

EY Tax Alert

Appellate Authority allows payment of incremental tax liability without interest w.r.t issuance of debit notes due to price escalation

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Executive summary

This Tax Alert summarizes a recent order passed by the Commissioner CGST (Appeals)¹, being the First Appellate Authority, regarding the applicability of interest on differential tax pursuant to issuance of debit notes for upward revision of price.

The key observations of the Commissioner (Appeals) are:

- A debit note for price escalation is a 'supplementary invoice' and not a 'revised invoice'. It increases the supplier's tax liability and the same must be paid in the return for the period in which the debit notes were issued.
- Time of supply on issuance of debit notes cannot be determined under Section 12(2) of the Central Goods and Services Tax Act, 2017 (CGST Act). Rather, it should be determined under the residuary provision of Section 12(5) i.e., the date on which return under Section 39 is required to be filed.
- Interest liability under Section 50(1) arises only if there is a failure to pay tax within the prescribed period. Since tax on debit notes was paid in the same return period in which the debit notes were issued, there was no failure to pay tax within the prescribed period.
- Applying for provisional assessment under GST is optional, not mandatory. It serves as a facility for taxpayers who are unable to ascertain the correct value or applicable tax rate for their goods or services at the time of issuing the initial invoice.

Basis above, the Appellate Authority set aside the order passed by proper officer demanding interest and penalty on issuance of debit notes.

¹ TS-100-FAA-2026-GST

Background

- Assessee is engaged in the business of supplying centrifuges, including centrifugal dryers.
- It issued several debit notes from July 2017 to March 2022 on account of price escalations after the supplies were made.
- Such debit notes were reported in GSTR-1 of the period in which they were issued. Tax w.r.t such debit notes was also paid in the corresponding GSTR-3B.
- Revenue issued a show cause notice (SCN) to the assessee alleging non-payment of interest due to delay in payment of tax on account of issuance of debit notes.
- The matter was adjudicated and an order was issued confirming the demand for interest along with penalty.
- Aggrieved, assessee filed an appeal before the First Appellate Authority, i.e. the Commissioner CGST (Appeals).

Assessee's Contentions

- Revenue's presumption that interest should be calculated from the date of the original supply is erroneous. Section 50 of the Central Goods and Services Tax Act, 2017 (CGST Act) mandates interest only in cases of delayed tax payment. Since tax was paid immediately upon issuance of debit notes, no delay occurred, and consequently, no interest liability arises.
- As per Section 15(1) of the CGST Act, tax is payable on the transaction value, which may be finalized at a later date. Tax liability on debit notes arises only upon the issuance of such document and not at the time of original supply.
- The GST Council in its 38th Meeting discussed the intent to delink time limit to claim ITC on debit notes from the date of original invoice.

The Council's mention of interest payment on debit notes was only a reference within the meeting discussion and has no legal enforceability unless expressly incorporated into the CGST Act or Rules.

- Debit note is a 'supplementary invoice' and not 'revised invoice'. A 'revised invoice' is issued to correct any kind of error or omission in original invoice.
Hence, interest from the date of issue of original invoices may be charged on the revised invoices but not on supplementary invoices/ debit notes.
- Provisional assessment is applicable in the case when a taxpayer is unable to decide the price of a particular product. The same is not relevant in the present case as price is determined at the time of supply. Variation in price occurs later due to change in cost of raw material and similar operational reasons covered in the agreement.

Revenue's Contentions

- There are two events which occurred in supply of goods. First, when the goods were supplied and

corresponding invoices were raised and second, when the revised invoice was issued.

- As per Section 12(2) of the CGST Act, the time of supply in respect of supply of goods is the date of issue of invoice or date of payment, whichever is earlier.
- Time of supply and the values assessed at that time are intertwined with each other. When supply is affected, there must be a value which has essential characteristic of determination at that point of time. If the values get changed after supply has been affected, even then it remains the value of those particular goods supplied.
In other words, when the value of goods is increased after the actual time of supply, the additional amount must be regarded as the portion of the value that remained unpaid. Consequently, this differential value constitutes short payment. Any subsequent adjustment therefore attracts applicable interest.
- Since price of the goods sold by assessee was subject to escalation, it should have opted for provisional assessment under Section 60 of the CGST Act.

- Thus, interest is required to be paid on the differential tax amount paid through debit notes in case of price escalation.

Appellate Authority's Ruling

- On perusal of Section 31, a debit note is not an invoice. Accordingly, the time of supply in case of debit notes cannot be determined under section 12(2) of the CGST Act, but under the residuary provision 12(5) i.e., the date on which return is filed in case where a periodical return has to be filed, or the date on which the tax is paid.
- As per Section 50(1), interest liability arises if there is a failure to pay tax within the prescribed period. There is no dispute that assessee has declared debit notes in the month in which they were issued and paid differential tax in their corresponding GSTR-3B returns.

Debit notes increase supplier's tax liability, and additional tax must be paid in the return for the period in which they were issued. Since the tax liability is discharged within the prescribed period, no interest liability arises.

- Applying for provisional assessment under GST is not mandatory. It is an option available to taxpayers to avail in situations when they are unable to determine the correct value or tax rate for the goods or services they are supplying at the time of the initial invoice.
- Accordingly, the demand for interest and penalty on debit notes is not sustainable and the impugned order is liable to be set aside.

Comments

- a. The Order, while from the first appellate authority, gains relevance as it addresses a situation most commonly prevalent in the continuous supply contracts where debit notes are raised basis commercial terms on price escalations.
- b. Under the erstwhile excise regime, the Larger Bench of the Supreme Court had held that interest was payable on differential excise duty paid post removal of goods, when the price at the time of removal was subject to revision under the escalation clause. [TS-309-SC-2019-EXC].
- c. The order passed by the Commissioner (Appeals) could be contested by the department before the higher appellate forums.

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



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