

EY Tax Alert

HC allows rectification of GSTR-3B after expiry of statutory time limit

Tax Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

Executive summary

This Tax Alert summarizes a recent ruling¹ of Karnataka High Court (HC) allowing rectification of GST returns with respect to availment of input tax credit (ITC) for the month of July 2017 and March 2018.

The petitioner had inadvertently considered integrated tax (IGST) paid on imports as other IGST in July 2017 and as central tax (CGST) and state tax (SGST) in March 2018. This error resulted in a mismatch between the GSTR-3B and GSTR-2A.

During audit, Revenue sought to disallow such ITC. The petitioner requested to rectify these errors by submitting a revised table in GSTR-3B, but the same was rejected on the ground that such rectification had become time-barred.

HC observed that the authorities must avoid a blinkered view while adjudicating/ assessing the tax liability of a dealer.

Revenue has, in the absence of GSTR-2A, referred to the IGST import figures reflected on ICEGATE portal for all the months except those in which the errors have been committed.

This clearly indicates that the Revenue is aware of the actual figures and also that there is an error committed by the petitioner, but has chosen to selectively ignore the IGST import amounts reflected on ICEGATE portal for the tax periods in dispute.

HC noted that there cannot be said to be any cascading effect, since the petitioner only seeks to shift the ITC already claimed from one head to another.

Accordingly, HC held that the petitioner is entitled to make the necessary changes in GSTR-3B returns for July 2017 and March 2018.

¹ 2023-VIL-46-KAR

Background

- ▶ The petitioner had inadvertently considered import IGST pertaining to July 2017 as other IGST and import IGST pertaining to March 2018 as CGST and SGST. This error in entering the figures under the wrong head resulted in a mismatch between the GSTR-3B and GSTR-2A forms.
- ▶ Department observed in its audit report that the ITC which had accrued to the petitioner was liable to be disallowed.
- ▶ The petitioner had sought permission to rectify these errors by submitting a revised input table in GSTR-3B but the same was rejected.
- ▶ Show cause notice was issued and the same is challenged before Karnataka High Court (HC).

Petitioner's contention

- ▶ Errors that were committed in filing of returns occurred during the nascent stage of GST regime. These minor and inadvertent errors were entirely bona-fide.
- ▶ In such circumstances, a lenient view is warranted, particularly since rectification of errors at this stage will not cause any loss of revenue nor will there be any cascading effect that will upset the scheme of GST.
- ▶ Auto population of details into GSTR-3B and GSTR-2B was only made available from 4 September 2020 and prior to that, dealers had to manually enter the GST details into the GST portal, which was ridden with technical and electronic glitches.
- ▶ Details of IGST relating to imports are readily available on ICEGATE portal and the authorities have, in fact, referred to the same in the absence of GSTR-2A for all the months except July 2017 and March 2018.

Revenue's contention

- ▶ The petitioner, at this belated stage, cannot be permitted to rectify the errors in view of Section 39(9) of the Central Goods and Services Tax Act, 2017 (CGST Act).
- ▶ Reliance was placed on the Supreme Court (SC) ruling in the case of Bharti Airtel Ltd.² wherein the Court has rejected the plea of the assessee therein to revise its returns beyond the statutory period prescribed under Section 39(9) of the CGST Act.

HC Ruling

- ▶ The introduction of GST required a major overhaul of the indirect tax regime, including the number and formats of statutory returns that were to be filed and that it was expected that dealers across the country would take a reasonable amount of time to readjust to the new system.
- ▶ The copies of the returns submitted/ filed by the

petitioner clearly demonstrate and evidence the innocuousness of the errors committed by the petitioner.

