



“LAST DATE FOR AVAILING ITC FOR 2017-2018 IS 31st AUGUST, 2019”: GUJARAT HIGH COURT

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Introduction:-

Recently Hon'ble Gujarat High Court pronounced a landmark judgment relating to last date of availing ITC relating to invoices issued for the period from July 2017 to March 2018. The High Court held that FORM GSTR-3B is not a return in lieu of FORM GSTR-3 and it is only a temporary stop-gap arrangement till the due date of filing the return in FORM GSTR -3 is notified.

This has resulted in availing of ITC of missed out invoices issued during the period from July 2017 to March 2018 till 31st August, 2019. First, Let us go through the basic provisions regarding Input Tax Credit.

Basic Conditions for taking ITC

As per Section 16(2) of CGST Act, 2017 No registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless –

- a) In possession of tax invoice.
- b) Received Goods and Services.
- c) Tax is actually paid to the Government.
- d) *Had furnished the return under section 39.*

Time Limit to avail the input tax credit [Section 16(4) of the CGST Act, 2017]

Time limit for availing of credit by registered taxable person is prescribed in the following manner.

a) Filing of return under sec.39 for the month of September following end of financial year to which such invoice pertains.

OR

b) Filing of Annual Return
Whichever is earlier

Rule 61:- Form and manner of Submission of Monthly Return –

“Every registered person other than a person referred 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, so 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.”

Rule 61(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.”

Having read with the provisions regarding Input Tax Credit, let's have a brief look upon the judgement of Hon'ble Gujarat High Court and its possible implications.

Case law:-AAP &CO., Chartered Accountants v/s Union of India

In the decision, the Gujarat High Court has held that 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 is only a temporary arrangement till due date of filing the return in FORM GSTR-3 is notified.

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 suppliers during the period from July, 2017 to March, 2018 is the last date for filing of such return for the month of September, 2018 i.e. 20th October, 2018."

The Hon'ble Gujarat High Court also held that the **above said clarification could be said to be illegal to the extent of its para-3 and contrary to 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.**

Therefore the last date for availing ITC for 2017-2018 is 31st August, 2019.

The Court further held that FORM GRSTR-3B is **not a return under section 39**. The due date of filing return under section 39 for the month of July 2017 to March 2019 shall be subsequently notified in Official Gazette.

The Judgement of High Court has settled the issue regarding last date of availing ITC, but it may have resulted in following complications: -

Complications: - If FORM GSTR-3B is not a return under section 39, as it is held by the court then:-

- 1) **Under section 16(2) (d)** of CGST Act, 2017 no registered person can claim input tax credit unless return is furnished under section 39. **This can create a huge problem for the tax payers as many businesses may have already claimed ITC.**
- 2) **1st Proviso to Section 37(3)** of the CGST Act provides that no rectification of error or omission in respect of the details furnished under Section 37(1) i.e. GSTR-1 shall be allowed after furnishing of the return under Section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier. **In such case GSTR-1 can be rectified for any mismatch till the date of filing annual return.**
- 3) Section 39(7) of the CGST Act provides that registered person who is required to furnish return under Section 39 shall pay to the Government tax due as per return not later than the last date on which he is required to furnish such return. **In such case, whether it is open for a taxpayer to contend that there is no last date for payment of tax dues till GSTR-3 is notified and therefore, not liable for interest for any delay in payment so far.**

Let's see how the government is going to tackle the problems arising from the recent judgement or else they will go with retrospective effect to the extent.