



GST Refund: Rectification of returns

Bharti Airtel Ltd. v. The Union of India and Ors.¹

The Delhi High Court decided the Writ Petition challenging the vires of Rule 61(5) of the Central Goods and Services Tax Rules, 2017, Form GSTR 3B and Circular No. 26/26/2017-GST dated 29 December 2017 ('Circular') on the ground of being violative of Article 14, 19 and 265 of the Constitution and seeking relief in form of refund of the excess tax paid by the Petitioner for the period July 2017 to September 2017 ('said period') owing to the non-implementation of GST return filing as was proposed when GST law was implemented.

- The Petitioner while filing GST returns in Form GSTR 3B recorded the input tax credit ('ITC') on an estimate basis as the corresponding returns in Form GSTR 2, Form GSTR 2A and Form GSTR 3 were not made operational on the GST Portal. In absence of any functionality to verify the amount of ITC in the books of Petitioner vis-à-vis the details uploaded by the Supplier, the Petitioner discharged excess tax liability in cash, despite being entitled to avail significant amount of ITC, which the Petitioner was only able to verify in October 2018 after the operationalisation of Form GSTR 2A for the said period.

- There was no statutory procedure under the Goods and Service Tax Act, 2017 ('CGST Act') implemented by the Government to enable the petitioner to correct / amend its GSTR 3B returns and therefore, the Petitioner sought to file a writ before the Hon'ble High Court.
- In the Petition, the following questions came up for consideration:
 - Whether the Petitioner can rectify any error in GSTR 3B returns already filed?
 - Whether such rectification / amendment of return is to be made in the month to which the error pertains or in the month in which the error is noticed by the Petitioner?

Summary of the Judgement

- When CGST Act was implemented, it was intended that the details of supplies made by the supplier disclosed in GSTR 1, would auto-populate as input in Form GSTR 2A of the recipient. The recipient would have an option to verify, validate, modify or delete such details in Form GSTR 2A and thereafter file Form GSTR 2 with the details of ITC availed. The details of any changes were to be

¹ W.P.(C) 6345/2018, CM APPL. 45505/2019



communicated to the supplier and Form GSTR 1 was to be amended accordingly. The unmatched details were required to be rectified in the month where such omission / incorrect details were noticed. Lastly, all these details were to auto-populate in Form GSTR 3 and the final return [for the month] was to be filed accordingly.

- The scheme of GST return filing was not implemented as was proposed and the GSTR-3B return as a substitute summary return was introduced. The data in the GSTR-3B, is required to be manually fed in and is not received as auto populated with verified disclosures as was proposed originally. The Hon'ble Court mentioned that the CGST Act provides a statutory right and facility to every person to avail ITC and file returns which can be corrected in the same month itself under Section 37 and 38 of the CGST Act. However, as the Respondent had failed to implement such statutory forms due to lack of technical infrastructure, the same cannot be the basis for denial of a statutory benefit to the Petitioner.
- The Hon'ble High Court also alluded to the refund provisions under the CGST Act and concluded that the Petitioner would not get covered under the refund provisions, as the refund of excess ITC can be claimed only in case of zero rated supplies and inverted duty structure and also merely providing the refund under Section 46(5) would not help the Petitioner.
- The Hon'ble High Court discussed Para 3 and 4 of the Circular, wherein Para 3 provides for amendment / rectification of errors and Para 4 imposes a restriction stating that rectification of error can be done in the month in which the error is noticed and not in the month to which the data relates. The High Court held the Circular to be arbitrary and contrary to the provisions of the CGST Act as there is no provision in the Act which debars the Petitioner from making a rectification in the return for the period to which the error relates.
- Further, the Court also held that a subordinate legislation must conform to the statute under which it is made, and it cannot whittle down the benefits

granted under statutory provision. Hence, the Circular cannot override the Act.

- The Hon'ble High Court concluded that the correction mechanism is critical to sustaining successful implementation of GST and thereby allowed the petitioner to rectify Form GSTR-3B for the said period.

Dhruva Comments

The decision acknowledges the importance of the fact that the amendment should be permitted to be made in the same returns, as opposed to subsequent returns. The amendments / availment in subsequent returns does not cure the issue of accumulation being faced by various taxpayers. By allowing the amendment of original returns, the excess tax paid through cash would become available as refund to the taxpayers, where the same is lying unutilized in the cash ledger.

However, the implementation of these aspects would have to be examined closely as the system today does not have the functionality to amend past / filed GSTR-3B and even where revised manual [physical] returns are filed, it is unclear as to how the authorities will process the refund claims outside of the GSTN system.

In addition, the decision opens an opportunity for the taxpayers to claim refund of GST paid in similar circumstances. E.g. where TRAN-1 declaration was not introduced on time and the taxpayers were forced to pay GST in cash, despite having substantial accumulated credit balance as a carry forward. This becomes important from a cash flow perspective, considering the Covid-19 crisis. The right to claim refund claim will also have to be examined in the light of the limitation provisions under the statute.

Also, the findings and the acknowledgement from the Revenue that GSTR-2 and GSTR 3 were never operationalised, is a very relevant finding qua the tax demands arising out of reconciliation between GSTR-2 (credit as per books) and GSTR 2A.





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