

GIB/GUJ/A A P & CO./28-08-2019/HC-56

High Court Category : INTEREST

State : Gujarat

Order No.: GIB/GUJ/A A P & CO./28-08-2019/HC-56

Name of Entry :
A A P & CO.

Date : 28-08-2019

Breif Issue :

Fact & Issues Involved:

Whether the return in Form GSTR-3B is a return required to be filed under Section 39 of the CGST Act/GGST Act?

Whether the Press release is valid and in consonance with Section 16(4) of the CGST Act/GGST Act only if Form GSTR-3B is a return required to be filed under Section 39 of the CGST Act/GGST Act.

- **As per Section 16(4) of the CGST Act/GGST Act states that the last date for taking the ITC by a registered person in respect of any invoice or debit note pertaining to a financial year is due date of furnishing of the return under Section 39 for the month of September following the end of financial year or furnishing of the relevant annual return, whichever is earlier.**
- That Rule 61(1) of the CGST/GGST Rules provides that every registered person except a few categories of registered persons shall furnish a return specified under sub-section (1) of Section 39 of the CGST/GGST Act in Form GSTR-3. Further, 61(5) of the CGST/GGST Rules provides if the circumstances so warrant, the Commissioner may, by notification, specify the manner and conditions subject to which the return shall be furnished in Form GSTR-3B. It indicates that return prescribed in terms of Section 39 is a return required to be furnished in Form GSTR-3 and not GSTR-3B.
- That Rule 61(5) of the CGST Rules was retrospectively amended with effect from July 1, 2017 vide Notification No.17/2017 – Central Tax dated July 27, 2017 to omit the wordings return in Form GSTR-3B being in lieu of Form GSTR-3.
- **That it would be obvious from a conjoint reading of Rule 61(1) and Rule 61(5) of the CGST/GGST Rules and the aforesaid Notification that the return required to be furnished in Form GSTR-3B is not the return in lieu of a return specified in Form GSTR-3.**
- That Rule 61(6)(c) of the CGST/GGST Rule states that if any ITC is taken after filing of the Form GSTR-3B return and it is reflected in return filed in Form GSTR-3 then the same will

have to be credited to the electronic credit ledger of the registered person. Further, the discrepancies, if any, in discharge of his tax and other liabilities can also be rectified through the return filed in Form GSTR-3.

- That the decision to add return in form GSTR-3B was taken to shorter return for the first two months of roll out. It has not been introduced as a return in substitute of return to be filed in form GSTR-3. Therefore, it is quite obvious that return in form GSTR-3B is only a temporary stop gap arrangement till the due date of filing return in form GSTR-3 is notified in the GSTN portal. Further, it is quite obvious that the return to be filed in form GSTR-3 is the final return for taking additional ITC as well as discharging of additional tax liabilities after filing of return in form GSTR-3B. Therefore, the last date for availing the ITC relating to the invoices issued during the period from July 2017 to March 2018 is the last date for filing of the return in form GSTR-3 and not GSTR-3B.
- That the impugned Press Release is without the authority of law, unreasonable, illegal and void.

Decision of Advance Ruling Authority :

Decision :-

- It was observed that initially it was decided to have three returns in a month, i.e. return for outward supplies i.e. GSTR-1 in terms of Section 37, return for inward supplies in terms of Section 38, i.e. GSTR-2 and a combined return in Form GSTR-3. However, considering technical glitches in the GSTN portal as well as the difficulty faced by the taxpayers it was decided to keep filing of GSTR-2 and GSTR-3 in abeyance. Therefore, in order to ease the burden of the taxpayer for some time, it was decided in the 18th GST Council meeting to allow the filing of a shorter return in Form GSTR-3B for an initial period.
- It was not introduced as a return in lieu of return required to be filed in Form GSTR-3. The return in Form GSTR-3B is only a temporary stop gap arrangement till the due date of filing the return in Form GSTR-3 is notified. Notifications are being issued from time to time extending the due date of filing of the return in Form GSTR- 3, i.e. return required to be filed under Section 39 of the CGST Act/GGST Act. It was notified vide Notification No.44/2018 Central Tax dated September 10, 2018 that the due date of filing the return under Section 39 of the Act, for the months of July 2017 to March 2019 shall be subsequently notified in the Official Gazette.
- Further, the Notification No.10/2017 Central Tax dated 28th June 2017 which introduced mandatory filing of the return in Form GSTR-3B stated that it is a return in lieu of Form GSTR-3. However, the Government, on realising its mistake that the return in Form GSTR-3B is not intended to be in lieu of Form GSTR-3, rectified its mistake retrospectively vide Notification No.17/2017 Central Tax dated July 27, 2017 and omitted the reference to return in Form GSTR-3B being return in lieu of Form GSTR-3.

Held:

- The Hon'ble High Court of Gujarat vide its *R/Special Civil Application No. 18962 of 2018 dated June 24, 2019* held that **the impugned Press Release dated October 18, 2018 is illegal to the extent that its Para-3 purports to clarify that the last date for availing input tax credit**

relating to the invoices issued during the period from July 2017 to March 2018 is the last date for the filing of return in Form GSTR-3B.

- The said clarification is contrary to Section 16(4) of the CGST Act/GGST Act read with Section 39(1) of the CGST Act/GGST Act read with Rule 61 of the CGST Rules/GGST Rules.