



## Interest on delayed payment of consideration *qua* imported goods, subject to GST?

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Determination of value is one of the most important factors in the judicious levying of indirect taxes. It is apparent from the Goods and Services Tax (GST) laws that a sincere endeavor has been made to do away with the contentious valuation issues that emerged particularly under the erstwhile Service Tax and Central Excise laws. One such aspect is interest/penalty/late fee for delayed payment of consideration for any supply which has to be specifically included in the value of supply<sup>1</sup> of goods or service, as the case may be.

While the GST law explicitly stipulates inclusion of interest for delayed payment in the value of supply, a question which arises for consideration is whether GST is leviable on interest paid on account of delayed payment of consideration *qua* the imported goods. In this regard, Gujarat AAR<sup>2</sup> in a recent ruling held that the applicant is liable to pay GST on reverse charge basis on the amount paid as interest on late payment of invoices of imported goods by observing the following:

- The foreign supplier has tolerated the act of receiving payment after a lapse of credit period, therefore the aforementioned act will be a 'service' covered under Entry No.5(e) of the aforementioned Schedule-II of the CGST Act which reads as "*(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act*"
- The AAR also made a reference to Section 15(2)(d) of the CGST Act which envisages that value of supply also includes "*interest or late fee or penalty for delayed payment of any consideration for any supply*" to hold that interest is includible in the value of imported goods.
- As regards the GST rate, the AAR concluded that as interest is includible in the value of imported goods as per Section 15(2)(d) of CGST Act, the rate of GST payable on the interest will be the same as that of the IGST applicable on the imported goods.

The aforestated ruling has opened a Pandora's box with host of issues/questions creeping in:

- The AAR has made a reference to the provisions of GST law for the purposes of inclusion of interest in the value of imported goods. IGST on imported goods is levied and collected in accordance with the provisions of Customs laws on the value as determined under the said laws<sup>3</sup> and not as per GST law. The question then arises whether the ability to tax interest should be evaluated under the Customs legislation or under GST.
- Interest is paid *qua* the delayed consideration for imported goods which are *per se* not subject to valuation under GST. Given this, can interest - which is a consequence of the underlying transaction - be amenable to GST.

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<sup>1</sup> Section 15(2)(d) of the Central Goods and Services Tax Act, 2017 (CGST Act)

<sup>2</sup> In re M/s Enpay Transformer Components India Pvt Ltd. 2021-VIL-210-AAR

<sup>3</sup> Proviso to Section 5 of Integrated Goods and Services Tax Act, 2017

- Typically interest payment lacks the necessary element of reciprocity to make it a 'supply'<sup>4</sup>. Further, the interest amount is merely the time value of money and not consideration for any provision of service. Given this, is it important to understand if interest payment can be assessed as an independent transaction of tolerating an act so as to be classified as a 'service'.
- While on one hand the AAR has concluded that the payment of interest on delayed consideration qualifies as a 'service' as per the GST law, from a rate perspective it has held that the rate will be that as applicable on the imported goods which are not under the ambit of GST laws. One therefore needs to understand if the rationale adopted for the rate is correct or whether interest should merit the rate of 18%, assuming for a moment that the same is liable to GST.

While the authorities can seek shelter of the ruling to demand GST on interest paid to the foreign suppliers citing that there is a toleration of an act, it is inevitable that the issue will go into further rounds of litigation. As a result, it is essential for the importers to revisit the contractual arrangements and take a conscious decision on tax implications.

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<sup>4</sup> *Religare Securities Ltd. V. CST, Delhi, [2014 (36) S.T.R. 937 (Tri. - Del.)]*