



## IN THE HIGH COURT OF JUDICATURE AT MADRAS

|               |            |
|---------------|------------|
| Reserved On   | 05.09.2024 |
| Pronounced On | 02.01.2025 |

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.1924 of 2021

Dell International Services India Private Limited,  
 (Represented by its authorized representative)  
 C/o. YCH Logistics India Private Limited,  
 Plot No.D-VI DTA Unit,  
 SIPCOT HITECH SEZ Phase II,  
 Srimangadu Village Sriperumbudur Taluk,  
 Kanchipuram, Tamil Nadu – 602 105.

...Petitioner

Versus

- 1.Union of India,  
 Represented by its Secretary,  
 Department of Revenue,  
 Ministry of Finance,  
 128-A/North Block, New Delhi.
- 2.Central Board of Indirect Taxes and Customs,  
 Through its Chairman,  
 North Block, New Delhi – 110 001.
- 3.Goods and Services Tax Council,  
 5<sup>th</sup> Floor, Tower II, Jeevan Bharti Building,  
 Janpath Road, Connaught Place,  
 New Delhi – 110 001.



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4.State of Tamil Nadu  
Represented by its Secretary,  
Commercial Tax Department,  
Fort St.George, Chennai – 600 009.

5.Commissioner, Goods & Services Tax,  
Chennai Commissionerate,  
Annexe Building, Greams Road,  
Chennai – 600 006.

6.Goods & Services Tax Network,  
4<sup>th</sup> Floor, East Wing, World Mark – 1,  
Aerocity, New Delhi – 110 037.

7.Assistant Commissioner,  
Sriperumbudur Circle,  
No.4/109, CT Building Bangalore High Road,  
Varadharajapuram, Nazarpet,  
Poonamallee – 603 108.

...Respondents

**Prayer:**

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus quashing the letter TIN/33941669575/2016-17 dated 30.09.2020 issued by the 7<sup>th</sup> respondent as received on 28.10.2020 and direct 7<sup>th</sup> respondent to permit the petitioner to rectify GSTR-3B for the months from July 2017 till date.

For Petitioner : Mr.Raghavan Ramabadran  
for M/s.Lakshmi Kumaran  
& Sridharan Attorney

For Respondents – 1, 2, 5 & 6 : Mr.A.P.Srinivas,  
Senior Standing Counsel



W.P.No.1924 of 2020.

For Respondent – 3 : No Appearance  
For Respondents – 4 & 7 : Mr.C.Harsharaj,  
Additional Government Pleader

### **ORDER**

This is the second round of litigation before this Court. Earlier, the petitioner had filed W.P.No.15467 of 2020 for a mandamus to direct the respondent No.7 to dispose of the petitioner's letter dated 18.06.2020 filed by the petitioner seeking permission to file a revised GSTR-3B for the months from July 2017 to November 2017.

2. The said writ petition was dismissed as infructuous in the light of the order dated 30.09.2020 impugned herein. Relevant portion of the impugned order reads as under:-

*“Please take notice that the letter received in the reference 1<sup>st</sup> cited has been examined in detail and inform you that there is no provision to file revised return under the TN GST Act/CGST Act, 2017. Therefore, your request to rectify the returns in GSTR-3B for the period from July 2017 to November 2017 is not capable of compliance.”*



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3. The brief background of the case is that the petitioner was an assessee under the provisions of the Finance Act, 1994 and had reportedly accumulated Input Tax Credit (ITC) for a sum of **Rs.82,91,19,712/-**. The petitioner had managed to transition the ITC of **Rs.74,61,65,427/-** out of **Rs.82,91,19,712/-**, after collating all the necessary informations under the previous regime for the purpose of Section 140 of the CGST Act, 2017. The Form Tran-I itself was electronically enabled by the Central Board of Indirect Taxes sometime during last week of September 2017 on 25.08.2017 to facilitate to transition of ITC that was earned by the registration under the previous regime.

4. The case of the petitioner is that although the portal was enabled on **25.08.2017**, the petitioner was not able to transition the credit legitimately that was lying unutilized on the cut off date viz., **30.06.2017** i.e. one day before the implementation of the respective GST enactments. It is submitted that during the month of July 2017 the tax liability of the petitioner was **Rs.1,13,15,86,524/-**. It was partly discharged out of the ITC availed during the month of July 2017 and the balance of **Rs.57,78,89,597/-**



in cash as the aforesaid input tax credit of Rs.**Rs.74,61,65,427/-** could not be transitioned.

