

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

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

Sd/-

and

HONOURABLE MR.JUSTICE A.C. RAO

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

AAP AND CO., CHARTERED ACCOUNTS THROU AUTHORISED PARTNER

Versus

UNION OF INDIA & 3 other(s)

Appearance:

MR AVINASH PODDAR(9761) for the Petitioner(s)No.1

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

MR NIPUN SINGHVI(9653) for the Petitioner(s)No.1

MS MAITHILIMEHTA, AGP(1) for the Respondent(s)No.3

MR NIRZAR S DESAI(2117) for the Respondent(s)No.4

NOTICESERVED(4) for the Respondent(s)No.1,2

CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA
and
HONOURABLE MR.JUSTICE A.C. RAO

Date: 24/06/2019

ORALJUDGMENT

(PER: HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. By this writ-application under Article 226 of the Constitution of India, the writ-applicant has prayed for the following reliefs :

“a. To issue writ of or in the nature of mandamus or any other appropriate writ, order or direction to quash and set aside the press release dated 18.10.2018 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;

b. To issue necessary writ(s), direction(s), and/or pass necessary order(s) directing the Respondents to allow/consider taking input tax credit relating to the invoices issued during the period from July, 2017 to March, 2018 till the due date for the filing of return in for GSTR-3 or annual return whichever is earlier;

c. To issue writs(s) and/or direction(s) in the nature of prohibition commanding the Respondents, their servants, agents and/or subordinates from resorting to any coercive measure during the pendency of the writ petition before this Hon'ble Court;

d. To issue order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice;

- e. *To issue Rule Nisi in terms of prayers (a) to (g) above;*
- f. *To Grant ad-interim reliefs in terms of prayers above;*
- g. *To award Costs of and incidental to this application be paid by the Respondents.”*

2. The case of the writ-applicant, in his own words as pleaded in the writ-application, is as follows :

3. It is submitted that the writ-applicant is a practicing Chartered Accountant having GST registration No. 24AARFA8951B1ZF. It is submitted that Section 16(4) of the Central Goods and Services Tax Act, 2017 (for short, 'the CGST Act')/Gujarat Goods and Services Tax Act, 2017 (for short, 'the GGST Act') provides that a registered person shall not be 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 the financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

4. The writ-applicant would submit that the relevant provision of Section 16(4) of the CGST Act/ GGST Act reads thus:

“Section 16(4) - A registered person shall not be 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.”

5. It is further submitted that it would be evident from the bare perusal of Section 16(4) of the CGST Act/GGST Act that the last date for taking the input tax credit 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.

6. The writ-applicant would submit that Section 39(1) of the CGST Act/GGST Act provides that every registered person except few categories of persons shall furnish a monthly return in such form and manner as may be prescribed.

7. The writ-applicant would further submit that the relevant provision of Section 39(1) of the CGST Act/ GGST Act reads thus:

“Section 39. Furnishing of returns. - (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.”

2) *A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.*

(3) *Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.*

(4) *Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.*

(5) *Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.*

(6) *The Commissioner may, for reasons to be recorded in*

writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein:

Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to

payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.”

8. It is submitted that the form and the manner of submission of monthly return is provided in Rule 61 of the CGST/GGST Rules. It is submitted that sub-rule (1) of the CGST/GGST Rules provides that every registered person except a few categories of persons shall furnish a return specified under sub-section (1) of Section 39 in Form GSTR-3 electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner. It is further submitted that sub-rule (5) of Rule 61 of the Central Goods and Services Tax Rules (for short, 'the CGST Rules')/Gujarat Goods and Services Tax Rules (for short, 'the GGST Rules') provides that where the time limit for furnishing of the 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 the manner and conditions subject to which the return shall be furnished in Form GSTR-3B electronically through the common portal, either

directly or through a Facilitation Centre notified by the Commissioner.

