

Apex Court order on GSTR 3B raises fears **over input tax credit**

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Supreme Court has stayed a Gujarat HC order, which held that GSTR 3B is not a return.

The Supreme Court has stayed an order by the Gujarat High Court which held that GSTR 3B (a return form) is not a return.

This has raised apprehensions that the stay might lead to denial of input tax credit (ITC) for a number of assessees.

The Gujarat High Court, in its order of June 24, (reissued with a small correction on July 10), termed the press release dated October 18, 2018, as 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 also the last date for the filing of return in Form GSTR-3B.

According to experts, this means that GSTR 3B is not a return form. Now, this same order has been stayed and the matter will be heard later this month.

Rajat Mohan, Senior Partner with AMRG & Associates, said that granting a stay order on operation of the Gujarat HC ruling in the case of AAP & Co may lead to denial of tax credit, tax adjustment on credit notes and amendment made in reporting of tax invoices after the due date of filing GSTR3B for month of September in the succeeding financial year.

“This stay order will impact thousands of taxpayers who as a matter of prudence took the benefit of the Gujarat High Court ruling even though they were beyond the jurisdiction of the Court,” he said.

Monthly filing

GSTR 3B needs to be filed on a monthly basis by every regular assessee even if the tax liability in ‘Nil.’

It does not require invoice level information but just a summary of sales and purchase made by the registered taxpayer, liable input tax credit, liable tax and tax paid. This return is to be filed by the 20th of the following month. The writ petition filed in the Gujarat High Court sought the quashing and the setting aside of the press release dated October 18, 2018, to the extent of its Para 3.

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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 September 2018.

The writ petition also mentioned that 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, the petition said.

It was submitted that the last date of taking the input tax credit should be the due date of filing of return in Form GSTR-3 or annual return whichever is earlier.

The High Court noted that GSTR 3B is only a temporary arrangement till the due date of filing the return in Form GSTR-3 is notified. It also pointed out that a government notification omitted the reference to return in Form GSTR-3B being return in lieu of Form GSTR-3. Keeping all these in mind, the Bench ruled in the favour of the petitioner.