



Bharti Airtel Limited v/s Union
of India W.P.(C) 6345/2018

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Bharti Airtel Limited (i.e. petitioner) engaged in providing **Telecommunication services**.

During transitional phase, petitioner faced **several issues** while filing **Form GSTR 3B** for **July'17 to September'17**.

During this period, **ITC** was availed on **estimated basis**. Later on when GSTR 2A was operationalized, it discovered that tax amounting to **INR 923 crores** was **excess paid** in cash and **ITC** was **under-reported**.

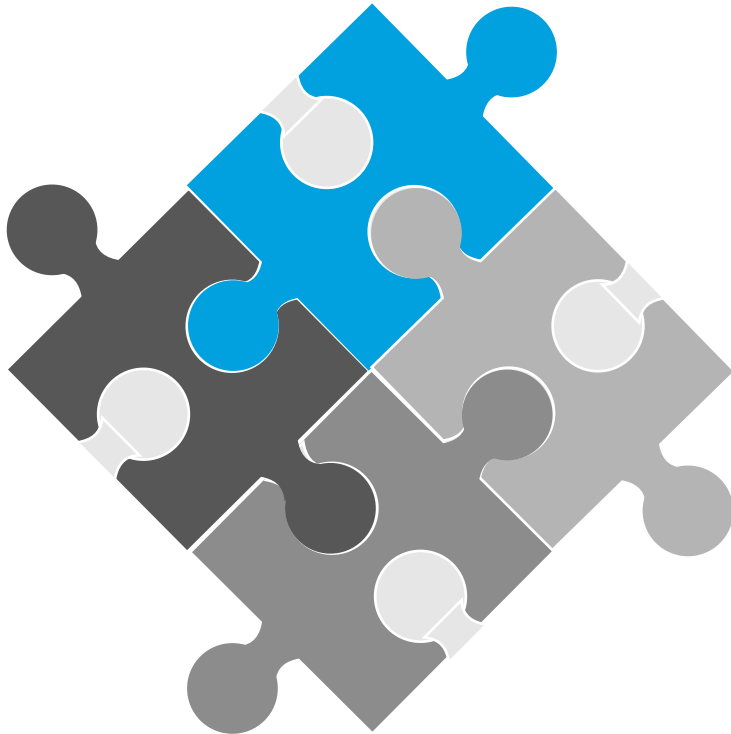
Brief Facts of the Case

This was occasioned to a great degree due to non-operationalization of **Forms GSTR-2A, GSTR-2 and GSTR-3** and the system related checks which could have forewarned the petitioner about the mistake.