5. It is the further case of the petitioner is that if the GST portal was enabled w.e.f. **01.07.2017**, the petitioner could have legitimately discharged the entire tax liability from and out of the transitional credit of **Rs.74,61,65,427/-** out of **Rs.82,91,19,712/-**. Under Rule 86B of the CGST Act, Rule 17 where an assessee discharges the entire tax liability from and out of the ITC, 1% of tax has to be paid in cash. However, this provision was inserted only w.e.f. 01.01.2021 vide Notification No.94/2020 – Central Tax dated 22.12.2020.

6. The learned counsel for the petitioner would submit that the petitioner could have discharged the tax liability till November 2017, out of **Rs.74,61,65,427/-** transitional credit of accumulated ITC in Tran- 1 in the GST portal. However, Tran- 1 in the GST portal was enabled only from November 2017. He would further submit that the petitioner has a huge accumulation of the ITC on account of the inverted structure due to exports made by it.



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7. It is therefore submitted that while the petitioner is entitled for refund of tax that was paid in cash as transitional credit of **Rs.74,61,65,427/-** could not be utilized by the petitioner and the petitioner continues to accumulate ITC as the petitioner is under inverted duty structure and has no immediate prospect of liquidating the same towards its tax liability.

8. In this connection, the learned counsel for the petitioner has drawn attention of this Court to the written submissions filed in support of this writ petition.

9. In the returns filed during the period from July 2017 to November 2017, out of the total output liability of **Rs.3,06,54,78,517/-**, the petitioner had discharged a sum of **Rs.86,96,78,402/-** partially in cash. It is submitted that the balance liability was discharged by utilizing the accumulated ITC which had accrued on the procurement of goods and services from 01.07.2017 onwards.



10. The month wise details of the returns filed during the period from July 2017 to November 2017 showing the tax liability and payments through cash ledger and credit ledger are given below:

| Month          | Total Value of Supply | Total Tax Paid      | Tax paid in Electronic Ledger | Tax paid in Cash Ledger | Transitional Credit admissible |
|----------------|-----------------------|---------------------|-------------------------------|-------------------------|--------------------------------|
| July 2017      | Rs.6,25,74,28,719/-   | Rs.1,13,15,86,524/- | Rs.55,36,96,927/-             | Rs.57,78,89,597/-       | Rs.82,91,19,712/-              |
| August 2017    | Rs.21,90,39,340/-     | Rs.3,58,91,188/-    | Rs.3,58,91,188/-              | -                       | -                              |
| September 2017 | Rs.2,91,06,42,002/-   | Rs.44,64,74,670/-   | Rs.44,64,74,670/-             | -                       | -                              |
| October 2017   | Rs.2,77,38,60,969/-   | Rs.45,65,98,625/-   | Rs.37,77,69,004/-             | Rs.7,88,29,621/-        | -                              |
| November 2017  | Rs.5,49,94,42,414/-   | Rs.99,49,30,557/-   | Rs.78,19,71,373/-             | Rs.21,29,59,184/-       | -                              |
| Total          | Rs.17,66,04,13,444/-  | Rs.3,06,54,81,564/- | Rs.2,19,58,03,162/-           | Rs.86,96,78,402/-       | Rs.82,91,19,712/-              |

11. It is submitted that as reflected above, the petitioner has discharged substantial portion of their output liability for the period July 2017 to November 2017 through cash despite the fact that the petitioner was legally entitled for utilize transitional credit of Rs.74,61,65,427/-. It is submitted that the accumulated transitional credit of Rs.82,91,19,712/- severely impacts the working capital of the petitioner.

12. In other words, it is the case of the petitioner that the petitioner paid an amount of **Rs.86,96,78,402/-** towards GST in cash, whereas, an



amount of Rs.74,61,65,427/- out of Rs.82,91,19,712/- (i.e., transitional credit) was available, but, could not be utilized as transitional credit and could not be transitioned immediately at the time of introduction of the GST regime.

13. The petitioner submits that had the transitional credit been made available to the petitioner as on the date of introduction of the GST regime, an amount of **Rs.74,61,65,427/-** which could have been used to pay tax from its electronic credit ledger and therefore, payment of tax in cash would have reduced to that extent.

14. Thus, the present writ petition has been preferred seeking for rectification of GSTR-3B from the period from July, 2017, as the petitioner has a huge balance of accumulated credits, which cannot be liquidated in the near future as the business model of the petitioner is predominantly export of services. It is submitted that if the rectification as sought for is allowed, the petitioner would be entitled to a refund of **Rs.74,61,65,427/-** for the period between **July 2017 to November 2017**.



