

REFUND OF INTEREST AND PENALTY ORDERED AS ITC WAS ALLOWED FOR DELAYED FILING OF RETURN AS PER AMENDMENT MADE BY FINANCE ACT: HC

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Issue:

The issue at hand revolves around whether the refund of interest and penalty would be allowed if Input Tax Credit (ITC) was permitted for delayed filing of returns, as per the amendment made under clause (5) of Section 16 of the GST Act, which was introduced by the Finance (No. 2) Act, 2024, with effect from 1st July 2017.

Key Points:

1. Clause (5) of Section 16 of the GST Act (as amended):

- This clause allows an assessee to claim Input Tax Credit (ITC) for delayed filings of returns for the financial year 2017-18, 2018-19, 201-20, and 2020-21.
- Prior to the amendment, the ITC could not be claimed for delayed returns. However, the amendment retrospectively permits such claims for returns filed after the due date for FY 2017-18.

2. Refund of Interest and Penalty:

- The Hon'ble High Court ruled that if the ITC was allowed under the new provision (amended clause 5 of Section 16), any interest or penalty levied on the petitioner due to delayed filing should be refunded.
- The refund is to be made with **6% interest** from the date of collection of such interest/penalty until the date of repayment.

Conclusion from the High Court Judgment:

- **Refund Eligibility:** The petitioner is entitled to a refund of the interest and penalty that were levied due to delayed filing of returns for FY 2017-18, in light of the amendment to Section 16(5).
- **Refund with Interest:** The refund should be made along with **6% interest** from the date of collection to the date of repayment.

Therefore, as per the High Court's judgment, the refund of interest and penalty is permissible if the delayed filing of returns for the financial year 2017-18 qualifies for ITC under the recent amendment, and the refund must include interest at 6%. (here 2018-19, 201-20, and 2020-21 are not mentioned, because the matter before court was only for 2017-18)