

Apex Court disallows refund claim filed by Bharti Airtel – Restricts rectification of ‘prior period’s’ GSTR - 3B

Union of India v. Bharti Airtel Limited & Ors.¹

The Supreme Court dealt with an issue that emanates from the judgment passed by Delhi High Court², wherein the High Court had allowed the taxpayer to rectify Form GSTR-3B (monthly returns) filed for certain periods (i.e., July – September 2017). The Supreme Court dispelled the claim for refund of the excess tax liability paid through cash.

Facts of the case:

- Bharti Airtel Limited (‘Respondent’) received various services from suppliers since the inception of GST.
- The Respondent had to file a monthly return (i.e., Form GSTR-3B) capturing the details of both outward and inward supplies for every tax period and accordingly, discharge the applicable tax liabilities.
- During the initial months of GST from July till September 2017 (‘relevant period’), the Respondent had discharged their outward tax liabilities in cash, without utilizing Input Tax Credit (‘ITC’) which was available. This was done under the pretext that there was no in-built mechanism on the GST portal to verify authenticity of its inward

supplies and the corresponding ITC available, as was proposed in the law initially.

- However, when the facility of downloading Form GSTR-2A from the GST portal became functional, the Respondent realized that it had substantial ITC available at its disposal for that period.
- Accordingly, the Respondent filed a Writ Petition before the Delhi High Court praying for certain remedial measures, including refund of cash.
- Agreeing with the Respondent’s contentions, the Delhi High Court, while reading down paragraph 4 of **Circular No. 26/26/2017 – GST dated December 29, 2017** (‘Circular’), allowed the Respondent to rectify its GSTR-3B filed for the relevant period, and thereby claim refund of ‘excess’ GST paid through cash.
- Aggrieved by the decision of the Delhi High Court, the Government of India filed an appeal before the Honorable Supreme Court.

Judgement of the Supreme Court:

Setting aside the decision of the Delhi High Court, the Apex Court held that the Respondent could not rectify its GSTR-3B filed for the relevant period, and thereby

¹ 2021-VIL-87-SC

² 2020-VIL-197-DEL



barred the Respondent from claiming refund of 'excess' tax payments.

Some important observations made by the Hon'ble Supreme Court are as follows:

- GST law, much like the *erstwhile* Indirect Tax regime, envisages determination of tax liability for each tax period on a self-assessment basis.
- In other words, every registered person under GST is obligated to reckon their ITC eligibility and compute the tax payable for a particular period, primarily on the basis of their books of account and other office records, which it is statutorily required to maintain.
- The Supreme Court thus elucidated that the GST portal (and especially Form GSTR-2A) was only a facilitator to feed or retrieve information, and in no way is it the primary source for determining ITC availability and the consequent tax liability in a self-assessment tax environment.
- It was also observed that discharging tax liability through cash or utilization of ITC is a matter of choice, which having been exercised once, could not be revised or reversed later, in the absence of any specific legal provision to this effect. The only remedy available is that of making appropriate adjustments in GSTR-3B of subsequent months, in line with Section 39(9) of the Central Goods and Services Tax Act, 2017 ('the Act').
- Regarding the authority of Paragraph 4 of the Circular directing prospective adjustment of tax liabilities, the Supreme Court held that this classification was well within the contours of Section 39(9) of the Act, and hence legally valid.

Dhruva Comments

The GST regime was envisaged with ITC (set-off) on an automated basis, although the system for matching of ITC was not made operational from day one (1st July 2017). Taxpayers were at a disadvantage and ended up paying tax in cash. Recouping the cash payment ('excess' in this case) is in many situations a hurdle.

The Apex Court has not commented on the GST scheme as originally proposed to be implemented, the make-shift arrangement made to implement the GST tax filing, or the technological challenges being faced which have handicapped taxpayers.





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