9. It is submitted that Rule 61 of the CGST/GGST Rules relating to the form and manner of submission of monthly return reads thus :

“61: Form and Manner of Submission of Monthly Return - (1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return specified under sub-section (1) of section 39 in FORM GSTR-3 electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

(2) Part A of the return under sub-rule (1) shall be electronically generated on the basis of information furnished through FORM GSTR-1, FORM GSTR-2 and based on other liabilities of preceding tax periods.

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(3) Every registered person furnishing the return under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in Part B of the return in FORM GSTR-3.

(4) A registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in Part B of the return in FORM GSTR-3 and such return shall be deemed to be an application filed under section 54.

(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 the manner and conditions subject to which the return shall be furnished in FORM GSTR-3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(6) Where a return in FORM GSTR-3B has been furnished, after the due date for furnishing of details in FORM GSTR-2:

(a) Part A of the return in FORM GSTR-3 shall be electronically generated on the basis of information furnished through FORM GSTR-1, FORM GSTR-2 and based on other liabilities of preceding tax periods and PART B of the said return shall be electronically generated on the basis of the return in FORM GSTR-3B furnished in respect of the tax period;

(b) the registered person shall modify Part B of the return in FORM GSTR-3 based on the discrepancies, if any, between

the return in FORM GSTR-3B and the return in FORM GSTR-3 and discharge his tax and other liabilities, if any;

(c) where the amount of input tax credit in FORM GSTR-3 exceeds the amount of input tax credit in terms of FORM GSTR-3B, the additional amount shall be credited to the electronic credit ledger of the registered person.”

10. It is submitted that the bare perusal of Rule 61 of the CGST/GGST Rules would indicate that the return prescribed in terms of Section 39 is a return required to be furnished in Form GSTR-3 and not GSTR-3B.

11. It is submitted that in the notification no.10/2017 – Central Tax dated 28th June 2017 it was provided in terms of sub-rule (5) of Rule 61 of the CGST Rules that 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. An analogous notification no.10/2017 – State Tax (Rate) dated 30th June 2017 was also issued by the Government of Gujarat under the GGST Rules.

12. It is submitted on behalf of the writ-applicant that sub-rule (5) of Rule 61 of the CGST Rules was retrospectively amended with effect from 1st July 2017 vide Notification No.17/2017 – Central Tax dated 27th July 2017 to omit the wordings return in

Form GSTR-3B being in lieu of Form GSTR-3.

13. It is further submitted 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. The Central and the State Government has consciously omitted reference to return required to be furnished in Form GSTR-3B being in lieu of Form GSTR-3 through Notification no.17/2017 – Central Tax dated 27th July 2017. The following sub-rule (6) in Rule 61 has been added subsequently after sub-rule (5) by Notification no.17/2017 – Central Tax dated 27th July 2017 :

“(6) Where a return in FORM GSTR-3B has been furnished, after the due date for furnishing of details in FORM GSTR-2:

(a) Part A of the return in FORM GSTR-3 shall be electronically generated on the basis of information furnished through FORM GSTR-1, FORM GSTR-2 and based on other liabilities of preceding tax periods and PART B of the said return shall be electronically generated on the basis of the return in FORM GSTR-3B furnished in respect of the tax period;

(b) the registered person shall modify Part B of the return in FORM GSTR-3 based on the discrepancies, if any, between the return in FORM GSTR-3B and the return in FORM GSTR-3 and discharge his tax and other liabilities, if any;

(c) where the amount of input tax credit in FORM GSTR-3 exceeds the amount of input tax credit in terms of FORM GSTR-3B, the additional amount shall be credited to the electronic credit ledger of the registered person.”

14. It is submitted on behalf of the writ-applicant that it is obvious from the bare perusal of the clause (c) of sub-rule (6) of Rule 61 of the CGST/GGST Rule that if any input tax credit is taken after filing of the 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.

15. It is further submitted that the decision to add return in form GSTR-3B was taken in the 18th GST Council held on 30th June 2017 on account of the reason stated as 'shorter return for 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 due date of filing return in form GSTR-3 is notified in the GSTN portal. It is therefore, submitted that it is quite obvious that the return to be filed in form GSTR-3 is the final return for taking additional input tax credit as well as discharging of additional tax liabilities after filing of return in form GSTR-3B. It is, therefore, submitted that the last date for availing the input tax credit 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.

