

Gujarat HC granted interim relief in writ challenging late fee for delayed filing of GSTR-3B

Synopsis: The Hon'ble Gujarat High Court in the matter of ***AAP & Co. vs Union of India*** has grants interim relief in writ challenging imposition of late fees for late filing of GSTR-3B under Section 47 of the CGST Act.

Facts:

M/s AAP & Co. ("**the Petitioner**") filed writ petition before the Hon'ble Gujarat High Court on behalf of thirty-one applicants for issuing appropriate writ, order or direction and declare the imposition of late fees for late filing of Form GSTR-3B under Section 47 of the CGST Act, 2017 ("**CGST Act**") as illegal, ultra vires and without any authority of law.

Issue involved:

The Petitioner seeks the benefit of complete waiver of late fees in accordance with the second proviso to the Notification No.76/2018-Central Tax for the returns furnished upto September 2018.

Petitioner's contention:

- The levy of late fees for the late filing of the Form GSTR- 3B under Section 47 of the CGST Act as well as the SGST Act is illegal and not sustainable in law.
- Section 47 talks about failure to furnish the details of outward and inward supplies required under Section 37 or Section 38 or returns required under Section 39 or Section 45 by the due date.
- Section 37 corresponds to GSTR-1, Section 38 corresponds to GSTR-2, Section 39 corresponds to GSTR-3,4,5,6,7,8 respectively and Section 45 corresponds to GSTR-10.
- The submission is that the GSTR-3B cannot be read in Section 39.

In such circumstances, the levy of late fees by virtue of the power under Section 47 of the CGST Act is something else which this Court will have to look into and adjudicate.

Held:

The Hon'ble Gujarat High Court in ***R/Special Civil Application No. 14624 of 2019 dated August 28, 2019*** held that, the writ applicant have been able to make a strong *prima facie* case to have an **ad-interim order** granting stay on recovery proceedings for the recovery of late fees for late filing of Form GSTR-3B for the period 1st July 2017 to 30th September 2018 for which returns are furnished between 1st July, 2017 to 21st December, 2018.

Accordingly, the High Court issued a notice returnable on October 16, 2019.

Citation:

Our Comments: While addressing the dilemma prevailing over the industry qua the last date for availment of ITC for Financial Year 2017-18, the Hon'ble Gujarat High Court earlier in ***R/Special Civil Application No. 18962 of 2018 dated June 24, 2019***, had categorically held that **GSTR-3B is not a return under Section 39 of the CGST Act**. The HC observed as under:

- It was the Government's decision, factoring the technical glitches and difficulties faced by taxpayers in filing Forms GSTR-2 and GSTR-3, both which are in abeyance. Thereafter, the eighteenth GST Council meeting decided to allow filing of a shorter return in Form GSTR-3B for an initial rollout period.
- Form GSTR-3B was not introduced as a return in lieu of return required to be filed in Form GSTR-3. The return in Form GSTR-3B was only a temporary stopgap arrangement until the due date of filing return in Form GSTR-3 was notified.
- Subsequently, through Notification No. 10/ 2017 - Central Tax dated June 28, 2017, the Government introduced mandatory filing of return Form GSTR-3B, stating that it is a return in lieu of Form GSTR-3. Thereafter, the Government omitted such reference retrospectively, vide Notification No. 17/2017 –Central Tax dated July 27, 2017.

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