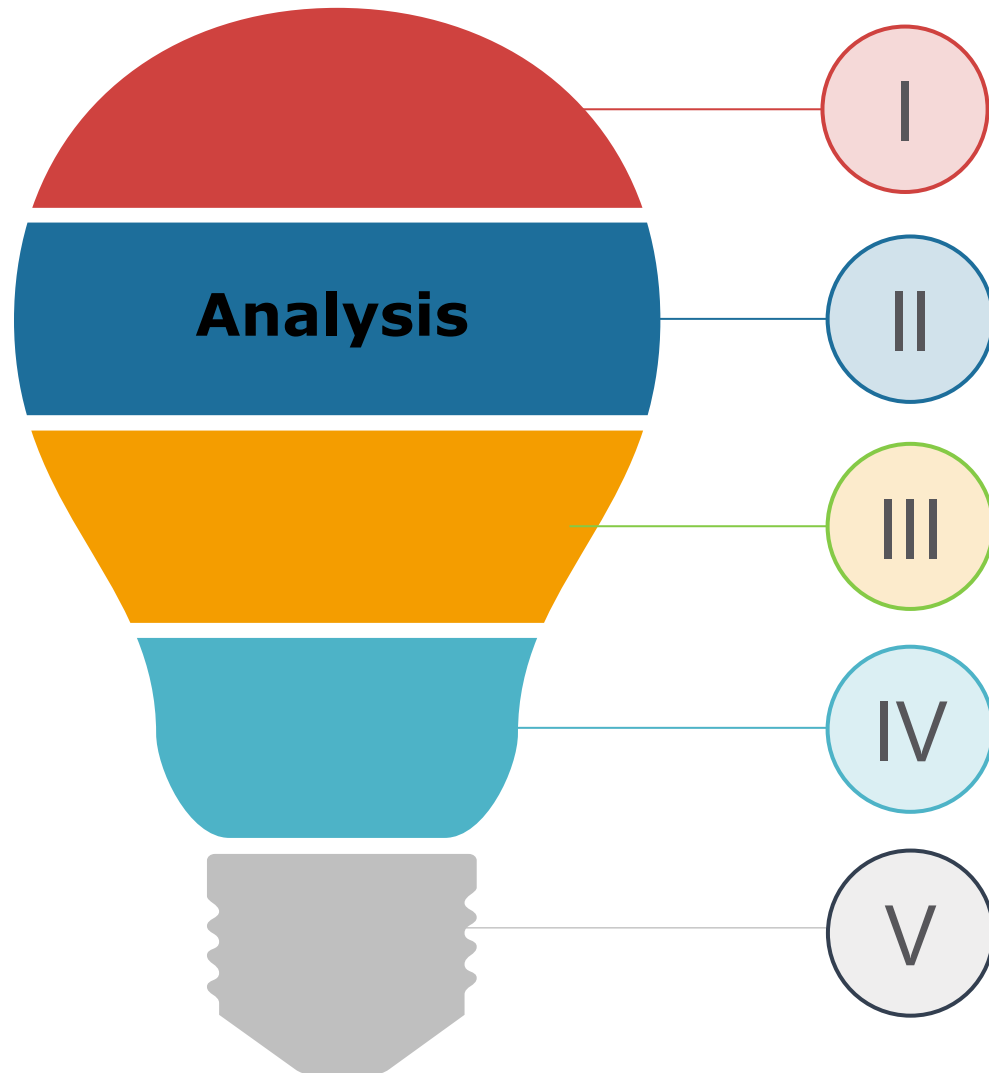
Petitioner now **desires to correct** its returns, but is being prevented from doing so, as there is no enabling statutory procedure implemented by the Government.

Moreover, since there were no checks on the **Form GSTR-3B** which was **manually filled** up by the Petitioner, the excess payment of tax went unnoticed.

Issues Involved



Whether Rule 61(5) of the CGST Rules, 2017, Form GSTR 3B and Master Circular 26/26/2017-GST dated 29.12.2017 which do not provide for modification of the information to be furnished in the return of the tax period to which such information relates are in line with statutory provisions of the CGST Act, 2017?



