

TAX FLASH NEWS

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Supreme Court affirms GST common portal is only a facilitator to feed or retrieve information and need not be the primary source for doing self-assessment

Hon'ble Delhi High Court vide its judgement dated 5 May 2020 had held that there was no reason to restrict rectification of GST returns and accordingly permitted to rectify Form GSTR-3B. This was not accepted by Hon'ble Supreme Court of India¹ which held that not making Form GSTR-2A operational cannot be a ground to allow revision of the returns.

Facts of the case

'Assessee' had sufficient input tax credit amount in electronic credit ledger during the impugned period July 2017 to September 2017 to offset its output tax liability. However, it discharged its output tax liability by depositing/paying in cash instead of utilizing input tax credit on the contention that Form GSTR-2A was not operational.

As there is no option to rectify/revise GST returns, it filed writ petition before the Hon'ble High Court of Delhi challenging Rule 61(5) of the CGST Rules, Form GSTR-3B and Circular No. 26/26/2017-GST dated 29 December 2017 as ultra vires the provisions of Central Goods and Services Tax Act, 2017 (CGST Act) and contrary to Articles 14, 19 and 265 of the Constitution of India.

Hon'ble High Court of Delhi allowed the writ petition in favour of the 'Assessee'. In response to same, tax department filed an appeal before the Hon'ble Supreme Court.

Revenue's contentions

Legal provisions

- Right to claim input tax credit, being a statutory right, is circumscribed by conditions and restrictions, subject to which a registered person is entitled to take credit.
- If the registered person intends to avail input tax credit, it can do so by paying the output tax liability from electronic credit ledger referred to in sections 2(46) and 49(2) of the CGST Act. As per section 59, every registered person is required to self-assess the taxes payable and furnish a return for each tax period as specified under section 39.
- Form GSTR-3B was always treated as return within the meaning of section 39 of the CGST Act.
- 'Assessee' cannot take advantage of its own failure of not being able to operationalize Form GSTR-2 and Form GSTR-3.

Common electronic portal

- Efficacy of common electronic portal or so to say malfunctioning thereof, does not extricate the registered person from the primary obligation of self-assessment of output tax liability as prescribed in section 16. For self-assessment, the registered person is obliged to maintain accounts and records as envisaged under Chapter VII of the CGST Rules.
- Features provided in the common electronic portal of auto-matching and auto-populating of the record of the supplier and the recipient and vice-versa are only a facility made available to the registered person.

¹ Union of India vs Bharti Airtel Ltd & Ors. [2021-VIL-87-SC]

- 'Assessee' cannot find fault with the deficiencies in the common electronic portal so as to extricate from its obligation.

Assessee's contentions

- It is only after operationalization of GSTR-2A in September 2018 that complete data for July to September 2017 became available to it on the basis of which it wanted to revise the GST returns filed for the impugned period.
- Revision was possible in terms of Circular No. 7/7/2017 dated 01 September 2017, which predicated that the details furnished in Form GSTR-3B will be corrected based on Form GSTR-1 and Form GSTR-2 and will be auto-populated and will reflect in Form GSTR-3 in that particular month.
- Circular No. 26/26/2017-GST dated 29 December 2017 stating that the above referred Circular will be kept in abeyance until such time period of filing of Form GSTR-2 and Form GSTR-3 is worked out is wholly without jurisdiction as it arbitrarily alters the statutory framework. This is also inconsistent with the return filing system under previous tax regime.

Supreme Court's decision

Hon'ble Supreme Court set aside the order of the Hon'ble Delhi High Court and concluded the following :

- Section 39(9) provides for an express mechanism to correct the error in returns for the month or quarter during which such omission or incorrect particulars have been noticed.
- Form GSTR-2A is only a facilitator for taking an informed decision while doing such self-assessment. Non-performance or non-operability of Form GSTR-2A or for that matter, other forms, will be of no avail because the dispensation stipulated at the relevant time obliged the registered person to submit returns on the basis of such self-assessment in Form GSTR-3B manually on electronic platform.
- Challenge to the impugned Circular No. 26/26/2017-GST dated 29 December 2017 is unsustainable.

Our comments

This was one of the most awaited judgment wherein many entities were envisaging a possibility of rectifying/revising the already filed GST return. Albeit the Hon'ble Supreme Court held it otherwise, it has held that Form GSTR-2A is only a facilitator to feed or retrieve such information and need not be the primary source for doing self-assessment. The view that, Form GSTR-2A is only a facilitator to arrive at the quantum of eligible credit and that the primary source would be the accounts, records, documents, etc. as maintained/kept by the assessee in accordance with law, highlights the importance of such source as regards the quantification of eligible input tax credit. This will help in substantiating the veracity of the input tax credit as shown in Form GSTR-3B in situations where there arises a difference between the auto populated input tax credit in (the auto drafted) Form GSTR-2A.



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