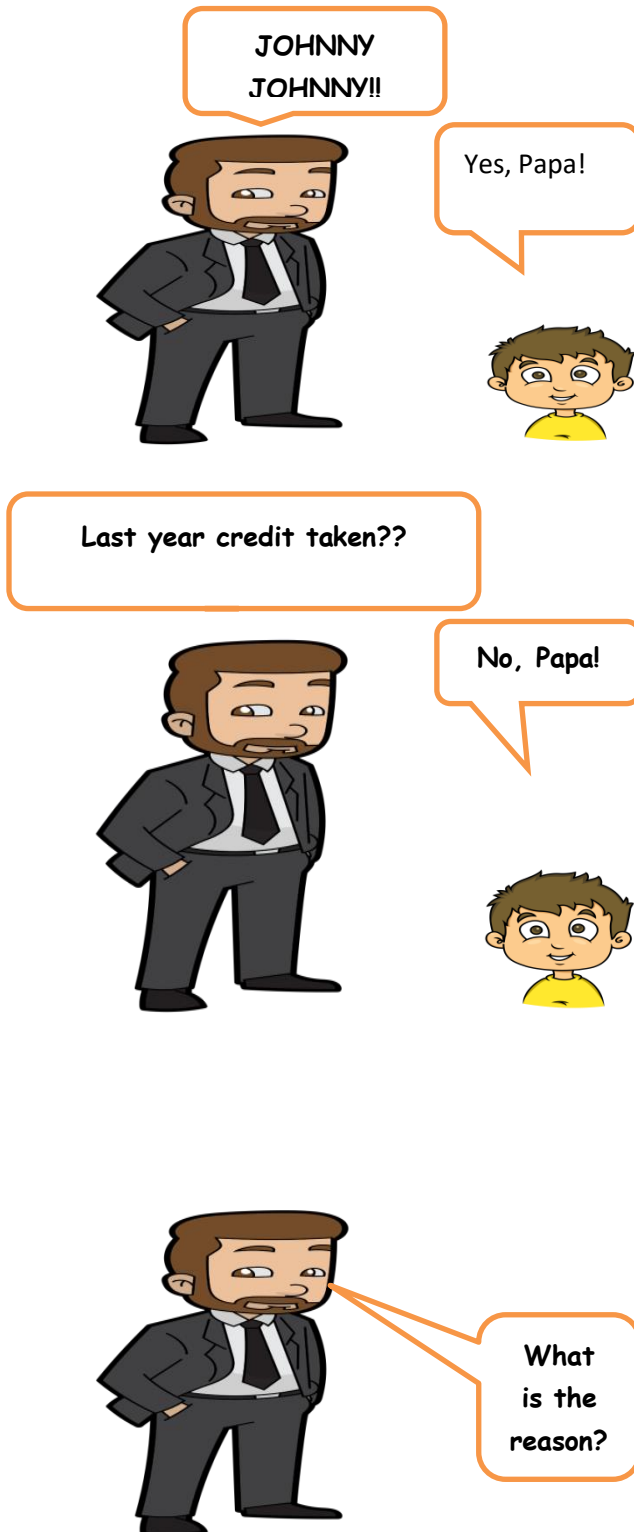


# GST and JOHNNY- UPDATE No.5



This Papa-:

There is time limit of taking credit under Section 16(4) of CGST Act, 2017. It restricts the time limit of taking credit on an invoice after the due date of furnishing return U/S39 for the month of September following the end of financial year to which invoice relates or annual return filing date, whichever is earlier. Section 39 prescribed the return GSTR-3 and it was never filed and hence GSTR-3B was prescribed. But the Government made it clear while introducing the GSTR-3B that it is a temporary return and final return was GSTR-3 only. Hence, the Gujarat High Court in case of AAP & Company made it clear that last date of taking of credit on invoice is filing of annual return and not the date of filing of return GSTR-3B for the month of September 2018. But the Government made the retrospective amendment vide Notification number 49/2019-GST dated 9.10.2019 declaring GSTR-3B is return. It has been held by Courts that a Legislature is competent to remove infirmities retrospectively and make any imposition of tax declared invalid, valid. However till date the retrospective amendment is done by parliament but this time, it has been done by a notification. Secondly, for retrospective amendment, it has been understood that the intention of law makers should be clear from day first but there is drafting errors. But in instant case, the GSTR-3B return was clearly declared as temporary by Government. Hence, earlier intention was not to declare GSTR-3B as a return U/S39. The provision of Section 16(4) is already challenged in Gujarat High Court in case of Times Heavn Club Private Limited. But notices are being issued by department

CA Pradeep Jain