16. It is submitted that para 3 of the press release dated 18th October 2018 says that, "*With taxpayers 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 supplier(s) 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*".

17. Thus, it appears from the pleadings that the writ-applicant seeks to question the legality and validity of the press release dated 18th October 2018 to the extent that its para-3 purports to clarify that the last date for availing the input tax credit relating to the invoices issued during the period between July 2017 and March 2018 would be the last date for filing of the return in Form GSTR-3B on the ground that the said clarification is contrary to Section 16(4) of the Central Goods and Services Tax Act, 2017 and Section 16(4) of the Gujarat Goods and Services Tax Act, 2017 read with Section 39(1) of the CGST Act/GGST Act read with Rule 61 of the Central Goods and Services Tax Rules, 2017 (for short, 'the CGST Rules') and Rule 61 of the Gujarat Goods and Services Tax Rules, 2017 (for short, 'the GGST Rules').

18. The case of the writ-applicant is that the impugned press release is without the authority of law, unreasonable, illegal and void.

19. On 7th December 2018, this Court passed the following order :

“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. ”*

20. In response to the notice issued by this Court, the respondents have appeared through Mr.Nirzar S.Desai, the learned standing counsel for the Union of India.

21. Mr.Desai has tendered his written submissions. Those are as under :

“1. Section 16(4) of the CGST Act, 2017 defines the due date after which a registered person cannot take input tax credit (ITC) for the invoices of a particular Financial Year. The last date of taking ITC as defined by Section 16(4) of the CGST Act, 2017 is the due date of filing of return under Section 39 of the CGST Act, 2017 or annual return whichever is earlier.

Section 16(4) of the CGST Act, 2017 reads as under :

“(4) - A registered person shall not be 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.”

2. *The petition has been filed against Press release dated 18.10.2018 which gives clarification regarding last date of taking ITC for the invoices pertaining to 2017-18 as per Section 16(4) of the CGST Act, 2017. The due date of annual return for F.Y. 2017-18 as per Section 44 of CGST Act, 2017 is 31st December, 2018. However, as per the request of trade the due date has been extended upto 31st August, 2019. The due date of filing of GSTR-3B for the month of September, 2018 was 20th October, 2018.*

3. *In view of above as per Section 16(4) of the CGST Act, 2017 the last date for taking input tax credit for the period 2017-18 should be 25th October, 2018 and accordingly the Press release dated 18.10.2018 was issued. However, on request of the trade due date of filing of GSTR-3B was extended upto 25th October, 2018.*

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4. *The petitioner is contending that GSTR-3B is not a return under Section 39 of the CGST Act, 2017 and hence its due date cannot be considered for Section 16(4) of the CGST Act, 2017 and hence the due date for filing the annual return of 2017-18 should be the last date for taking input tax credit for the F.Y. 2017-18.*

Section 39(1) reads as under :

“(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.”

Rule 61(5) reads as under :

“(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 the manner and conditions subject to which the return shall be furnished in FORM GSTR-3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.”

On going through Section 39 of the CGST Act, 2017 it can be seen that no specific name has been given to the return to be filed under this Section. The only condition mentioned in the Section is that the return should contain the details of (I)

inward and outward supplies of goods or services or both (ii) input tax credit availed (iii) tax payable, tax paid.

Rule 61(5) of the CGST Rules, 2017 says that in case time limit of furnishing of details in Form GSTR-1 under Section 37 of the CGST Act, 2017 and GSTR-2 under Section 38 of the CGST Act, 2017 has been extended in that case the Commissioner may notify to file return GSTR-3B. This return contains all the details i.e. (i) inward and outward supplies of goods or services or both (ii) input tax credit availed (iii) tax payable, tax paid as mentioned in Section 39 of the CGST Act, 2017. On reading Section 39(1) of the CGST Act, 2017 along with rule 61(5) of the CGST Rules, 2017 it is amply clear that FORM GSTR-3B is a return which is to be furnished under section 39 of the CGST Act, 2017.

