



Negative blocking of ITC allowed

The allowance of negative blocking of Input Tax Credit (ITC) was justified based on the interpretation of Rule 86A of the GST Rules, which permits authorities to block the electronic credit ledger if there are reasons to believe that the credit has been fraudulently availed or is ineligible. The court determined that the blocking can occur even if the credit balance is nil at the time of blocking, as long as there was a history of fraudulent availment that could affect future credits. This interpretation aims to protect state revenue by preventing the use of credits that may have been wrongfully claimed, regardless of their current availability in the ledger.

Additional reasons for the allowance of negative blocking of ITC include:

- 1. Preventive Measure:** The blocking serves as a preventive measure to safeguard against potential future claims of fraudulent credits, ensuring that any credits that may be accrued later cannot be utilized if they are linked to prior fraudulent activities.
- 2. Revenue Protection:** The authorities are empowered to act in the interest of protecting state revenue, allowing them to take necessary actions even when the current balance is zero, to deter fraudulent practices.
- 3. Interpretation of "Available":** The interpretation of "available" in the context of Rule 86A was broadened to mean that the authorities can consider past fraudulent availments, allowing for blocking actions based on historical data rather than just current balances.
- 4. Jurisdictional Authority:** The court affirmed that state authorities retain the jurisdiction to issue blocking orders independently of any concurrent actions taken by central authorities, especially when the amounts and periods involved differ.
- 5. Legal Framework:** The absence of explicit prohibition against negative blocking in the statute allows for its application, reinforcing the legislative intent to combat tax evasion effectively.

The judgment may implicitly reference several legal maxims, including:

- 1. "Ut res magis valeat quam pereat"** - This maxim means that a thing should be interpreted in such a way that it has effect rather than being rendered ineffective. It supports the idea that the provisions of the law should be applied to achieve their intended purpose.
- 2. "In dubio pro reo"** - While typically applied in criminal law, this maxim suggests that in cases of doubt, the interpretation should favor the accused. In this context, it can be seen as a reminder to ensure that the rights of taxpayers are considered, but balanced against the need to protect revenue.
- 3. "Expressio unius est exclusio alterius"** - This maxim means that the expression of one thing implies the exclusion of another. It can be relevant in interpreting statutes where specific provisions are included, suggesting that the absence of explicit prohibition against negative blocking allows for its application.

These maxims reflect principles of legal interpretation that guide courts in understanding and applying statutes in a manner consistent with their intended purpose.



WEB COPY



W.P.No.29872 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

| | |
|---------------|------------|
| Reserved on | 29.10.2024 |
| Pronounced on | 28.11.2024 |

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.29872 of 2024

and

W.M.P.Nos.32579, 32574 & 32575 of 2024

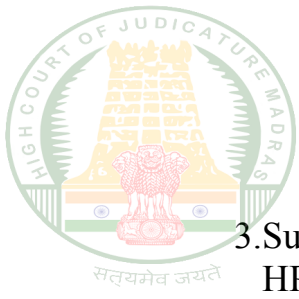
Tvl.Skanthaguru Innovations Private Limited,
CD Arcade, Door No.38, Corporate Office,
Karbammal Nagar, Mylapore, Chennai 600004
Tamil Nadu,
Rep by its Authorised Representative,
Mr.J.Arun Balaji

... Petitioner

Vs.

1.Commercial Tax Officer,
Office of the State Tax Officer,
Thiruvallikeni Assessment Circle,
Room No.333, 3rd Floor,
Integrated Commercial Taxes Building,
No.571, Anna Salai, Nandanam,
Chennai 600 035.

2.Assistant Commissioner (ST),
Review, Appeal and Legacy,
Chennai South-I,
Integrated Commercial Taxes Building,
Anna Salai, Nandanam,
Chennai 600 035



W.P.No.29872 of 2024

3. Superintendent of GST,
HPU, Chennai North,
Office of Principal Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

4. Principal Commissioner of GST & Central Excise,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

... Respondents

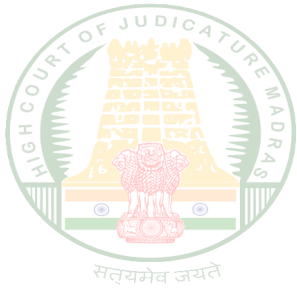
Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Notice in Form ASMT-10 dated 26.09.2024 issued by the 1st respondent and quash the same and to consequently direct the respondents 1 and 2 and/or anyone acting under or through them to unblock the electronic credit ledger/electronic cash ledger of the petitioner.