- ▶ The ruling in case of Bharti Airtel cannot be made applicable to this case. In the said case, the Court observed that allowing the assessee to revise its returns at a belated stage would lead to a cascading effect on the chain of dealers under GST. It also observed that there is no revenue loss to the assessee and denial of revision would only result in a delay in ITC availment.
- ▶ The facts of the present case are entirely different. There cannot be said to be any cascading effect since the petitioner only seeks to shift the ITC already claimed from one head to another.
- ▶ The authorities must avoid a blinkered view while adjudicating/assessing the tax liability of a dealer under the Act.
- ▶ In the instant case, Revenue has, in the absence of GSTR-2A for the relevant tax periods, referred to the IGST import figures reflected in the ICEGATE portal for all the months except those in which the errors have been committed.
- ▶ This clearly indicates that Revenue is aware of the actual figures and also that there is an error committed by the petitioner but has chosen to selectively ignore the IGST import amounts reflected in the ICEGATE portal for the tax periods in dispute, which is yet another circumstance to uphold the claim of the petitioner.
- ▶ Accordingly, HC held that the petitioner is entitled for the limited relief of being permitted to make the necessary changes to GSTR-3B returns for July 2017 and March 2018.
- ▶ However, HC mentioned that this ruling is with reference to the peculiar facts and circumstances of the case, particularly since the tax periods involved relate to the first year of introduction of GST and shall not be treated as a precedent nor have any precedential value for any purpose whatsoever.

Comments

- a. While the HC allowed rectification beyond statutory time limit with a rider that the ruling shall not have any precedential value, taxpayers who have committed similar errors in the initial phase of introduction of GST may rely on this judgement to counter denial of ITC by the department.
- b. The Government may consider issuing a Circular allowing taxpayers to belatedly rectify such mistakes where there is no revenue implication.

² TS-555-SC-2021-GST

Our offices

Ahmedabad

22nd Floor, B Wing, Privilon
Ambli BRT Road, Behind Iskcon
Temple, Off SG Highway
Ahmedabad - 380 059
Tel: + 91 79 6608 3800

Bengaluru

12th & 13th floor
"UB City", Canberra Block
No. 24, Vittal Mallya Road
Bengaluru - 560 001
Tel: + 91 80 6727 5000

Ground Floor, 'A' wing

Divyasree Chambers
11, O'Shaughnessy Road
Langford Gardens
Bengaluru - 560 025
Tel: + 91 80 6727 5000

Chandigarh

Elante offices, Unit No. B-613 & 614
6th Floor, Plot No- 178-178A
Industrial & Business Park, Phase-I
Chandigarh - 160 002
Tel: + 91 172 6717800

Chennai

Tidel Park, 6th & 7th Floor
A Block, No.4, Rajiv Gandhi Salai
Taramani, Chennai - 600 113
Tel: + 91 44 6654 8100

Delhi NCR

Golf View Corporate Tower B
Sector 42, Sector Road
Gurugram - 122 002
Tel: + 91 124 443 4000

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Aerocity, New Delhi - 110 037
Tel: + 91 11 4731 8000

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
Gautam Budh Nagar, U.P.
Noida - 201 304
Tel: + 91 120 671 7000

Hyderabad

THE SKYVIEW 10
18th Floor, "SOUTH LOBBY"
Survey No 83/1, Raidurgam
Hyderabad - 500 032
Tel: + 91 40 6736 2000

Jamshedpur

1st Floor, Shantiniketan Building,
Holding No. 1
SB Shop Area, Bistupur
Jamshedpur - 831 001
Tel: + 91 657 663 1000

Kochi

9th Floor, ABAD Nucleus
NH-49, Maradu PO
Kochi - 682 304
Tel: + 91 484 433 4000

Kolkata

22 Camac Street
3rd Floor, Block 'C'
Kolkata - 700 016
Tel: + 91 33 6615 3400

Mumbai

14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (W), Mumbai - 400 028
Tel: + 91 22 6192 0000

5th Floor, Block B-2
Nirlon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: + 91 22 6192 0000

Pune

C-401, 4th floor
Panchshil Tech Park, Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: + 91 20 4912 6000

Ernst & Young LLP

EY | Building a better working world

About EY

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EYG member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/en_in.

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at 22 Camac Street, 3rd Floor, Block C, Kolkata - 700016

© 2023 Ernst & Young LLP. Published in India.
All Rights Reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.



Download the EY India Tax Insights App

ey.com/en_in

[@EY_India](https://twitter.com/EY_India) [in](https://www.linkedin.com/company/ey) EY [YouTube](https://www.youtube.com/channel/UCv31111111111111111111) EY India [f](https://www.facebook.com/EYCareersIndia) EY Careers India [@ey_indiacareers](https://www.instagram.com/ey_indiacareers)