

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 14624 of 2019**

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M/S AAP AND CO TRHOUGH PARTNER ANCHAL AVINASH PODDAR
Versus
UNION OF INDIA

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Appearance:

MR.AVINASH PODDAR(9761) for the Petitioner(s) No.
1,10,11,12,13,14,15,16,17,18,19,2,20,21,22,23,24,25,26,27,28,29,3,30,31,4,5
,6,7,8,9
MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No.
1,10,11,12,13,14,15,16,17,18,19,2,20,21,22,23,24,25,26,27,28,29,3,30,31,4,5
,6,7,8,9
for the Respondent(s) No. 1,2,3,4,5

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA
and
HONOURABLE MR.JUSTICE A.C. RAO
Date : 28/08/2019

ORAL ORDER

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

1. This writ application has been preferred by in all thirty one writ applicants with the following prayers:

(a) issue an 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 as illegal, ultra vires and without any authority of law;

(b) issue an appropriate writ, order or direction to grant complete waiver 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 by appropriately modifying the Notification No.76/2018- Central Tax dated 31.12.2018 which grants this waiver only for the period

from 22nd December, 2018 to 31st March, 2019;

(c) issue writ, order or direction in the nature of mandamus directing the Respondent Authorities to refund the late fees paid for delayed filing of return in 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;

(d) pending admission, hearing and final disposal of this petition, to stay any 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;

(e) any other and further relief deemed just and proper be granted in the interest of justice;

(f) to provide for the cost of this petition.

2. We are of the view that although the cause may remain the same yet each of the writ applicant ought to have preferred a separate one page petition.

3. In such circumstances, we direct the learned counsel to file a one page petition so far as the writ applicants Nos. 2 to 31 are concerned. The order which we propose to pass as on date shall be construed to be an order passed only in the case of the writ applicant No.1.

4. The principal argument of Mr.Tushar Himani, the learned senior counsel appearing for the writ applicant, is that 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.

5. The writ applicant seeks the benefit of complete waiver of late fees in accordance with the second proviso to the Notification No.76/2018-Central Tax dated 31.12.2018 for the returns furnished upto September 2018.

6. Mr.Himani, the learned senior counsel invited our attention to Section 47 of the Act which provides for the imposition of late fees in case the returns are filed late.

7. Mr.Himani, the learned senior counsel submitted that 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.

8. If there is a delay then the late fee of Rs.100/- for every day during which such failure continues subject to the maximum amount of Rs.5,000/- can be levied.

9. In Para 3.3 of the writ application, a chart has been provided indicating the relevant section and the form number as well as the rule number. 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.

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

11. Let **Notice** be issued to the respondents, returnable on 16.10.2019. Ms.Maithili Mehta, the learned Assistant Government Pleader waives service of notice for and on behalf of the respondent No.3-State of Gujarat.

12. Having heard Mr.Himani, the learned senior counsel appearing for the writ applicants and having gone through the materials placed on record, we are of the view that the writ applicants have been able to make a strong *prima facie* case to have an ad-interim order in terms of Para -7(d). We, accordingly, grant such order. Direct Service is permitted.

13. The respondent Nos.1, 2, and 4 shall be served by Registered Speed Post and other respondents shall be served by directly.

(J. B. PARDIWALA, J)

SUYASH

(A. C. RAO, J)