For Petitioner : Mr.Satish Parasaran, Senior counsel,
for Mr.Karthik Sundaram

For Respondents : Mr.C.Harsha Raj,
Additional Government Pleader,
for R1 & R2

Mr.R.P.Pragadish,
Senior Standing counsel, for R3 & R4



WEB COPY



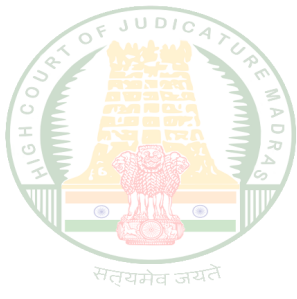
W.P.No.29872 of 2024

ORDER

This writ petition has been filed challenging the impugned notice in the Form ASMT-10 dated 26.09.2024 issued by the 1st respondent and consequently, to direct the respondents 1 and 2 to unblock the electronic credit ledger/electronic cash ledger (hereinafter called as “ECL”) of the petitioner.

2. Mr.Satish Parasaran, learned Senior counsel appearing on behalf of the petitioner had made the following submissions:

2.1 In this case, the main grievance of the petitioners is that the petitioner's ECL has been blocked without the availability of any credit, which is totally contrary to the provisions of Rule 86A of GST Rules, 2017. The intimation for blocking of ECL was issued on the following dates:



WEB COPY

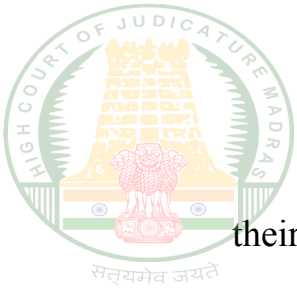


W.P.No.29872 of 2024

| Date of blocking orders | Amount blocked |
|--------------------------------|-----------------------|
| 24.06.2024 | Rs.72,902/- |
| 09.09.2024 | Rs.37,09,376/- |
| | Rs.1,55,22,210/- |
| 10.09.2024 | Rs.45,36,666/- |
| | Rs.9,77,410/- |

2.2 All the above blocking orders were issued by the 2nd respondent. Subsequent to the said blocking orders, the impugned intimation was issued by the 1st respondent in Form ASMT-10 dated 26.09.2024, which is pertaining to the issue of wrongful availment of ITC to the extent of a sum of Rs.13,10,44,864/-.

2.3 He would submit that the Central Authorities had already conducted the investigation at the petitioner's premises and found that till March, 2024, the petitioners had wrongfully availed a sum of Rs.6.3 Crores as ITC. Accordingly, the Central Authorities had issued summons with regard to the wrongful availment of ITC to the extent of Rs.6.3 Crores and subsequently, freezed the bank accounts of the petitioners. Thereafter, the petitioner paid a sum of Rs.1.3 Crores as GST to show



W.P.No.29872 of 2024

their bonafide and as a result, the attachment order passed by the Central Authorities was lifted and the bank accounts of the petitioner were defrozeed. Under these circumstances, for the very same issue, the 1st respondent, being the State Authority, had also issued the notice under Form GST ASMT-10 pertaining to the period till the month of September for wrongful availment of a sum of Rs.13,10,44,864/-.

2.4 As far as the initiation of proceedings by the State Authorities is concerned, he would submit that the State Authorities will not have any concurrent jurisdiction since the Central Authorities have already initiated proceedings for the very same issue by conducting the search at the petitioner's premises. Subsequent to the said search, the Central Authorities had also recorded the Statement of Arun Balaji, one of the Directors, on 14.03.2024 and the arrest was also made. Thereafter, he was released on bail.

2.5 That apart, by referring Rule 86A of GST Rules, 2017, he



W.P.No.29872 of 2024

WEB COPY

would submit that for the purpose of blocking the ECL, the credit should be available in ECL of the Registered person at the time of blocking. If there is “Nil” balance in the credit ledger, there cannot be any negative blocking of credit since the same is not permissible under the provisions of Rule 86A of the GST Rules.

2.6 Further, he would submit that the Officer, who has blocked the ECL of the petitioner, should record the reasons as to believe that the credit has been fraudulently availed by the petitioner and the same is ineligible. In this case, when the ECL was initially blocked for a sum of Rs.72,902/-, a DRC-01A was issued and the amount admitted in the said DRC-01A was paid, whereby the dispute raised by the respondent had attained its finality. However, without considering the proceedings initiated by the Central Authorities, the State Authorities had also initiated a similar proceedings and issued the impugned Form ASMT-10.