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15. It is submitted that the decision of the Hon'ble Supreme Court in *Union of India Vs. Bharti Airtel Ltd.* reported in **2021 (54) G.S.T.L 257 (SC)** was rendered in a different context and is entirely distinguishable on facts of the present case.

16. It is submitted that the decision in the case of *Bharti Airtel* cited *supra* was rendered in a context where the petitioner therein, in order to calculate the output tax liability was awaiting the operationalization of the system of matching of credits based on the information provided by the suppliers in Form GSTR-2A which became operational only in September, 2018.

17. Hence, the petitioner therein opted to pay the tax liability using cash and sought for rectification of Form GSTR-3B so that the taxes could be paid by utilizing the ITC which they insisted they could not avail solely on account of non-operationalization of Form GSTR-2A.

18. The decision rendered in the case of *Bharti Airtel* cited *supra* is distinguishable on the following aspects:



| Sl.No. | Facts in the case of <b>Bharti Airtel</b>                                                                                                                                                                                                                                                                                       | Facts in the present matter                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a.     | Assessee had opted to remit tax using cash instead of ITC, and then sought amendment of Form GSTR-3B. The Assessee claimed that had the matching system between GSTR-1 and GSTR-2A been made operational, the petitioner would have been able to avail ITC and would have been able to utilize said ITC to remit GST liability. | The petitioner was prevented from transiting the credit from the erstwhile regime to the GST regime as Form GST TRAN-01 was not made operational at the introduction of the GST regime. The petitioner remitted the applicable GST in cash in the absence of any alternative.                                                                                                                                                                                                                                                                                                         |
| b.     | The issue under dispute was relating to output tax liability paid out of cash on account of non operability of Form GSTR-2B and did not deal with transitioned credits.                                                                                                                                                         | This case pertains to transitional credit, which the petitioner could not transition on account of delay in operationalization of Form GST TRAN-01.<br>Admittedly, the decision in the case of <b>Bharti Airtel</b> cited <i>supra</i> did not deal with the teething troubles in transition of credit from erstwhile regime to GST regime.                                                                                                                                                                                                                                           |
| c.     | The decision apprehended a situation of cascading effect on account of unilateral revision of returns, leading to uncertainty and lack of finality in relation to the returns filed.                                                                                                                                            | No such cascading effect would present itself because the petitioner is only seeking to utilize the transitioned credits duly reflected in the electronic credit ledger and the tax already paid in cash is being sought as a refund.<br>The said rectification will not impact any recipient or suppliers, as there will be no change in the output tax liability whatsoever. It is only the mode and manner of payment that will be amended. This is a revenue neutral situation, and the interest of revenue will not be impacted if the rectification as prayed for is conducted. |

Thus, it is submitted that for the above reasons, the decision rendered in the case of **Bharti Airtel** does not apply to the present case.



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19. The learned counsel for the petitioner further submitted that the issue arising in the present case is no longer *res integra* and is squarely covered by the decision rendered by the Delhi High Court in ***Vision Distribution Private Ltd. Vs. Commissioner of State Goods & Services Tax and Ors.*** reported in **2019 TIOL 2918**. Therefore, applying the ratio in the said case, the present petition merits to be allowed, and refund merits to be granted to the petitioner.

20. Thus, the prayer as sought for in this writ petition may be granted. Reference was drawn also to the decision of this Court in ***Sun Dye Chem Vs. Assistant Commissioner*** reported in **(2021) 84 G S.T.R 237 (Mad)**, wherein, the rectification of GSTR-1 was permitted for the period between August 2017 and December 2017 to enable the petitioner therein to avail the ITC.

21. The learned counsel for the petitioner has placed reliance on the decision of the Delhi High Court in ***Vision Distribution Private Ltd. Vs. Commissioner State Goods & Services Tax and Ors.*** reported in **2019 TIOL 2918**, wherein, it was held that system limitations cannot be a



justification to deny the relief, to which the petitioner is legally entitled. It was also held that the failure of the respondents in first putting a workable system in place, before implementing the GST regime, reflects poorly on the concerned that the respondents have shown to the difficulties that the trade faced throughout the length and breadth of the country.

