

Supreme Court blow for Airtel in GST Refund Case – Tax Experts Opine

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The Supreme Court's unprecedented move striking-down Delhi High Court order granting relief to Bharti Airtel by quashing the restriction on rectification of GST returns, has been the hot potato since yesterday. In a big setback for Bharti Airtel denying Rs. 923 crores refund of excess output tax paid (in cash), SC firmly opined that Bharti Airtel cannot be permitted to unilaterally carry out rectification of its 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. Profusely, SC carved out an important point, that the GSTN system is merely a facilitator for the purpose of tax reporting and assesseees cannot shed their responsibilities citing system failures or inefficiencies while terming the plea about non-operability of Form GSTR-2A, as "flimsy".

Against the backdrop, top tax stalwarts discuss the implications of the ruling for businesses (including medium and small business enterprises) and what it envisages in particular.



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Bharti Airtel claimed Rs. 923 crores refund by way of rectifying its GST returns for the period to which the error relates i.e. months of July to September 2017. Upon realizing that wash surplus amount of ITC in its electronic credit ledger (ECL), Assessee filed a refund claim of its output tax liability paid in excess by cash due to non-operationalization of GSTR-2A.

Taking note of repeated technical glitches in GSTN portal Hon'ble HC read-down para 4 of impugned circular to the extent it restricted the rectification of Form GSTR-3B in respect of the period in which the error occurred.

In the case SC held that, HC did not enquire into the fundamental question as to whether the taxpayer was required to be fully dependent on the auto generated information on the GSTN portal or not.

SC also note that there is a legal obligation on taxpayer to maintain books of account and records irrespective of the fact that such similar auto-populated electronic data was inexistent in the erstwhile laws. The primary source of accounting is agreements, invoices/challans, receipts of goods and services and books of accounts maintained manually/electronic and not the information maintained on GSTN portal. Thus, the plea about non-operability of Form GSTR-2A, is "flimsy".

This is a multi-faceted issue. On one hand, the concerned authority has failed to devise a linear indirect taxation system. Due to that dynamic changes are occurring from time to time, substantially causing problems for the taxpayers. In the present case, the non-functionality of GSTR-2 and GSTR-3 in filing the return is evidentiary of such an issue. A stop-gap arrangement (GSTR-3B) is provided to cover up technical glitches but when the pertaining provision (GSTR-2) is operationalized, inherent problems in the statutory provisions transpire.

On the other hand, considering the GST zeitgeist i.e., intricate system of GST, the taxpayers are required to be cautious and conspicuous while self-assessment of ITC and filing of the return within the stipulated time period.

The impasse between GST authority and taxpayers is an aftermath of cumbersome statutory provisions not yet prevalent with the masses. The strict interpretation of provisions envisaged in the GST Circular is detrimental to taxpayers who are a novice to the post-GST regime. It was the view that the Hon'ble Supreme Court should have been lenient considering the inherent limitations of the GST system. However, in the case of Rajeev Suri vs. DDA & Ors., Supreme Court stated that "the trajectory of our jurisprudence in the review of matters involving personal liberties has been one of the strict approaches."

This stringent view will cause financial encumbrance on the taxpayers even when bona fine errors were made due to numerous challenges in the entire ecosystem. This judicial precedent will impact both the market giants and medium and small business enterprises sooner than later. Hon'ble Court could have given a scope of rectification in the forms and applied pensive and wide interpretation of the statutory provisions