

RECTIFICATION OF GST RETURNS IN FORM GSTR-3B TO BE PERMITTED FOR THE MONTH TO WHICH IT RELATES: DELHI HC

The Delhi High Court in Bharti Airtel Ltd. v. Union of India [WP(C) 6345/2018] considered the validity of CBIC Circular No. 26/26/2017-GST dated 29.12.2017 which restricted rectification of errors in Form GSTR-3B to the period in which the error is noticed and corrected, by way of net reporting, and not correction in the period to which the original return relates. In reading the scheme of return filing as provided within the Central Goods and Services Tax Act, 2017 (“CGST Act”), the High Court, *vide* order dated 05.05.2020, allowed the Petition and quashed the Circular dt. 29.12.2017 as *ultra vires* the statutory provisions.

Background

The originally envisaged scheme of GST returns is of relevance to the matter at hand. **Section 39 of the CGST Act** provides for furnishing of a consolidated return, intended to be Form GSTR-3. Sub-section (9) thereof states that any omissions in such return may be rectified “*in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed*”. This language was sought to be amended to “*in such form and manner as may be prescribed*” by the Central Goods and Services Tax (Amendment) Act, 2018. However, this amendment is yet to be notified. The summary filing of Form GSTR-3B has been provided under **rule 61(5) of the Central Goods and Services Tax Rules, 2017**.

Circular No. 7/7/2017-GST dated 01.09.2017 was issued to provide a guide to reporting and system reconciliation of returns in Forms GSTR-1 (outward supplies), GSTR-2 (inward supplies) and GSTR-3 (consolidated report of inward and outward supplies for discharge of liability). According to the Circular dated 01.09.2017, any rectifications in outward liability or input tax credit (“ITC”) would be made in the very month to which the liability or ITC pertains. Although a simplified return in Form GSTR-3B was introduced for July, 2017 onwards, this was intended to be a stopgap arrangement. In fact, the Circular dated 01.09.2017 provides for amendment of ITC incorrectly furnished in Form GSTR-3B to be done in the final Form GSTR-3 on the basis of the system reconciliation with Form GSTR-2.

Thereafter, **Circular No. 26/26/2017-GST dated 29.12.2017** was issued to keep the earlier Circular dated 01.09.2017 in abeyance since all the returns had not been operationalised. The Circular dated 29.12.2017, impugned in the present matter, states that since Form GSTR-3B does not allow reporting of differential figures in respect of previous months, the figures must be reported on a net basis in the return of the month in which the error is noticed and rectification being made.

Facts

The present matter in respect of the Petitioner pertains to the period between July, 2017 and September, 2017. Since Form GSTR-2A was not operational on the GST portal at the time, the Petitioner could not reconcile the ITC available to it on the system and had resorted to availing ITC based on its own conservative estimate and discharging its liability in cash.

However, upon operationalisation of the Form GSTR-2A, the Petitioner discovered that it was eligible to avail a substantially higher amount of ITC for July, 2017 to September, 2017. Being unable to amend the returns filed for that period, the Petitioner is forced to claim residual ITC in future returns and adjust the same against future output liability in terms of the Circular dated 29.12.2017. However, due to lowered tariffs in the telecom sector, the Petitioner faces a reduced

output liability and is unable to exhaust the residual ITC. In contrast, amendment of returns for July, 2017 to September, 2017 would allow the ITC to be availed in the correct months and reduce the Petitioner's cash outflow for those months.

Judgment

The High Court observed that the statutory scheme intended to create an infrastructure whereby reported details are auto-populated and reconciled through the IT system before being verified, modified and filed by the taxpayer. Therefore, **this system is not merely procedural but creates a statutory right of such facility in favour of the taxpayer so that the correctness of reported data may be authenticated.** In this regard, the judgment notes that the Department has failed in operationalisation of the original scheme of the CGST Act and cannot take benefit of its own lapses to deprive the Petitioner of its substantive right to rectification of the returns.

Analysing the limited scope of refund provisions under the CGST Act, the High Court found that there is **no alternate remedy available in the Petitioner's case for reduction of the cash liability, other than rectification of the returns for the prior period.** Additionally, the judgment notes a lack of any cogent rationale on part of the Department in disallowing such rectification.

Subordinate legislation in the form of rules or departmental circulars cannot restrict or conflict with the substantive law laid down by statute. In view of this, the Delhi High Court ruled that the Circular dated 29.12.2017 be read down to the extent that it disallows rectification of Form GSTR-3B in the return of the month to which the error relates.

VA Comments

Although the judgment places considerable reliance on the factual background in this case, it has categorically observed the Circular dated 29.12.2017 to be *ultra vires* the explicit scheme of the CGST Act. The pronouncement may come as a relief to taxpayers who have been riddled with technical and procedural setbacks since the implementation of the GST regime.

However, the matter at hand pertains to a period prior to introduction of Form GSTR-2A on the portal. Although filing of Forms GSTR-2 and GSTR-3 remains suspended, **the availability of inward supplies in Form GSTR-2A is not a factor considered in the instant case. Amendment to section 39(9) of the CGST Act, as and when notified, may also pose a hindrance** to this applicability of this judgment as precedent to any prospective scenarios. However, **the implementation of the new returns system may potentially circumvent the need for such clarification altogether** since retrospective amendment of the return is allowed and system reconciliation is proposed to be made available for inward supplies.

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