75(12)



- MTC Limited received a form DRC-07 on account of short payment of GST liability in form GSTR 3B as compared to the amount of liability reported in form GSTR 1. However, no prior intimation or notice in form DRC 01 in the nature of opportunity was given to MTC limited. MTC limited had paid tax without interest for such difference in form DRC 03 prior to issuance of form DRC 07.
- Case 1 Assuming that the reason for difference in GSTR 1 and GSTR 3 due to short payment by the Company in form GSTR 3B. MTC Limited does not disputes the calculation or levy of interest.
- Case 2. MTC limited disputes the calculation of interest.
- Whether the department is justified in directly issuing form DRC 07 for recovery of interest ?

# Answer – Case Study 13



- As per Sub-rule 5 & 6 to Rule 142 read with Section 75(12), form DRC 07 can be directly issued for recovery of self assessed tax and interest thereon. **Rajkumar Builders vs. UOI C/SCA/21534/2019**
- However, an opportunity of being heard shall be provided as per CBIC Instruction No. 01 /2022-GST dated 7<sup>th</sup> January, 2022 before issuing form DRC -07 and initiating recovery proceedings U/s 79 of the CGST Act..
- As per the decision of Jharkhand HC in case of **Mahadeo Construction Co. vs. UOI vs. W.P.(T) No. 3517 of 2019** proceedings u/s 73/74 of the CGST Act shall be initiated in case assessee disputes the quantum of interest liability for any reason.

10

Recovery of Interest u/s 73/74

# Case Study 14 – Notice u/s 73/74 for recovery of interest



- AZB Limited has made voluntary payment of tax (reversal of ITC) at the time of filing form 9 through DRC 03. However, no interest was paid on account of delay in payment of liability.
- Now, the AZB limited has received notice u/s 73 for payment of interest. Whether interest can be recovered u/s 73 where the tax liability has already been paid before SCN.

# Answer – Case Study 14



- A bare reading of the aforesaid sub-sections (5), (6) and (7) of Section 73 would reveal that a person chargeable with tax, if before service of notice pays the amount of tax along with interest payable thereon under Section 50 of the Act on the basis of his own ascertainment, then the Assessing Officer, if satisfied that correct tax along with interest has been paid by the said assessee, shall not issue any notice under Section 73(1) of the Act.
- **However, Section 73(7) of the Act provides that if an assessee, who has itself on his own ascertainment, deposited the tax along with interest, but if in the opinion of the Proper Officer, the amount paid on own ascertainment falls short of the amount actually payable, then a notice would be issued by the said Proper Officer under Section 73 (1) of the Act for recovery of the actual amount payable.**
- Thus, from a conjoint reading of the aforesaid provisions, it would be evident 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.** Mahadeo Construction Co. vs. UOI vs. W.P.(T) No. 3517 of 2019

11

## Recovery of Interest on Reversal of transitional credit



# Case Study 15 – Interest on reversal of transitional Credit

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- MTC Limited had reversed transitional credit wrongly availed by filing form DRC 03. Now the Company has received a notice for recovery of interest @24% on such reversal of ITC.
- Whether the MTC limited should pay the interest or dispute the same ?

# Answer – Case Study 15



- Transitional cenvat credit is not an input tax credit as the definition of 'input tax credit' does not include credit transitioned in GST regime. The provisions of Rule 121 of the CGST Rules which provides for verification of transitional credit and initiation of proceedings u/s 73/74 of the CGST are ultra vires the provisions of the main Act. It is the established law that the delegated legislation cannot travel beyond the scope of the main legislation.
- One may also refer to the decision of Jharkhand d HC in case of **TS-609-HCJHAR-2022-GST-Order\_dated\_10\_11\_2022\_Usha\_Martin\_Final**
- Retrospectively amended Section 50(3) provides recovery of interest only in case of input tax credit and not the wrongly availed transitioned credit. Therefore, one may argue that the levy of interest on reversal of ineligible transitional credit is out of the purview of Section 50 of the CGST and the same shall not be demanded.

# Disclaimer



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12

Thank You

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