5. *From above, it is evident that the impugned press release dated 18.10.2018 has rightly publicized the last date for availing ITC to be the last date for the filing of return in FORM GSTR-3B for the month of September, 2018 i.e. 20th October, 2018 and therefore, is not contrary to the section 16(4) of the CGST Act, 2017 read with section 39(1) of the CGST Act, 2017, read with rule 61 of the CGST Rules, 2017.”*

22. An affidavit-in-reply has been filed on behalf of the respondent no.4, inter alia, stating as under :

“14. With regard to para 2.19 of the petition, I say that Section 39(1) of the said Act has to be read along with rule

61(5) of the said Rules which provides for the filing of FORM GSTR-3B and reads as “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 the manner and conditions subject to which the return shall be furnished in FORM GSTR-3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner”. Thus, it is amply clear that FORM GSTR-3B is a return which is to be furnished under section 39 of the said Act.

16. With regard to para 2.21 to 2.23 of the petition, I say that Section 39(1) of the said Act has to be read along with rule 61(5) of the said Rules which provides for the filing of FORM GSTR-3B and reads as “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 the manner and conditions subject to which the return shall be furnished in FORM GSTR-3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner”. Thus, it is amply clear that FORM GSTR-3B is a return which is to be furnished under section 39 of the said Act. From above, it is evident that the impugned press release has rightly publicised the last date for availing ITC to be the last date for the filing of return in FORM GSTR-3B for the month of September, 2018 i.e. 20th October, 2018 and therefore, is not contrary to the section 16(4) of the said Act

read with section 39(1) of the said Act, read with rule 61 of the said Rules.

17. *With regard to Grounds A to E of the petition, I say that whatever is stated in Grounds A to E is totally disputed and denied in toto and the petitioner is put to strict proof in support of whatever is stated in Grounds A to E. I say that para 3 of press release dated 18.10.2018 is aligned with Section 16(4) CGST Act/GGST Act, read with Section 39(1) of the CGST Act/CGST Act, read with rule 61 of the CGST/GGST Rules, 2017.*

Section 16(4) of the said Act reads as “A registered person shall not be 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.” Further, section 39(1) of the said Act reads as “Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof”. Further,

section 39(1) of the said Act has to be read along with rule 61(5) of the said Rules which provides for the filing of FORM GSTR-3B and reads as “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 the manner and conditions subject to which the return shall be furnished in FORM GSTR-3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner”. Thus, it is amply clear that FORM GSTR-3B is a return which is to be furnished under section 39 of the said Act. From above, it is evident that the impugned press release has rightly publicised the last date for availing ITC to be the last date for the filing of return in FORM GSTR-3B for the month of September, 2018 i.e. 20th October, 2018 and therefore, is not contrary to the section 16(4) of the said Act read with section 39(1) of the said Act, read with rule 61 of the said Rules.

Further, the Hon'ble High Court of Delhi in its order dated 26.11.2018 on W.P.(C) 9019/2017 & CM APPL. No.36921/2017, in the matter of Anil Goel and Associated versus Union of India & Ors., has accepted that “learned counsel for the respondent has drawn our attention to the counter affidavit filed on behalf of the Commissioner of Central Tax, GST, Delhi-east, wherein it has been stated that the return filed in FORM GSTR-3B is not in addition to the return in FORM GSTR-3. Rule 61(5) of the Rules prescribe that where time for furnishing of details/returns in

FORM GSTR-1 under section 37 and in FORM GSTR-2 under section 38 are extended, the Commissioner may, by notification specify that return may be filed under GSTR-3B. In other words, wherever the Commissioner has issued notification in terms of sub-rule 5 of Rule 61, the assessee would be required to file return in FORM GSTR-3B and not in FORM GSTR-3. Learned counsel for the petitioner is substantially satisfied as the statement made clarifies that FORM GSTR-3B and not GSTR-3 is to be filed in case covered by Rule 61(5) of the Rules”.

