

# **Tax Alert: GSTR-3B is not a return holds Gujarat High Court**

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## Summary

The Gujarat High Court (HC) in a recent case<sup>1</sup> has held that that Form GSTR-3B was never introduced as GST return in lieu of Form GSTR-3. The HC further held that Form GSTR-3B is only a temporary stop-gap arrangement till the due date of filing the return in Form GSTR-3 is notified.

It accordingly held Para 3 of the press release<sup>2</sup> to be illegal. The press release stated that the last date for filing Form GSTR-3B was the last day for availing ITC on invoices issued during July 2017 to March 2018.

## Facts of the case

- The Petitioner had filed a writ petition questioning the legality of Para 3 of the press release<sup>3</sup> purporting to clarify that the last date for availing the ITC 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.
- Further, the Petitioner contended that the impugned press release is contrary to the relevant provisions<sup>4</sup> of the GST law and hence is unreasonable, illegal and void.

## Petitioner's contentions

- **GSTR-3B not in lieu of GSTR-3:** The Petitioner, placing reliance on provisions<sup>5</sup> of the law, argued 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. Further, the Petitioner argued that the Government had consciously omitted reference to the term 'return' in GSTR-3B being in lieu of GSTR-3 vide a notification<sup>6</sup>.

- **Rectification through GSTR-3:** The taxpayer pointed out that discrepancies, if any, in discharge of tax and other liabilities could be rectified through GSTR-3 return. Further, it was pointed out that where any ITC is taken after filing GSTR-3B and the same gets reflected in GSTR-3, it is required to be credited to the electronic credit ledger of the registered person.
- **Decision taken by the GST Council:** The Petitioner submitted that the decision to add return in form GSTR-3B was taken in

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<sup>1</sup> M/s AAP and Co. Chartered Accountant v Uoi

<sup>2</sup> Dated 18 October 2018

<sup>3</sup> Press Release dated 18 October 2018

<sup>4</sup> Section 16(4) of the CGST Act read with Section 39(1) of the CGST Act and Rule 61 of the CGST Rules

<sup>5</sup> Rule 61(1) and Rule 61(5) of the CGST/GGST Rules and the aforesaid Notification

<sup>6</sup> Notification no.17/2017 - Central Tax dated 27 July 2017

the 18th GST Council Meeting held on 30 June 2017 to accommodate 'shorter return for first two months of roll out'. Thus, it argued that GSTR-3B was never intended to substitute GSTR-3.

- **GSTR-3B only a temporary stop-gap:**

The petitioner submitted that GSTR-3B is only a temporary stop-gap arrangement till the due date of filing return in Form GSTR-3 was notified on the GSTN portal.

- **GSTR-3 should be taken as final return:**

Thus, the Petitioner submitted that GSTR-3 should be treated as the final return for taking additional Input Tax Credit (ITC) as well as discharging additional tax liabilities after filing of return in Form GSTR-3B. Accordingly, it was submitted that the last date for availing the ITC relating to the invoices issued during July 2017 to March 2018 is the last date for filing of the return in Form GSTR-3 and not GSTR-3B.

### Gujarat HC's observations and ruling

- **Temporary stop-gap arrangement:** The HC observed that, 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 periods. It was never introduced to replace GSTR-3. The return in Form GSTR-3B is only a temporary stop-gap arrangement till the due date of filing the return in Form GSTR-3 is notified.

- **Rectification by the Government:** The HC pointed out that the notification<sup>7</sup> introducing mandatory filing of GSTR-3B in lieu of GSTR-3 was retrospectively rectified<sup>8</sup> by the Government.
- **Para-3 of the press release was illegal:** Accordingly, the HC held Para 3 of the press release to be illegal.

### Our comments

The ruling by the HC could open a Pandora's box and would have widespread implications not only as regards the determination of due date for availing ITC but also on various other aspects. At this juncture, it has become imperative on the part of the Government to issue appropriate clarification on this aspect.

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<sup>7</sup>No. 10/2017 Central Tax dated 28 June 2017

<sup>8</sup>Vide Notification No.17/2017 Central Tax dated 27 July 2017

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