

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 13794 of 2020**

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M/S SURAT MERCANTILE ASSOCIATION & 5 other(s)  
Versus  
UNION OF INDIA & 2 other(s)

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Appearance:

MR VINAY SHRAFF, ADVOCATE WITH MR PARTH S SHAH(8375) for the  
Petitioner(s) No. 1,2,3,4,5,6  
for the Respondent(s) No. 1,2  
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP(99) for the  
Respondent(s) No. 3

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**CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA**  
and  
**HONOURABLE MR. JUSTICE ILESH J. VORA**

**Date : 27/01/2021**

**ORAL ORDER**

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

1 We have heard Mr. Vinay Shraff, the learned counsel assisted by Mr. Parth Shah, the learned counsel appearing for the writ applicants.

2 The subject matter of challenge in the present writ application is to the constitutional validity of Section 16(4) of the GST Act, 2017 on the ground of being manifestly arbitrary and violative of Articles 14, 19(1)(g) and 300A respectively of the Constitution.

3 The argument canvassed is that the taxpayers cannot be made to suffer by not allowing the ITC on account of the failure on the part of the respondents to notify the Forms GSTR – 2 and GSTR – 3 respectively. It is also argued that the retrospective amendment in Rule

61 of the Rules is also unconstitutional being violative of Article 14 of the Constitution. It is also argued that the retrospective amendment to Rule 61(5) of the Rules and the deletion of Rule 61(6) of the Rules is unconstitutional being violative of Article 279A of the Constitution. It was argued that para 4 of the C.B.I. & C. Press Release No.56/2018 dated 10<sup>th</sup> September 2018 to the extent it purports to clarify that if there is delay in filing of the returns in the Form GSTR – 3B from the due date of furnishing of the returns for the month of September following the end of financial year or furnishing of the relevant annual returns, whichever is earlier, would render the Input Tax Credit time barred, be quashed and set aside.

4 In the last, the learned counsel submitted that appropriate directions may be issued declaring that Section 39 of the Act does not bar filing of the returns without payment of tax and the GSTN portal not allowing furnishing of such returns without payment of tax be declared as arbitrary and unreasonable being violative of Article 14 of the Constitution of India.

5 Let Notice be issued to the respondents, returnable on 25<sup>th</sup> March 2021. The respondents shall be served directly through E-mail. In the meantime, one set of the entire paper book be furnished to Mr. Devang Vyas, the learned Additional Solicitor General of India, who would be appearing for the respondents.

**(J. B. PARDIWALA, J)**

**(ILESH J. VORA, J)**

CHANDRESH