22. The learned counsel for the petitioner submits that the facts are identical in all four corners as there also ITC was the transitional credit of the said assessee during December 2017. In this case also, the petitioner has transitioned the entire credit of **Rs.82,91,19,712/-** during the month of December i.e., 27.12.2017.

23. It is submitted that during the aforesaid period, the tax liability that was discharged by the petitioner in cash was **Rs.86,96,78,402/-**. Therefore, to that extent of **Rs.74,61,65,427/-** ought to be refunded back if not [7,88,29,621 + 21,29,59,184].

24. The learned counsel for the petitioner also submits that the appeal against the decision of the Division Bench of the Delhi High Court



in the above case was also dismissed by the Hon'ble Supreme Court on 15.02.2021 in SLP(Civil) Diary No.16998/2020.

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25. He further submits that the petitioner will debit the corresponding amount of Rs.74,61,65,527/- or Rs.57,78,89,597/- as the case may be on receipt of payment.

26. On behalf of the respondent, the learned counsel for the respondent would place reliance on the decision of the Hon'ble Supreme Court in the case of *Union of India Vs. Bharti Airtel Ltd.* reported in **2021 (54) G.S.T.L 257 (SC)** rendered on 28.10.2021 arising out of the order of the Delhi High Court dated 05.05.2020 in the case of *Bharti Airtel Ltd. Vs. Union of India & Ors.* reported in **2020 (38) G.S.T.L 145 (Del)**, wherein, it was held that if there is no provision regarding refund of surplus or excess ITC in the electronic credit ledger, it does not follow that the assessee concerned who has discharged OTL by paying cash (which he is free to pay in cash in spite of the surplus or excess electronic credit ledger account), can later on ask for swapping of the entries, so as to show the corresponding OTL amount in the electronic cash ledger from where he can take refund. It



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is submitted that the payment for discharge of OTL by cash or by way of availing of ITC, is a matter of option, which having been exercised by the assessee, cannot be reversed unless the Act and the Rules permit such reversal or swapping of the entries.

27. Defending the order, Mr.C.Harsha Raj, learned Additional Government Pleader for the contesting respondents 4 & 7 further submits that there is no merits in the present writ petition wherein challenge has been made to the impugned order passed by the 7<sup>th</sup> respondent.

28. It is submitted that there is no scope for rectification of return filed in GSTR-3B for the month of July 2017 to enable the petitioner to encash the ITC that was transitioned under Section 140 of the Goods and Services Tax Act, 2017.

29. The learned counsel for the respondent submits that the Hon'ble Supreme Court in *Union of India Vs. Bharti Airtel Ltd.* reported in **2021 (54) G.S.T.L 257** found that the petitioner has taken a plea of non-operability of Form GSTR-2A ignoring that the output tax liability can vary



well be discerned from the books required to be statutorily maintained by the petitioner therein, and the petitioner nevertheless opted to pay the tax in cash. The petitioner therein having opted to pay in cash, cannot now resile from the same. The Hon'ble Supreme Court further observed that despite the availability of funds in the electronic credit ledger, if a registered person opts to discharge output tax liability in cash, that is a matter of an option exercised by the registered person and even tax authorities have no role to play.

30. It is further submitted that the petitioner could have opted for refund of ITC if any paid on or before the appointed date, of any amount of ITC interest or any other amount paid under the existing law, provided the amount was not carried forward under the GST Act.

31. It is submitted that since the amount was carried forward and transitioned, question of refund of the aforesaid amount was not available to the petitioner.

32. The learned counsel also reiterated the submission of the learned



Senior Standing Counsel for respondents 1, 2, 5 & 7 and placed reliance on the decision of the Hon'ble Supreme Court in ***Bharti Airtel Ltd. Vs. Union of India & Ors.*** reported in ***2020 (38) G.S.T.L 145 (Del)***.

33. By way of rejoinder, the learned counsel for the respondent would submit that the decision is no in authority for the jurisdiction that has been canvassed in this case. It is submitted that the said decision was rendered in the context of the delay on the part of the assessee to avail ITC. Since the assessee purportedly was awaiting for Form GSTR – 2A with effect from September 2018, by which time, the assessee therein had discharged the tax liability from and out of the electronic cash register in cash. That apart, it is submitted that the Hon'ble Supreme Court in the said decision as also in para 47 noted that the registered person is not denied of the opportunity to rectify omission or incorrect particulars, which he could do in the return to be furnished for the month or quarter in which sum omission or incorrect particulars are noticed. It is submitted that Section 39(9) was amended with effect from 01.10.2022, whereas, the decision was rendered on 28.10.2021. That apart, it is submitted that the Hon'ble Supreme Court shall also took note of the fact the registered person had the



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option to discharge the output tax liability by paying the amount in cash or in electronic credit ledger, whereas, in this case on account of technical glitches, the petitioner could not transition the credit immediately after GST was implemented with effect from 01.07.2017.

34. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

35. In ***Union of India Vs. Bharti Airtel Ltd.*** reported in **2021 (54) G.S.T.L 257 (SC)**, the Honourable Apex Court held as under:-

*“37. Further, the High Court in paragraph 23 of the impugned judgment, noted that the relief sought in the case before it, was indispensable. This logic does not commend to us. For, if there is no provision regarding refund of surplus or excess ITC in the electronic credit ledger, it does not follow that the assessee concerned who has discharged OTL by paying cash (which he is free to pay in cash in spite of the surplus or excess electronic credit ledger account), can later on ask for swapping of the entries, so as to show the corresponding OTL amount in the electronic cash ledger from where he can take refund. Payment for discharge of OTL by cash or by way of availing of ITC, is a matter of option, which having been exercised by the assessee, cannot be reversed unless the Act and the Rules permit such reversal or swapping of the entries. As a matter of fact, 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.*

*46. We need not multiply the authorities referred to in the concerned judgments, and cited before us, as in our opinion, these decisions have not dealt with the cardinal aspect of statutory obligation fastened upon the registered person to maintain books of accounts and record within the meaning of Chapter VII of the 2017 Rules, which are*



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primary documents and source material on the basis of which self-assessment is done by the registered person including about his eligibility and entitlement to get ITC and of OTL. 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. The provision contained in Section 39(9) of the 2017 Act and Rule 61 of the Rules framed thereunder, as applicable at the relevant time, apply with full vigor to the returns filed by the registered person in Form GSTR-3B.

47. Significantly, the registered person is not denied of the opportunity to rectify omission or incorrect particulars, which he could do in the return to be furnished for the month or quarter in which such omission or incorrect particulars are noticed. Thus, it is not a case of denial of availment of ITC as such. If at all, it is only a postponement of availment of ITC. The ITC amount remains intact in the electronic credit ledger, which can be availed in the subsequent returns including the next financial year. It is a different matter that despite the availability of funds in the electronic credit ledger, the registered person opts to discharge OTL by paying cash. That is a matter of option exercised by the registered person on which the tax authorities have no control, whatsoever, nor they have any role to play in that regard. Further, there is no express provision permitting swapping of entires effected in the electronic cash ledger vis-a-vis the electronic credit ledger or vice versa.

48. A priori, despite such an express mechanism provided by Section 39(9) read with Rule 61, it was not open to the High Court to proceed on the assumption that the only remedy that can enable the assessee to enjoy the benefit of the seamless utilization of the input tax credit is by way of rectification of its return submitted in Form GSTR-3B for the relevant period in which the error had occurred. Any unilateral change in such return as per the present dispensation, would have cascading effect on the recipients and suppliers associated with the concerned transactions. There would be complete uncertainty and no finality could ever be attached to the self-assessment return filed electronically. We agree with the submission of the appellant that any indulgence shown contrary to the statutory mandate would not only be an illegality but in reality, would simply lead to chaotic situation and collapse of tax administration of Union, States and Union Territories. Resultantly, assessee cannot be permitted to unilaterally carry out rectification of his 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.”



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36. The Delhi High Court in Paragraph No.7 of its judgment in ***Vision Distribution Private Limited Vs. Commissioner State Goods and Services Tax & Ors. 2019 TIOL 2918*** has held as under:

“7. Having heard learned counsels, we are inclined to direct partial refund of the amount claimed by the petitioner. We are of the view that the petitioner cannot be made to suffer on account of failure on the part of the respondents in devising smooth transition to GST regime w.e.f. 01.07.2017, from the erstwhile indirect taxation structure. The petitioner, being an exporter under the GST regime is entitled to undertake zero rated supplies. The petitioner claims to have undertaken exports in the months of July and August, 2017 and since its unutilized Input Tax Credit – to the tune of Rs.3,13,06,050/-, which was accumulated up to June, 2017, was not reflected in its ITC ledger as on 01.07.2017, it could not utilize the same w.e.f. 01.07.2017. The same resulted in the petitioner having to shell out, in cash, Rs.1,37,37,029/- which would not have been required, had the respondents taken care to ensure that the petitioner was able to utilize its accumulated Input Tax Credit in the said months. Even the Form GST TRAN-1 was made available on the portal of the respondents only from 25.08.2017. The business activity in the country could not be expected to come to a standstill, only to await the respondents making the GST system workable. The failure of the respondents in first putting a workable system in place, before implementing the GST regime, reflects poorly on the concerned that the respondents have shown to the difficulties that the trade faced throughout the length and breadth of the country. Unfortunately, even after passage of over two years, the respondents have not remedied their omissions and failures by taking corrective steps. They continue to take shelter of the limitations in, and the inability of their software systems to grant refund, despite the same being justified. The rights of the parties cannot be subjugated to the poor and inefficient software systems adopted by the respondents. The software systems adopted by the respondents have to be in tune with the law, and not vice versa. The system limitations cannot be a justification to deny the relief, to which the petitioner is legally entitled. We, therefore, reject the hyper technical objections sought to be raised by the respondents-to the effect, that no refund can be granted, because the system did not reflect any credit lying in the ITC ledger of the petitioner for the months of July and August, 2017. If that is so, it is entirely the



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*respondents making. In fact, to permit the respondents to get away with such an argument would be putting premium on inefficiency, We therefore, reject the submission.*

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37. Various Indirect Taxes were subsumed into GST Enactment pursuant to 101st amendment to the Constitution of India which ultimately culminated in the enacting of respective GST Enactment with effect from 01.07.2017.

37A. Chapter XX deals with transitional provisions to transition unutilized ITC. As per Section 140(1) of the CGST Act, 2017, a registered person, other than a person opting to pay tax under Section 10 shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit ( of eligible duties) carried forward in the return relating to the period ending with the day immediately preceding the appointed day i.e., 01.07.2017, furnished by him under the existing law ( within such time and ) in such manner as may be prescribed.

38. As per proviso to Section 140(1) of the CGST Act, 2017, a registered person shall not be allowed to take credit in the following circumstances, viz.,



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*i) Where the said amount of credit is not admissible as input tax credit under this Act; or*

*(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date ; or*

*(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.*

39. As per sub-section 2 to Section 140 of the Central Goods and Services Tax Act, 2017, a registered person, other than a person opting to pay tax under Section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for a period ending with the day immediately preceding the appointed day within such time and in such manner as may be prescribed.

40. Section 140 of the Central Goods and Services Act, 2017 is reproduced below:

*“(1) A registered person, other than a person opting to pay tax under section 10 shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit [of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law [within such time and] in such manner as may be prescribed:*

***Provided*** that the registered person shall not be allowed to take credit in the following circumstances, namely:—

*(i) where the said amount of credit is not admissible as input tax*



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*credit under this Act; or*

*(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or*

*(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.*

*(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day [ within such time and ] in such manner as may be prescribed:*

***Provided*** that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

***Explanation.***—For the purposes of this sub-section, the expression “unavailed CENVAT credit” means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

*(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished [goods held in stock on the appointed day subject to] goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to” the following conditions, namely:—*

*(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;*

*(ii) the said registered person is eligible for input tax credit on such inputs under this Act;*

*(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;*

*(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and*



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(v) the supplier of services is not eligible for any abatement under this Act:

**Provided** that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994, (32 of 1994), but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,—

(a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and

(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the [existing law within such time and in such manner as may be prescribed] subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

**Provided** that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

**Provided** further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished[goods held in stock on the appointed day subject to]. goods held in stock on the appointed day, within such time and in such



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manner as may be prescribed, subject to” the following conditions, namely:—

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is not paying tax under section 10;

(iii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and

(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as [credit under this Act, within such time and in such manner as may be prescribed, even if] the invoices relating to such services are received on or after the appointed day.

(8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day [within such time and in such manner] as may be prescribed:

**Provided** that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier:

**Provided** further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

**Provided** also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law.

(9) Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such [credit can be reclaimed within such time and in such manner as may be prescribed, subject to] the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.



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(10) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

**Explanation 1.**—For the purposes of [sub-sections (1), (3), (4)] and (6), the expression “eligible duties” means—

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

[(iv) the additional duty of excise leviable under Section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);]

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(vi) the duty of excise specified in the second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986); and

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001, (14 of 2001), in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

**Explanation 2.**—For the purposes of [ sub-section (1) and (5)], the expression “eligible duties and taxes” means—

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

[(iv) the additional duty of excise leviable under Section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);]

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001); and

(viii) the service tax leviable under section 66B of the Finance Act, 1994 (32 of 1994),

in respect of inputs and input services received on or after the appointed day.



