

The Apex Court disallows rectification of GST return for INR 923 crore GST refund

29 October 2021



Summary

The Supreme Court (SC) has set aside the order of the Delhi High Court which had allowed the petitioner to rectify the return submitted in Form GSTR 3B for the relevant period in which the error had occurred. Further, the SC has disallowed refund of INR 923 crore as tax paid by the petitioner in cash instead of utilising input tax credit (ITC) due to failure to operationalise the Form GSTR-2A (auto populating facility reflecting ITC). The SC observed that the discharge of output tax liability by cash is a matter of option exercised by the petitioner and cannot be reversed unless the law permits such reversal or swapping of the entries. Therefore, the SC held that the petitioner cannot be permitted to unilaterally carry out rectification of return submitted electronically in Form GSTR-3B, which inevitably would affect the obligations and liabilities of other stakeholders, because of the cascading effect in their electronic records.

Facts of the case

- The grievance of the petitioner¹ was that due to failure to operationalise Form GSTR-2A at the relevant time (July to September 2017), it was unable to access the information about its electronic credit ledger account. Consequently, as the petitioner was not able to access the information pertaining to available ITC for the relevant period it had to discharge the output tax liability (OTL) in cash. Thus, this had resulted in payment of double tax and unfair advantage to the tax authorities.
- The petitioner was allowed by the Delhi high court to rectify Form GSTR-3B for the period in which error had occurred.
- The petitioner had appealed to rectify GSTR-3B so that it could avail ITC² and the cash deposited against OTL could be credited to electronic cash ledger.

- **Obligated to do self-assessment of ITC:** Under the law, the registered person is obliged to do self-assessment of ITC⁴ based on primary material, reckon its eligibility to ITC and of OTL based on his office record and books of accounts. The common portal is only a facilitator and not the primary source for doing self-assessment.
- **Express provision for rectification of errors:** On perusal of the provisions⁵ it was clear that omission or incorrect particulars furnished in the return in Form GSTR-3B can be corrected in the return to be furnished in the month or quarter during which such omission or incorrect particulars are noticed. The same has been restated in the impugned circular⁶. Therefore, the said circular is not contrary to the statutory dispensation specified under the law.
- **Payment of OTL by cash or ITC is optional matter:** Despite the availability of funds in the electronic credit ledger, the petitioner opted to discharge OTL by cash. Discharge of OTL by cash or by way of availing of ITC, is a matter of

SC observations and ruling³:

¹ Bharti Airtel Ltd

² Section 49 of the CGST Act, 2017

³ CIVIL APPEAL NO. OF 2021 ARISING OUT OF S.L.P. (C) NO. 8654 OF 2020

⁴ Under Section 16(1) and 16(2) of the CGST Act, 2017

⁵ Section 39(9) of the CGST Act, 2017

⁶ Circular No. 26/26/2017-GST dated 29.12.2017

option, which having been exercised by the petitioner, cannot be reversed unless the law permits such reversal or swapping of the entries.

- **Ground of non-operability of Form GSTR-2A is not acceptable:** The argument of non-performance or non-operability of Form GSTR-2A will be of no avail to the petitioner because the dispensation stipulated at the relevant time obliged the registered person to submit returns based on such self-assessment in Form GSTR-3B manually on electronic platform.
- **Incorrect assumption by HC:** Despite such an express mechanism provided under the GST law,⁷ it was not open to the HC to proceed on the assumption that the only remedy that can enable the assessee to enjoy the benefit of the seamless utilisation of the ITC is by way of rectification of its return for the relevant period in which error had occurred.
- **Rectification not permitted:** Therefore, the petitioner cannot be permitted to unilaterally carry out rectification of his returns submitted electronically in Form GSTR-3B, which inevitably would affect

the obligations and liabilities of other stakeholders, because of the cascading effect in their electronic records. Further, the challenge to circular is unsustainable as the stipulations stated in the circular are consistent with the Act. The order of the HC cannot be sustained and is accordingly set aside.

Our comments

The Apex Court has, in the present case, reserved the grant of relief provided by the Delhi High Court to Bharti Airtel stating that despite an express mechanism provided under the GST law, it was not open for the High Court to proceed on the assumption that the only remedy available was to rectify the return and correct the error to enjoy seamless utilisation of ITC. Further, the court also agreed with the tax department that any indulgence shown contrary to statutory requirement would lead to a chaotic situation.

The ruling will have a widespread ramification and will have a substantial negative impact on all the pending cases at all levels in similar matters.

⁷ By Section 39(9) of the CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI

National Office,
Outer Circle, L 41,
Connaught Circus,
New Delhi - 110001
T +91 11 4278 7070

NEW DELHI

6th Floor, Worldmark 2,
Aerocity,
New Delhi - 110037
T +91 11 4952 7400

BENGALURU

5th Floor, 65/2, Block
A, Bagmane Tridib,
Bagmane Tech Park,
CV Raman Nagar,
Bengaluru - 560093
T+91 80 4243 0700

CHANDIGARH

B-406A, 4th Floor,
L&T Elante Office Building,
Industrial Area Phase I,
Chandigarh - 160002
T +91 172 4338 000

CHENNAI

9th Floor, A Wing, Prestige
Polygon, 471 Anna Salai,
Mylapore Division,
Teynampet,
Chennai – 600035
T +91 44 4294 0000

DEHRADUN

Suite No 2211, 2nd Floor,
Building 2000,
Michigan Avenue,
Doon Express Business
Park, Subhash Nagar,
Dehradun - 248002
T +91 135 2646 500

GURGAON

21st Floor,
DLF Square, Jacaranda
Marg,
DLF Phase II,
Gurgaon - 122002
T +91 124 462 8000

HYDERABAD

7th Floor, Block III,
White House,
Kundan Bagh,
Begumpet,
Hyderabad - 500016
T +91 40 6630 8200

KOCHI

6th Floor,
Modayil Centre Point,
Warriam Road Junction,
MG Road
Kochi - 682016
T +91 484 406 4541

KOLKATA

10C Hungerford Street,
5th Floor,
Kolkata - 700017
T +91 33 4050 8000

MUMBAI

11th Floor, Tower II,
One International Center,
SB Marg Prabhadevi (W),
Mumbai - 400013
T +91 22 6626 2600

MUMBAI

Kaledonia, 1st Floor,
C Wing,
(Opposite J&J Office),
Sahar Road,
Andheri East,
Mumbai - 400069
T +91 22 6176 7800

NOIDA

Plot No 19A, 2nd Floor,
Sector - 16A,
Noida - 201301
T +91 120 485 5900

PUNE

3rd Floor,
Unit No 309-312,
West Wing, Nyati Unitree,
Nagar Road, Yerwada
Pune - 411006
T +91 20 6744 8800

For more information or for any queries, write to us at gtbharat@in.gt.com



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