19. With regard to Grounds G to J of the petition, I say that whatever is stated in Grounds G to J is totally disputed and denied in toto and the petitioner is put to strict proof in support of whatever is stated in Grounds G to J. I say that Section 39(1) of the said Act has to be read along with rule 61(5) of the said Rules which provides for the filing of FORM GSTR-3B and reads as “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 the manner and conditions subject to which the return shall be furnished in FORM GSTR-3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner”. Thus, it is amply clear that FORM GSTR-3B is a return which is to be furnished under section 39 of the said Act. From above, it is evident that the impugned press release has rightly publicised the last date for availing ITC to be the last date for the filing of return in FORM GSTR-3B for the

month of September, 2018 i.e. 20th October, 2018 and therefore, is not contrary to the section 16(4) of the said Act read with section 39(1) of the said Act, read with rule 61 of the said Rules.

Further, the Hon'ble High Court of Delhi in its order dated 26.11.2018 on W.P.(C) 9019/2017 & CM APPL. No.36921/2017, in the matter of Anil Goel and Associated versus Union of India & Ors., has accepted that "learned counsel for the respondent has drawn our attention to the counter affidavit filed on behalf of the Commissioner of Central Tax, GST, Delhi-east, wherein it has been stated that the return filed in FORM GSTR-3B is not in addition to the return in FORM GSTR-3. Rule 61(5) of the Rules prescribe that where time for furnishing of details/returns in FORM GSTR-1 under section 37 and in FORM GSTR-2 under section 38 are extended, the Commissioner may, by notification specify that return may be filed under GSTR-3B. In other words, wherever the Commissioner has issued notification in terms of sub-rule 5 of Rule 61, the assessee would be required to file return in FORM GSTR-3B and not in FORM GSTR-3. Learned counsel for the petitioner is substantially satisfied as the statement made clarifies that FORM GSTR-3B and not GSTR-3 is to be filed in case covered by Rule 61(5) of the Rules".

20. With regard to Grounds K to M of the petition, I say that whatever is stated in Grounds K to M is totally disputed and denied in toto and the petitioner is put to strict proof of whatever is stated in Grounds K to M. I say that the

petitioner has wrongly contended that unless GSTR-1 of outward supplies is filed it will not possible for tax payer to calculate the amount of credit for the purpose of availment.

Para 4 of press release dated 18.10.2018 reads as under :

“It is clarified that the furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and the facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act. The apprehension that ITC can be availed only on the basis of reconciliation between FORM GSTR-2A and FORM GSTR-3B conducted before the due date for filing of return in FORM GSTR-3B for the month of September, 2018 is unfounded as the same exercise can be done thereafter also.”

The press release dated 18.10.2018 specifically states that the furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and the facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act.

To facilitate trade and industry, based on the recommendation of the GST Council in its 31st meeting held

on 22.01.2018. Order No. 02/2018 - Central Tax dated 31.12.2018 has been issued vide which the last date for availing ITC has been extended subject to specified conditions. Thus, a registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for the furnishing the details under sub-section (1) of said section for the month of March, 2019.

21. With regard to Ground N of the petition, I say that whatever is stated in Ground N is totally disputed and denied in toto and the Petitioner is put to strict proof in support of whatever is stated in Ground N. I say that Section 39(1) of the said Act has to be read along with rule 61(5) of the said Rules which provides for the filing of FORM GSTR-3B and reads as "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 the manner and conditions subject to which the return shall be furnished in FORM GSTR-3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner". Thus, it is amply clear that FORM GSTR-3B is a return

which is to be furnished under section 39 of the said Act. From above, it is evident that the impugned press release has rightly publicised the last date for availing ITC to be the last date for the filing of return in FORM GSTR-3B for the month of September, 2018 i.e. 20th October, 2018 and therefore, is not contrary to the section 16(4) of the said Act read with section 39(1) of the said Act read with rule 61 of the said Rules.

