

TAX FLASH NEWS

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CBIC clarification, linking last date for claiming ITC with due date of filing GSTR-3B, 'illegal' – High Court, Gujarat

High Court of Gujarat¹, has recently observed that form GSTR-3B was not introduced as a return in lieu of form GSTR-3 and was merely a stop gap arrangement till the time due date for filing of return in GSTR-3 is notified.

Accordingly, press release dated 18 October 2018 issued, clarifying that the last date for availing input tax credit (July 2017 to March 2018), is the due date for filing form GSTR-3B, is said to be illegal, as it would be contrary to the provisions of the GST Act.

Background

For the purpose of availing input tax credit (ITC), time limit has been prescribed in the Goods and Services Tax Act (the Act). The Act requires ITC for a financial year to be claimed before filing of the return for the month of September following the end of the financial year, or before furnishing of the relevant annual return, whichever is earlier.

The Act had prescribed three returns i.e. GSTR-1 (outward supply), GSTR-2 (inward supply) and GSTR-3 (combined return), which taxpayers were required to file. However, due to technical glitches in the GSTN system, return in GSTR-2 and GSTR-3 were kept in abeyance. In the midst, a shorter return in form GSTR-3B was introduced as a stop gap arrangement till due date for filing of the return in GSTR-3 is notified.

Thereafter, notifications were issued from time to time extending the due date for filing of return in GSTR-3. Later through a press release dated 18 October 2018, it was clarified that last date for claiming of ITC for invoices issued during the period July 2017 to March 2018 shall be the last date of filing of GSTR-3B for the month of September 2018 i.e. 20 October 2018.

Against the said press release, AAP and Company, Chartered Accountants (Applicant) had filed a writ petition challenging the legality and validity of the same.

Order by the High Court

The court observed and held that, GSTR-3B was introduced as a stop gap arrangement.

GST council had introduced GSTR-3B as a shorter return for initial period owing to the technical glitches. It was not introduced as a return in lieu of return required to be filed in GSTR-3.

Notification 10/2017 Central Tax dated 28 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 after realising its mistake rectified the same by issuing notification no. 17/2017 Central tax dated 27 July 2017 and omitted the reference to return in form GSTR-3B being return in lieu of for GSTR-3.

Thus the impugned press release of October 2018 could be said to be illegal to the extent that it clarifies that the last date for availing ITC relating to the invoices issued during the period from July 2017 to March 2018 is the last date for filing of return in form GSTR-3B.

The said clarification could be said to be contrary to the provisions of the GST Act and rules framed thereunder.

Our comments

This is a very critical judgement since companies were not able to claim credit post September 2018 for invoices prior to March 2018. However, we need to await on future steps by CBIC.

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