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*[Explanation 3.— For removal of doubts, it is hereby clarified that the expression “eligible duties and taxes” excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975)].”*

41. The facts are not in dispute. The petitioner had transitional input tax credit of **Rs.82,91,19,712/-** and filed TRAN-1 only on **27.12.2017**. During the interregnum, the tax liability for the period between 01.07.2017 to the aforesaid date on 27.12.2017 was partially discharged by the petitioner from its electronic credit ledger maintained under Rule 86 of the respective GST Rules, 2017 and partially from electronic cash ledger maintained under Rule 87 of the respective GST Rules, 2017. Out of **Rs.82,91,19,712/-**, a sum of **Rs.74,61,65,427/-** actually transitioned.

42. In this case, the petitioner could transition ITC of only **Rs.74,61,65,427/-** out of **Rs.82,91,19,712/-** that was availed prior to **01.07.2017** during **December 2017**. Meanwhile, a sum of **Rs.86,96,78,402/-** was paid in cash and the balance tax liability of **Rs.2,19,58,03,162/-** out of ITC availed during the aforesaid period for the total tax liability of **Rs.3,06,54,81,564/-**.



43. Section 39 of the respective GST Acts, deals with a provisions relating to furnishing of returns. The said section was amended by Finance Act, 2022 with effect from 01.01.2022.

44. Section 39(9) of the respective GST Act, 2017 reads as under:-

| <i>Section 39(9) (old)at the time of inception</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <i>Section 39(9) amended thereafter</i>                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Subject to the provisions of Sections 37 and 38, any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section(3) or sub-section(4) or sub-section(5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act. | Where any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section(3) or sub-section(4) or sub-section(5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in such form and manner as may be prescribed, subject to payment of interest under this Act. |

45. Section 39(9) of the respective GST enactments contemplates rectification of the returns where a registered person who after filing returns discovers any omission or incorrect particulars therein.



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46. As far as this case is concerned, it cannot be said that the returns that was filed by the petitioner was incorrect which warrants a rectification on account of the situation contemplated under Section 39(9) of the respective GST Act, 2017 viz., **omission or furnishing of incorrect particulars** in the returns.

47. What has happened in the present case is that the petitioner was unable to transition the ITC that was available under the previous regime before the appointed date viz., 01.07.2017. If transition of such credit viz, transitional credit was allowed then and there seamlessly, the question of petitioner discharging the tax liability in cash for an amount of **Rs.74,61,65,427/-** out of **Rs.82,91,19,712/-** out of the total tax liability of **Rs.3,06,54,81,564/-** during the aforesaid period would not have arisen.

48. Admittedly, the TRAN-01 facility was enabled on the GST portal only on **25.08.2017** which is almost 56 days after the implementation of



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GST w.e.f **01.07.2017**. The petitioner had time upto 29.09.2017 to file TRAN-01 returns as per Rule 117 of the CGST Rules, 2017. Such time was extended upto to **31.10.2017** vide **Order No.03/2017 – GST** dated **21.09.2017**. Thereafter, the said time was further extended upto **30.11.2017** vide **Order No.07/2017-GST** dated **28.10.2017**. Once again, the time for filing TRAN-01 returns was further extended upto **27.12.2017** vide **Order No.09/2017 – GST** dated **15.11.2017**.

49. The petitioner filed the Revised Return only on **27.12.2017** belatedly, by which time, all the supplies effected by the petitioner had incurred a tax liability of **Rs.3,06,54,81,564/-**. The part of the liability was discharged by the petitioner from and out of input tax credit availed during the aforesaid period starting from 1<sup>st</sup> of July, 2017 to a sum of **Rs.2,19,58,03,162/-**. Thus, the balance of **Rs.86,96,78,402/-** was paid in cash.

50. The decision of the Honourable Supreme Court in *Union of India Vs. Bharti Airtel Ltd.* reported in **2021 (54) G.S.T.L 257 (SC)**, is not



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applicable to the facts of the present case as the decision pertains to belatedly availing of input tax credit by the petitioner primarily on account of the delayed implementation of Form GSTR-2A under Rule 60(1) of the CGST Rules, 2017. The credit that was available to the petitioner therein was available immediately on payment of amounts to the supplier. The petitioner however instead delayed in availing the input tax credit and waited for availing the input tax credit till GSTR-2A was made operational. Meanwhile, tax liability was discharged out of amounts credited in the electronic cash ledger in the electronic liability register.