Further, the Hon'ble High Court of Delhi in its order dated 26.11.2018 on W.P.(C) 9019/2017 & CM APPL. No. 36921/2017, in the matter of Anil Goel and Associated versus Union of India & Ors, has accepted that "learned counsel for the respondent has drawn our attention to the counter affidavit filed on behalf of the Commissioner of Central Tax, GST, Delhi-east, wherein it has been stated that the return filed in FORM GSTR-3B is not in addition to the return in FORM GSTR-3. Rule 61(5) of the Rules prescribe that where time for furnishing of details/ returns in FORM GSTR-1 under section 37 and in FORM GSTR-2 under section 38 are extended, the Commissioner may, by notification specify that return may be filed under GSTR-3B. In other words, wherever the Commissioner has issued notification in terms of sub-rule 5 of Rule 61, the assessee would be required to file return in FORM GSTR-3B and not in FORM GSTR-3. Learned counsel for the petitioner is substantially satisfied as the statement made clarifies that FORM GSTR-3B and not GSTR-3 is to be filed in case covered by Rule 61(5) of the Rules."

23. The impugned press release reads thus :

“PRESS RELEASE

18.10.2018

Last date to avail input tax credit in respect of invoices or debit notes relating to such invoices pertaining to period from July, 2017 to March, 2018

There appears to be misgiving about the last date for taking input tax credit (ITC) in relation to invoices or debit notes relating to such invoices pertaining to period from July, 2017 to March, 2018. Such uncertainty seems to stem from the Government’s decision to extend the last date for furnishing of details of outward supplies in FORM GSTR-1 from time to time.

2. According to section 16(4) of the CGST Act, 2017, a registered person shall not be entitled to take ITC 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 (hereinafter referred to as “the said invoices”) or furnishing of the relevant annual return, whichever is earlier.

3. With taxpayers 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 supplier(s) 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.

4. It is clarified that the furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and the facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act. The apprehension that ITC can be availed only on the basis of reconciliation between FORM GSTR-2A and FORM GSTR-3B conducted before the due date for filing of return in FORM GSTR-3B for the month of September, 2018 is unfounded as the same exercise can be done thereafter also.

5. It may, however, be noted that the Government has extended the last date for furnishing of return in FORM GSTR-3B for the month of September, 2018 for certain taxpayers who have been recently migrated from erstwhile tax regime to GST regime vide notification No. 47/2018-Central Tax dated 10th September, 2018. For such taxpayers, the extended date i.e. 31st December, 2018 or the date of filing of annual return whichever is earlier will be 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.

6. All the taxpayers are encouraged to take note of the legal requirements and be compliance savvy. ”

24. In the course of the hearing of this matter, Mr.Desai submitted that this writ-application has become infructuous as

a fresh press release has been issued dated 21st June 2019, which reads thus :

*“35th GST Council Meeting, New Delhi
21st June 2019*

*PRESS RELEASE
(Law and Procedure related changes)*

The GST Council, in its 35th meeting held today at New Delhi, recommended the following:

1. In order to give ample opportunity to taxpayers as well as the system to adapt, the new return system to be introduced in a phased manner, as described below:

i. Between July, 2019 to September, 2019, the new return system (FORM GST ANX-1 & FORM GST ANX-2 only) to be available for trial for taxpayers. Taxpayers to continue to file FORM GSTR-1 & FORM GSTR-3B as at present;

ii. From October, 2019 onwards, FORM GST ANX-1 to be made compulsory. Large taxpayers (having aggregate turnover of more than Rs. 5 crores in previous year) to file FORM GST ANX-1 on monthly basis whereas small taxpayers to file first FORM GST ANX-1 for the quarter October, 2019 to December, 2019 in January, 2020;

iii. For October and November, 2019, large taxpayers to continue to file FORM GSTR-3B on monthly basis and will file first FORM GST RET-01 for December, 2019 in January, 2020. It may be noted that invoices etc. can be uploaded in FORM GST ANX-1 on a continuous basis both by large and small taxpayers from October, 2019 onwards. FORM GST

