The government has decided to forego Rs 46,000 crore of unpaid interest on delayed GST payment by notifying on Wednesday that the interest will be charged on net tax liability, and not on gross liability, with effect from September 1. Now it will have to be seen whether the government would refund those businesses which have already paid the interest on gross liability for the last three years.

The Central Board of Indirect Taxes and Customs (CBIC) has notified September 1, 2020 as the date from which interest would be charged on net tax liability. Industry had earlier this year raised concern over the board’s directive for recovery of about Rs 46,000 crore of unpaid interest on delayed GST payment based on gross tax liability.

"...no recoveries shall be made for the past period as well as for Central and State tax administration in accordance with the decision taken in the 39th Meeting of GST Council. This will ensure full relief to the taxpayers as decided by the GST Council," the CBIC statement had said.

A decision on charging the interest on net tax liability was taken by the 38th GST Council meeting in March. It was then decided that the amendment will be effective from July 1, 2017, and law would be amended retrospectively.

However, the CBIC has now said that the notification has been issued prospectively due to certain technical limitations. "If the government is not recovering the unpaid interest of some businesses, it becomes imperative to refund to those who have already paid, from an equity point of view. But we will have to see whether the government will refund the interest already paid or not," said Abhishek Jain, tax partner, ET.

"It is possible businesses might seek a refund of the interest paid by them for the last three years based on gross tax liability. Businesses are expected to approach the courts on this unjustified and illegal demand of interest basis the 'principle of estoppel'," said Rajat Mohan, senior partner, AMRG & Associates.

In 2018, the Telangana High Court had upheld CBIC’s stance that the interest was payable on gross tax liability. An interest of 18 per cent is levied on delayed tax payment. Net GST Liability is arrived at after deducting input tax credit from gross GST liability. Hence, calculating interest on gross GST liability increases the payout burden on businesses.

According to Jain, the government will have to pay the refund if the court awards a judgement in favour of the businesses. Rahul Rajarya, chief India economist, Barclays, said the government should look at simplifying the tax system then forcing businesses to take legal recourse for smaller tax components.