

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 18962 of 2018**

=====
AAP AND CO., CHARTERED ACCOUNTS THROU AUTHORISED
PARTNER
Versus
UNION OF INDIA
=====

Appearance:

MR VINAY SHRAFF with MR.AVINASH PODDAR(9761) for the
PETITIONER(s) No. 1

MR.VISHAL J DAVE(6515) for the PETITIONER(s) No. 1

NIPUN SINGHVI(9653) for the PETITIONER(s) No. 1
for the RESPONDENT(s) No. 1,2,3,4
=====

CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE DR.JUSTICE A. P. THAKER

Date : 07/12/2018

ORAL ORDER

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. Mr. Vinay Shraff, learned counsel for the petitioner has invited the attention of the court to the impugned press release dated 18.10.2018 to point out that according to section 16(4) of the Central Goods and Services Tax Act, 2017, a registered person is not entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier. It was pointed out that the relevant return under section 39 of the CGST Act is FORM

GSTR-3 as provided under rule 61(1) of the Central Goods and Services Tax Rules. The attention of the court was invited to Notification No.10/2017 – Central Tax dated 28th June, 2017 whereby the Central Goods and Services Tax (Second Amendment) Rules, 2017 came to be notified and more particularly, sub-rule (5) of rule 61 thereof, which provides thus:-

“(5) Where the time limit for furnishing of details in FORM GSTR-1 under section 37 and in FORM GSTR-2 under section 38 has been extended and the circumstances so warrant, return in FORM GSTR-3B, in lieu of FORM GSTR-3, may be furnished in such manner and subject to such conditions as may be notified by the Commissioner.”

2. It was pointed out that the Central Government realising its mistake thereafter, vide Notification No.17/2017-Central Tax dated 27th July, 2017 notified the the Central Goods and Services Tax (Fourth Amendment) Rules, 2017 whereby sub-rule (5) of rule 61 came to be substituted as follows :-

“(5) Where the time limit for furnishing of details in FORM GSTR-1 under section 37 and in FORM GSTR-2 under section 38 has been extended and the circumstances so warrant, the Commissioner may, by notification, specify that return shall be furnished in FORM GSTR-3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.”

3. It was submitted that, therefore, FORM GSTR-3B is not in lieu of FORM GSTR-3 and is applicable only in the circumstances stipulated under sub-rule (5) of rule 61 of the rules.

4. Referring to the impugned press release, it was submitted that the same provides that with tax payers self-assessing and availing ITC through return in FORM GSTR-3B, the last date for availing ITC in relation to the said invoices issued by the corresponding suppliers during the period from July, 2017 to March, 2018 is the last date for the filing of such return for the month of September, 2018 i.e. 20th October, 2018. It was submitted that sub-section (4) of section 16 of the Act contemplates furnishing of return under section 39 thereof which is in FORM GSTR-3 whereas FORM GSTR-3B is to be furnished in the circumstances, as contemplated under sub-rule (5) of rule 61 of the rules. It was submitted that, therefore, the impugned press release is contrary to the provisions of the Act and the rules.

5. Having regard to the submissions advanced by the learned counsel for the petitioner, **Issue Notice** returnable on 9th January, 2019.

(HARSHA DEVANI, J)

(A. P. THAKER, J)

Z.G. SHAIKH