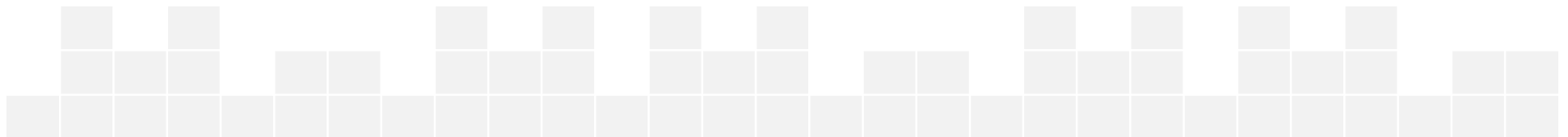


**LATEST**

# **Rectification of GST Returns – prior to October 2018**

**Delhi High Court – In case of Bharti Airtel Limited**

**[W.P.(C) 6345/2018]**



# Rectification of GST Returns

In this latest decision of the Hon'ble Delhi High Court, it has been held that, restriction imposed on rectification of GST return through a Circular, in the month for which the statutory return has been filed, is contrary to the scheme of GST Act.

## Brief Facts

- The Petitioner recalled several issues faced during the early days of GST regime which had significant effect on the tax paid, output liabilities and ITC claimed, leading to several inadvertent errors in filing the GST Return for the period July 2017 to September 2017
- The major grievance was towards the recording of ITC based on its estimates, since there was no GSTR 2A, as same was operationalized only from latter part of 2018. This resulted into discharging of tax liability (to the tune of Rs. 923 Crores) in cash, despite of having eligible ITC for the period of July 2017 to September 2017
- The Petitioner also mentioned that, such errors were occasioned due to non-operationalization of Form GSTR 2A, GSTR 2 and GSTR 3 and other system related checks, which could forewarn the taxpayers. These were supposed to be the backbone of the GST law
- Given the above, the grievance of the Petitioner was that they could not rectify Form GSTR-3B for the period from July 2017 to September 2017 due to restrictions imposed by Circular No. 26/26/2017-GST dated 29.12.2017 and the inability of the GST system
- Furthermore, the payments made by the Petitioner could not be covered under the provisions of Section 54 of the CGST Act, as it is not strictly in the nature of excess payment of tax or zero-rated supply of inverted duty structure, etc.

# Rectification of GST Returns Cont..

## Discussion & Decision

- With proper interpretation of the provisions in Section 37, Section 38 and Section 39 of the CGST Act, it clearly emerges that there will be a validation of monthly data wherein, the output of one dealer becomes input of another dealer. Further, the CGST Act contemplated a concept of self-policing, where the authenticity of ITC is not only auto-populated but is also verified in the same month
- It was held that, Para 4 of Circular No. 26/26/2017-GST dated 29.12.2017 is not in consonance with the provisions of CGST Act, 2017 as it stipulates that the rectification of errors can be done concurrently in the month in which the error is noticed, and not in the month to which the data relates
- Court also mentioned that that, the Respondents have also not been able to expressly indicate the rationale for not allowing the rectification in the same month to which the Form GSTR-3B relates. Respondents had admitted that the facility of Form GSTR-2A (which was statutorily mandated) was not available prior to October 2018
- The Hon'ble High Court held that, it is imperative for rectification of the return for that very month to which it relates. Accordingly, they permitted the Petitioner to rectify Form GSTR-3B for the period to which the error relates, i.e. the relevant period from July 2017 to September 2017

# Rectification of GST Returns Cont..

## Our Comments

- This is a welcoming Judgment by the Hon'ble High Delhi Court in such a crisis period, which allowed the rectification of GST returns to the Co. pertaining to the period July 2017 to September 2017. This Judgment will have a great persuasive value as it cannot be negated that the inefficient and untimely transition has caused enough hardship to the taxpayers
- Relief has been served to the taxpayers for the difficulties faced during the initial phase of the GST regime on account of inefficiency of the electronic system, as it was not equipped to handle the transition and give effect to the intention of the legislation
- An important aspect of this decision is that, if there were errors in filing of a return due to which appropriate ITC could not be claimed, the return should be allowed to be rectified in the very month in which the ITC was not recorded and the cash paid should be available as refund
- We understand that many assesses fall under the same bracket and may avail the benefit of revising their return by citing this decision



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