51. Thus, there was a delay in availing the ITC and therefore, during the interregnum, part of the liability was discharged by cash by debiting the amounts to the electronic cash ledger. It is under these circumstances, the Honourable Supreme Court observed that 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. This is not the case here.



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52. The GST was implemented w.e.f. 01.07.2017. However, the system to implement the GST fully was not operational on 01.07.2017. Thus, the petitioner was unable to transition ITC of **Rs.74,61,65,427/-** out of **Rs.82,91,19,712/-** which was available to the petitioner under the previous regime.

53. Under Section 54(3)(ii) of the CGST Act, 2017, though the petitioner is entitled to refund of credit accumulated on account of rate of tax on input supplies higher than the rate of tax on output supplies, the petitioner would have been unable to liquidate its credit of ITC in its electronic credit ledger.

54. There will also be no scope for claiming refund of ITC under Section 54(3)(ii) of the CGST Act, 2017 on the aforesaid sum of **Rs.74,61,65,427/-** out of **Rs.82,91,19,712/-** which was debited by the petitioner from its electronic credit ledger as the aforesaid amount of **Rs.74,61,65,427/-** out of **Rs.82,91,19,712/-** was not transitioned in time.



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55. If the aforesaid ITC was seamlessly made available to the petitioner, the petitioner could have discharged the bulk of its tax liability of **Rs.3,06,54,81,564/-** of ITC availed and out of transitional ITC and would have been required to pay only the difference of **Rs.4,05,58,690/-** (Rs.86,96,78,402 – Rs.82,91,19,712) in cash, instead of **Rs.86,96,78,402/-**.

56. The petitioner cannot be burdened with accumulation of ITC as the petitioner is unable to liquidate the same as it is under inverted duty structure.

57. If the system was enabled then and there, the petitioner would have discharged part of its tax liability also from the input that ought to have been allowed to be transitioned in the system.

58. The decision of the Honourable Supreme Court in *Union of India Vs. Bharti Airtel Ltd.* reported in **2021 (54) G.S.T.L 257 (SC)** referred to *supra* relied by the learned counsel for the respondent does not apply to the facts and circumstances of the case on hand.



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59. Therefore, the petitioner should be allowed refund of the aforesaid sum of Rs.82,91,19,712/- that was paid in cash subject to a debit of equal amount from the petitioner's electronic credit ledger towards the tax liability discharged by the petitioner between July 2017 – November 2017.

60. In the result, the impugned order is set aside and the writ petition is allowed with a direction to the respondents to allow the petitioner to amend the returns filed by the petitioner in GSTR-3B during the period in dispute and also, with a consequential direction to the 7<sup>th</sup> respondent to refund a sum of **Rs.74,61,65,427/- (Rupees Seventy Four Crores Sixty One Lakhs Sixty Five Thousand Four Hundred and Twenty Seven only)** to the petitioner in cash subject to debit equal amount from the petitioner's electronic credit ledger. No costs.

**02.01.2025**

jas/kkd/mrr

Index : Yes

Neutral Citation: Yes

Speaking Order (or) Non-Speaking Order



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- 1.The Secretary,  
Department of Revenue,  
Ministry of Finance,  
128-A/North Block, New Delhi.
- 2.Central Board of Indirect Taxes and Customs,  
Through its Chairman,  
North Block, New Delhi – 110 001.
- 3.Goods and Services Tax Council,  
5<sup>th</sup> Floor, Tower II, Jeevan Bharti Building,  
Janpath Road, Connaught Place,  
New Delhi – 110 001.
- 4.The Secretary,  
Commercial Tax Department,  
Fort St.George, Chennai – 600 009.
- 5.Commissioner, Goods & Services Tax,  
Chennai Commissionerate,  
Annexe Building, Greams Road,  
Chennai – 600 006.
- 6.Goods & Services Tax Network,  
4<sup>th</sup> Floor, East Wing, World Mark – 1,  
Aerocity, New Delhi – 110 037.
- 7.The Assistant Commissioner,  
Sriperumbudur Circle,  
No.4/109, CT Building Bangalore High Road,  
Varadharajapuram, Nazarpet,  
Poonamallee – 603 108.



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W.P.No.1924 of 2021

**C.SARAVANAN, J.**

jas/kkd/mrr

**Pre-Delivery Order in  
W.P.No.1924 of 2021**

**02.01.2025**