ANX-2 may be viewed simultaneously during this period but no action shall be allowed on such FORM GST ANX-2;

iv. From October, 2019, small taxpayers to stop filing FORM GSTR-3B and to start filing FORM GST PMT-08. They will file their first FORM GST- RET-01 for the quarter October, 2019 to December, 2019 in January, 2020;

v. From January, 2020 onwards, FORM GSTR-3B to be completely phased out

2. On account of difficulties being faced by taxpayers in furnishing the annual returns in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C, the due date for furnishing these returns/reconciliation statements to be extended till 31.08.2019

3. To provide sufficient time to the trade and industry to furnish the declaration in FORM GST ITC-04, relating to job work, the due date for furnishing the said form for the period July, 2017 to June, 2019 to be extended till 31.08.2019

4. Certain amendments to be carried out in the GST laws to implement the decisions of the GST Council taken in earlier meetings.

5. Rule 138E of the CGST rules, pertaining to blocking of e-way bills on non-filing of returns for two consecutive tax periods, to be brought into effect from 21.08.2019, instead of the earlier notified date of 21.06.2019

6. Last date for filing

of intimation, in FORM GST CMP-02, for availing the option of payment of tax under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, to be extended from 30.04.2019 to 31.07.2019

(Note: The recommendations of the GST Council have been presented in this release in simple language for information of all stakeholders. The same would be given effect through relevant Circulars/Notifications which alone shall have the force of law.) ”

25. Thus, according to Mr.Desai, the grievance as redressed in the writ-application would not survive and the petition be disposed of accordingly. However, the learned counsel submitted that as a neat question of law has been raised, this Court may look into the legality and validity of the impugned press release and decide the matter on merits.

26. The writ-application has been filed seeking quashing and setting aside of the press release dated 18th October 2018 to the extent that its para 3 purports to clarify that the last date for availing the 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 the return in Form GSTR-3B for the month of September 2018. As per the above clarification, a taxpayer will not be able to claim the input tax credit for the period from July 2017 to March 2018 after filing of the return in Form GSTR-3B for the month of September 2018. It disentitles a taxpayer to claim the input tax credit for the aforesaid period which could not be taken on account of any error or omission. It is submitted

that the aforesaid clarification is not in consonance with Section 16(4) of the CGST Act/GGST Act which provides for the last date for taking the input tax credit. It is submitted that the last date of taking the input tax credit should be due date of filing of return in Form GSTR-3 or annual return whichever is earlier.

27. Section 16(4) of the CGST Act/GGST Act provides that the last date for taking the input tax credit in respect of any invoice or debit note pertaining to a financial year is the due date of furnishing of the return under Section 39 for the month of September following the end of the financial year or furnishing of the relevant annual return, whichever is earlier.

28. Therefore, the moot question is, whether the return in Form GSTR-3B is a return required to be filed under Section 39 of the CGST Act/GGST Act. The aforesaid 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.

29. Section 39(1) of the CGST/GGST Act provides that every taxpayer, except a few special categories of persons, shall furnish a monthly return in such form and manner as may be prescribed. Rule 61 of the CGST Rules/GGST Rules prescribes the form and manner of submission of monthly return. Sub-rule 1 of Rule 61 of the CGST Rules/GGST Rules provides that the return required to be filed in terms of Section 39(1) of the CGST/GGST Act is to be furnished in Form GSTR-3.

30. It would be apposite to state 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 difficulty faced by the tax payers 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 filing of a shorter return in Form GSTR-3B for 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 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 GST-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 10th September 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.

31. It would also be apposite to point out that 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 27th July 2017 and omitted the reference to return in Form GSTR-3B being return in lieu of Form GSTR-3.

32. Thus, in view of the above, the impugned press release dated 18th October 2018 could be said to be 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.

33. The said clarification could be said to be 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.

34. With the above, this writ-application stands disposed of.

(J. B. PARDWALA,J.)

(A. C. RAO,J.)

/MOINUDDIN

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THE HIGH COURT
OF GUJARAT

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