

**GST: Where assessee was not able to file returns in Form GSTR-3B for months November, 2017 onwards and it filed writ petition contending that there was no condition for making payment of tax as a pre-condition for filing return of Form GSTR-3B and in absence of any such provision, on-line system of department, which did not allow filing of returns without payment of tax liability admitted as per such returns, was contrary to legal provisions, assessee was permitted to file manual returns in Form GSTR-3B, which would be subject to final outcome of petition**

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**[2019] 105 taxmann.com 262 (Gujarat)**

**HIGH COURT OF GUJARAT**

**Octagon Communications (P.) Ltd.**

**v.**

**Union of India\***

**MS. HARSHA DEVANI AND BHARGAV D. KARIA, JJ.  
R/SPECIAL CIVIL APPLICATION NO. 5873 OF 2019  
APRIL 18, 2019**

**Section 39 of the Central Goods and Services Tax Act, 2017 read with rule 61 of the Central Goods and Services Tax Rules, 2017/Section 39 of the Gujarat Goods and Services Tax Act, 2017 read with rule 61 of the Gujarat Goods and Services Tax Rules, 2017 - Returns - Furnishing of - Assessee was not able to file returns in Form GSTR-3B for months November, 2017 onwards - It filed writ petition stating that there was no condition for making payment of tax as a pre-condition for filing return of Form GSTR-3B - In absence of any such provision, on-line system of department, which did not allow filing of returns without payment of tax liability admitted as per such returns, was contrary to legal provisions - If it was not able to file returns in Form GSTR-3B by 20-4-2019, it would be deprived of input tax credit - Whether assessee was to be permitted to file manual returns in Form GSTR-3B, which would be subject to final outcome of petition - Held, yes [Para 3] [In favour of assessee]**

**(NR)**

**Uchit N. Sheth** *for the Petitioner.*

**ORDER**

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**Ms. Harsha Devani, J.** - Despite service of notice, there is no appearance on behalf of the respondents No.2 and 3.

**2.** Mr. Uchit Sheth, learned advocate for the petitioner has submitted that there is no condition for making payment of tax as a pre-condition for filing return of Form GSTR-3B. It was submitted that in the absence of any such provision, the online system of the respondents which does not allow filing of returns without payment of tax liability admitted as per such returns is contrary to legal provisions. It was further submitted that if the petitioner is not able to file return in Form GSTR-3B by 20th April, 2019 the petitioner would be deprived of input tax credit.

**3.** Having regard to the urgency of the matter and the fact that there is no response from the respondents No.2 and 3, by way of ad-interim relief, the petitioner is permitted to file manual returns in Form GSTR-3B for the months November, 2017 onwards, which would be subject to final outcome of the petition. Stand over to 13th June, 2019.

Direct service is permitted today.

s.k. jain

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\*In favour of assessee.