

Union of India v. Bharti Airtel Ltd. & Ors.

Case number: Civil appeal arising out of SLP (C) No. 8654 of 2020

Citation: Judgment dated 28 October 2021

Decision date: 2021-10-28

GST self-assessment and rectification of GSTR-3B for July to September 2017

Court: Supreme Court

Bench: A.M. Khanwilkar and Dinesh Maheshwari, JJ.

Decision stage: Final judgment

01 Facts

Bharti Airtel, a registered supplier and recipient of services, sought to revise the GSTR-3B returns it had filed for July, August and September 2017, the initial months of GST. It contended that unavailable automated reconciliation and GSTR-2A information had prevented an accurate assessment of available input tax credit (ITC), causing it to discharge output tax liability in cash even though ITC could have been used. It claimed that later information revealed excess cash payment of Rs. 923 crore. That figure was the taxpayer's claim, not a refund awarded by the Supreme Court. Airtel wanted the earlier returns changed so that ITC would replace cash used to discharge the liability, with a corresponding restoration to its electronic cash ledger. Paragraph 4 of Circular No. 26/26/2017-GST instead contemplated adjustments through subsequent returns. On 5 May 2020, the Delhi High Court read down that paragraph, permitted rectification of the July-September 2017 returns and directed verification and consequential effect. The Union appealed. The dispute therefore concerned reopening those historical returns and changing the mode of payment, rather than a general denial of the existence of ITC.

Pinpoint: Paragraphs 1, 10-17 and 28; official PDF pages 1-2, 6-15 and 29-31.

02 Court Discussion

The Court treated the taxpayer's own records as the foundation of self-assessment. Agreements, invoices, evidence of supplies and books of account had to be maintained and used to determine eligible ITC and output tax liability; the common portal and GSTR-2A facilitated that exercise but did not replace it. Non-operation of GSTR-2A did not, on these facts, justify departure from the statutory return-correction mechanism. Section 39(9), as applicable to the disputed period, permitted correction in the return for the month or quarter when the omission or incorrect particulars were noticed. Paragraph 4 of the circular restated that mechanism. A taxpayer's inability to obtain a cash refund by the route it preferred did not confer a right to reverse its earlier choice of paying tax in cash and swap entries between the cash and credit ledgers without statutory permission. Although introduced as a stop-gap arrangement, GSTR-3B was a return under section 39 read with rule 61. The Court disagreed with the contrary view in AAP & Co.; the retrospective rule 61 amendment was also material, and its validity was not under challenge. The Court distinguished inability to access a portal to file a return from Airtel's attempt to replace an already elected cash payment with ITC. It explained that the credit remained available for use through the permitted mechanism in the circumstances before it, while unilateral revision of earlier returns could affect counterparties and the finality of self-assessment. Separately, it rejected the Union's preliminary jurisdiction and non-joinder objections, and upheld the Board's authority under section 168(1) for the circular.

Pinpoint: Paragraphs 30-41 and 43-50; official PDF pages 31-43 and 45-51. Core self-assessment reasoning: paragraphs 32-36 and 46. Correction and ledger reasoning: paragraphs 37-40, 44 and 47-50.

03 Decision

The Supreme Court held that the challenged circular, including paragraph 4, was consistent with the Act and Rules governing the disputed returns. There was no basis to read it down or to direct rectification of the original July-September 2017 GSTR-3B returns contrary to the statutory mechanism. The Union's appeal was allowed, the Delhi High Court's judgment and order were set aside, and Airtel's writ petition was dismissed. There was no order as to costs; all applications were disposed of. The Court did not direct a Rs. 923 crore refund, remand the dispute for such a refund, or grant permission to reopen those three returns.

Pinpoint: Paragraphs 50-52; official PDF pages 51-52. The correction route is explained in paragraphs 37, 44 and 47.

04 In Favour Of

Union of India / Revenue on merits; preliminary jurisdiction and non-joinder objections rejected

In favour of the Union of India / Revenue on the substantive return-rectification dispute. This was a final reversal of the High Court's relief and dismissal of the writ petition, not an interim or remand outcome. The Union nevertheless failed on its preliminary objections to Delhi High Court jurisdiction and non-joinder of States and Union Territories. The adverse substantive result for Airtel should not be described as a holding that eligible ITC itself ceased to exist; the Court addressed the permissible method and timing of correction and use of credit in this case.