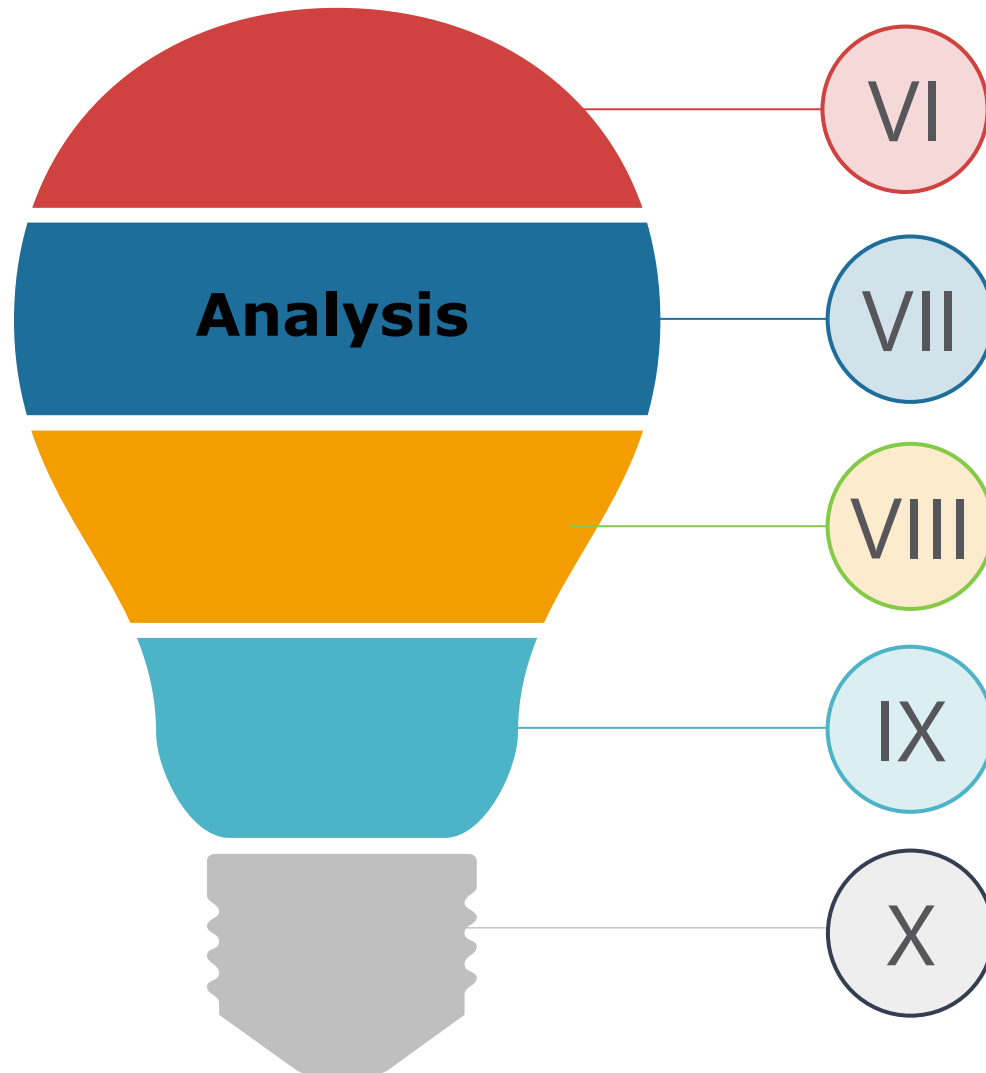
CGST Act and CGST Rules provides for **verification, validation, modification and deletion of information** in particular tax period through **FORM GSTR 1/2 and 3**. However, due to and **under preparedness of GSTIN portal, FORM GSTR 2 and 3** were **not made operational**. **2A** was made **operational** only in **September 2018** by **CBIC**.

Hence, Government introduced **Rule 61(5)** (which was amended vide Notification No. **17/2017-CT** dated 27.07.2017) and **Rule 61(6)**, which provided for filing of monthly return in **Form GSTR 3B (i.e. summary return)**

Form GSTR-3B is filled in **manually** by each registered person and has **no inbuilt checks** and balances by which it can be ensured that the data uploaded by each registered person is accurate, verified and validated. Therefore, the **design and scheme** of the Act as envisioned has **not been entirely put into operation** as yet.

Petitioner's **ITC claim was based on estimation** and the exact amount for the relevant period was not known, Petitioner **discharged** the **GST liability** for the relevant period **in cash**, although, in reality, ITC was available with it. (though it was **not reflected** in the system on **account of lack of data**)

Form GSTR-3B as introduced by Rule 61 (5) being at **variance** with the **other statutory provisions** does **not permit** the **data validation** before it is uploaded. The statutory provisions, therefore, **provided not just for a procedure but a right and a facility** to a registered person by which it can be **ensured** that the **ITC availed**, and **returns** can be **corrected** in the **very month** to which they relate, and the registered person is **not visited** with **any adverse consequences** for uploading incorrect data.



In terms of **Circular No. 26/26/2017-GST**, any **adjustment** of tax liability/ input tax credit **is permissible in subsequent months**.

The **High Court** said that **para 4** of **Circular No. 26/26/2017-GST** dated 29.12.2017 is **not in consonance** with the **provisions of CGST Act, 2017** as it has **restricted the mechanism of rectification in the same period**.

There is **no provision** under the **Act** that would **restrict** such **rectification**.

Also, in the case of **Commissioner of Central Excise, Bolpur vs. Ratan Melting and Wire Industries**, (2008) 13 SCC 1, it was held by the Hon'ble Supreme Court that a **circular** which is **contrary** to the **statutory provisions** has really **no existence in law**.

Accordingly, the **Petitioner** was **permitted** to **rectify Form GSTR-3B** for the period to which the error relates, i.e. the relevant period from July 2017 to September 2017. The High Court also direct the Respondents that on filing of the rectified Form GSTR-3B, they shall, within a period of two weeks, verify the claim made therein and give effect to the same once verified.



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