

Union of India & Ors. v. AAP and Company

Case number: Civil Appeal No. 5978 of 2021

Citation: Order dated 10 December 2021; no separate reporter or neutral citation verified

Decision date: 2021-12-10

Status of GSTR-3B as a statutory return; direct application of Bharti Airtel to the overruled Gujarat decision

Court: Supreme Court

Bench: A.M. Khanwilkar and C.T. Ravikumar, JJ.

Decision stage: Final reasoned order disposing of the Revenue appeal by applying Bharti Airtel

01 Facts

The Union of India appealed the Gujarat High Court judgment dated 24 June 2019 in Special Civil Application No. 18962 of 2018. The Supreme Court had meanwhile decided Union of India v. Bharti Airtel Ltd. & Ors., Civil Appeal No. 6520 of 2021, on 28 October 2021. The AAP order identifies that precedent as expressly overruling the very Gujarat judgment under appeal. The respondent nevertheless sought to distinguish Bharti Airtel and submitted a written note. The short order does not reproduce the underlying transactions, an individual tax demand or a quantified refund claim. For the substantive background only, Bharti Airtel paragraph 41 identifies the Gujarat issue as whether Form GSTR-3B was the return required by section 39; the Gujarat view had treated it as a temporary arrangement until the GSTR-3 filing date was notified. The immediate issue in this appeal was whether that already-overruled judgment could survive by distinguishing the precedent.

Pinpoint: AAP signed order, unnumbered paragraphs on official PDF page 1; linked Bharti Airtel judgment, paragraph 41, official PDF pages 42-43.

02 Court Discussion

The Court rejected the attempted distinction because Bharti Airtel had expressly overruled the impugned Gujarat judgment. It took the respondent's note on record only to reject it. This was a direct application of the governing decision, rather than a fresh, detailed reconsideration of the return framework. In the relevant passage of Bharti Airtel, the Court held that Form GSTR-3B remained a return under section 39 read with rule 61 despite its initial stop-gap role. Paragraph 41 expressly rejected the contrary Gujarat view and relied additionally on the retrospective rule 61(5) amendment clarifying that a person furnishing GSTR-3B need not later furnish GSTR-3. The validity of that amendment had not been put in issue in Bharti Airtel. Those statutory observations belong to the expressly applied precedent and are identified here as such; the two-page AAP order does not independently reproduce them or decide every conceivable ITC, filing-error or portal-failure dispute.

Pinpoint: AAP signed order, official PDF pages 1-2; Bharti Airtel paragraphs 39-41, official PDF pages 41-43. The direct rejection of the Gujarat reasoning is in paragraph 41.

03 Decision

The Revenue appeal succeeded on the same terms as Civil Appeal No. 6520 of 2021, Union of India v. Bharti Airtel Ltd. & Ors., identified in the order as reported in (2021) 13 SCALE 301. The civil appeal was disposed of in those terms, and pending applications, if any, were also disposed of. The Court did not remit this

appeal for a new adjudication, quantify a tax demand, or award a refund in this order. The accompanying record of proceedings records disposal in terms of the signed order.

Pinpoint: AAP signed order, official PDF page 2; accompanying record of proceedings, page 3.

04 In Favour Of

Union of India / Revenue; the appeal succeeds by application of Bharti Airtel

In favour of the Union of India / Revenue in this appeal. The respondent's attempt to preserve the Gujarat judgment by distinguishing Bharti Airtel failed. This is a final disposal applying an existing substantive precedent, rather than an interim direction or an independent adjudication of a quantified liability. It should not be presented as granting an extension of every GST time limit or extinguishing all otherwise eligible ITC.

Pinpoint: AAP signed order, official PDF pages 1-2; Bharti Airtel paragraphs 39-41 for the return-status context.

05 AKHB REVIEW POINT

AKHB REVIEW POINT: A submission that GSTR-3B was merely an informal or non-statutory return cannot safely rely on the Gujarat AAP judgment after its express rejection in Bharti Airtel and this direct appellate disposal. When preparing a return-correction or ITC case, identify the actual error, return period, governing statutory version, available correction mechanism and deadline. Read the full Bharti Airtel decision for its own facts and limitations; this brief application order does not supply a new general remedy for all filing problems. Keep the two decisions separately identified: AAP is a distinct dated order concerning the Gujarat litigation, while Bharti Airtel contains the detailed return-correction reasoning. Do not import Airtel's Rs. 923 crore claim into AAP as though it were a fact or relief in this case.

Pinpoint: AKHB analysis based on AAP official PDF pages 1-2 and the specifically checked Bharti Airtel paragraphs 39-41, pages 41-43.

Sources and limitations

Relevant provisions

Central Goods and Services Tax Act, 2017: section 39, including section 39(9), through the expressly applied Bharti Airtel judgment

Central Goods and Services Tax Rules, 2017: rule 61(5), including its historical amendment by Notification No. 49/2019-Central Tax dated 9 October 2019, as discussed in Bharti Airtel paragraphs 39-41

Statutory note

This order applies the historical return framework considered in Bharti Airtel; it does not state a current universal deadline for rectification or taking ITC. Its rejection of the Gujarat view on GSTR-3B status must be separated from the different statutory conditions and time limits governing an individual claim. No independent comprehensive audit of later amendments to sections 16 or 39, rule 61, or related notifications has been completed for this note.

Treatment note

Primary order and the identified Bharti Airtel passages checked on 12 October 2026. No comprehensive subsequent-treatment, review or clarification-order search has been completed. The reference to Bharti is an express relationship in the original order, not a representation that every later application of either

decision has been checked. This AI-assisted AKHB research note is based on identified primary material; it is not evidence of human legal review and is not a substitute for professional advice on a particular case.

Scope of source review

Complete three-page official PDF read: the two-page unnumbered signed order and one-page record of proceedings. Case number, title, bench and decision date verified from those pages. The electronic-signature timestamp of 19 July 2022 is not the judicial decision date. Bharti Airtel paragraphs 39-41 and its signature page were separately checked in the identified official original to explain the precedent's return-status context; this note does not claim a fresh full-source review of that separate judgment. Bharti primary source: https://api.sci.gov.in/supremecourt/2020/13465/13465_2020_3_1502_30887_Judgement_28-Oct-2021.pdf

Primary source

Source description: Supreme Court of India official signed order dated 10 December 2021 and accompanying record of proceedings

Official source: [Open source document](#)

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Judges: A.M. Khanwilkar; C.T. Ravikumar

Outcome type: final

Disclosures and source rights

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