Pinpoint: Paragraph 30 (preliminary objections), paragraphs 37 and 47-50 (substantive limits), and paragraph 52 (operative result); official PDF pages 31-32, 39-40 and 49-52.

05 AKHB REVIEW POINT

AKHB REVIEW POINT: Reconcile purchase records, invoices, available credit and output liability before filing, and retain the evidence supporting the return. A claim that portal-generated information was unavailable should be tested against what the taxpayer's own contemporaneous records could establish. For a proposed correction, identify the original tax period, the date the error was discovered, the precise entry involved and the correction mechanism and deadline applicable to that period. This judgment is particularly important where the requested relief would retrospectively substitute ITC for cash used to discharge a correctly quantified liability. It should not be used as an undifferentiated answer to every GST portal failure or wrong-column case: the Court itself distinguished inability to file through a malfunctioning portal. Nor should its discussion of credit being available in later returns be treated as a general exemption from statutory ITC conditions or time limits. The holding arose from July-September 2017 returns. Apply the legislation and notifications governing the actual period before advising on a current claim; the historical correction deadline reproduced in the judgment is not a reliable statement of today's deadline. The statutory update below is a limited later-development check, not a comprehensive subsequent-treatment opinion.

Pinpoint: AKHB analysis based on paragraphs 32-40, 43-48 and 50; official PDF pages 34-42, 45-50 and 51. Later statutory timing update: Ministry of Finance clarification dated 4 October 2022, paragraphs 1-4 (link below).

Sources and limitations

Relevant provisions

Central Goods and Services Tax Act, 2017: sections 16(1)-(2), 37, 38, 39(9), 41, 49(2), 59 and 168(1), as relevant to the disputed period

Central Goods and Services Tax Rules, 2017: rule 61(5)-(6) and Chapter VII, as relevant to the disputed period

Circular No. 26/26/2017-GST dated 29 December 2017, especially paragraph 4

Notification No. 49/2019-Central Tax dated 9 October 2019, retrospectively amending rule 61 from 1 July 2017

Statutory note

Historical-period qualification: the Court applied section 39(9) and rule 61 as relevant to July-September 2017. A later, bounded official-source check confirms that Finance Act 2022 section 105(c), brought into force on 1 October 2022 through Notification No. 18/2022-Central Tax, changed the section 39(9) rectification cutoff to 30 November of the following financial year or furnishing of the relevant annual return, whichever is earlier. The Ministry of Finance's clarification of 4 October 2022 states that these extended timelines apply from FY 2021-22 onwards. This update does not reopen the returns at issue in this judgment and is not a complete audit of later GST amendments or case-specific eligibility.

Treatment note

Primary judgment verified on 12 October 2026. Only the specified 2022 statutory timing development has additionally been checked. No comprehensive search for subsequent judgments, review orders, overruling, legislative changes or current applicability has been completed; current precedential treatment is not certified. This is an AI-assisted source-based AKBH research note, not evidence of human legal review and not a substitute for advice on the reader's facts.

Scope of source review

Complete 52-page official judgment, paragraphs 1-52. Case identity and signed bench checked on the cover and signature page. The cover leaves the civil appeal number blank and identifies SLP (C) No. 8654 of 2020; no unverified reporter or neutral citation is supplied. Analysis addresses the historical July-September 2017 returns.

Primary source

Source description: Supreme Court of India official signed judgment dated 28 October 2021

Official source: [Open source document](#)

AKHB source PDF: [Open source document](#)

Judges: A.M. Khanwilkar; Dinesh Maheshwari

Outcome type: final

Additional sources

Entry 1

Source: Ministry of Finance clarification dated 4 October 2022

Source document: [Open source document](#)

Source note: Bounded check of the section 39(9) rectification deadline; not a comprehensive current-law review.

Disclosures and source rights

AI disclosure: Prepared with AI assistance from the identified sources. No human legal review is claimed.

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