2.7 Further, he would submit that now, the Central Authorities have issued DRC-01A on 08.10.2024 with regard to the wrongful availment of a sum of Rs.13.10 Crores. Therefore, he would submit that

6/35



W.P.No.29872 of 2024

WEB COPY

the impugned Form DRC ASMT-10 issued by the State Authorities shall be quashed. In support of the law regarding the negative blocking, the learned counsel referred to the judgement of the Hon'ble Division Bench of Gujarat High Court in *Samay Alloys India Pvt. Ltd., vs. State of Gujarat* reported in *2022 (61) GSTL 421 (Guj.)* and also the judgement of High Court of Delhi in *Best Crop Science Pvt. Ltd., vs Principal Commissioner, CGST Commissionerate* reported in *(2024) 22 Centax 531 (Del.)*.

2.8 He would also insist that the State Authorities will not have any jurisdiction when the Central Authorities have already initiated the proceedings on the same issue. Therefore, he would submit that without any authority, the respondents 1 and 2 have issued the notice in Form GST ASMT-10 on 26.09.2024 and passed blocking orders on 24.06.2024, 09.09.2024 and 10.09.2024. Hence, he prayed this Court to allow this writ petition. Further, he would submit that now, due to the blocking of credit, the petitioners are not in a position to utilise the credit available in the ECL to an extent of Rs.2.48 Crores/-.



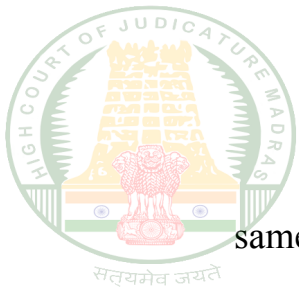
W.P.No.29872 of 2024

WEB COPY

3. Per contra, the learned Additional Government Pleader appearing for the respondents had strongly opposed the submissions made by the learned Senior counsel for the petitioner and would submit as follows:

3.1 Initially, the Central Authorities has initiated the proceedings pertaining to the period till March, 2024 for the wrongful availment of ITC to the extent of a sum of Rs.6.8 Crores. On the other hand, the State Authorities have found that the wrongful utilisation of credit for the period till September, 2024 is about a sum of Rs.13.10 Crore. Therefore, though the issues are similar in nature, the quantum of amount and period pertaining to the initiation of proceedings for wrongful availment of ITC by the Central Authorities and State Authorities are entirely different i.e., the Central Authorities had issued notice for a sum of Rs.6.8 Crores, whereas, the State Authorities had issued notice for a sum of Rs.13.10 Crores. In such case, if the petitioner is aggrieved over the aspects with regard to the quantum of amount and double prosecution, i.e., one by State Authority other by Central Authority, they can very well file their reply, in which case, the Authorities would have certainly considered the

8/35



W.P.No.29872 of 2024

same and dropped the proceedings accordingly.

WEB COPY

3.2 Further, as on the date of issuance of impugned Form GST ASMT-10, i.e., 26.09.2024, no proceedings was initiated by the Central Authorities for the wrongful availment of credit to the extent of Rs.13.10 Crores. Therefore, the petitioners cannot take a stand that the State Authorities will not have any authority to initiate proceedings for the quantum of amount, which was wrongfully availed by the petitioner since the period and quantum of amount raised by the State Authorities is entirely different. Further, there is no bar in any of the Statute or in any of the ruling of this Court and the Hon'ble Apex Court in this regard. Therefore, he would contend that the State Authorities are well within their jurisdiction/power.

3.3 However, he fairly submitted that subsequent to the issuance of ASMP 10, the Central Authorities have issued DRC-01A to the extent of Rs.13.10 Crores on 08.10.2024. Therefore, he would submit that if any further orders are issued on the same issue by the State Authorities, after the issuance of Form GST DRC-01A by the Central Authorities, the petitioner can very well challenge the same before this Court in the

9/35



W.P.No.29872 of 2024

WEB COPY

manner known to law. Therefore, he would contend that now the petitioners had filed the present petition in a pre-mature manner by challenging the ASMT-10 issued by the respondents.

3.4 Further, he would submit that only the State Authorities will have power to pass blocking orders, based on the wrongful availment of credit to the extent of a sum of Rs.13.10 Crores, the blocking orders were issued to the extent of Rs.2.48 Crores/-, which was the credit available and debited from the ECL. On the other hand, the Central Authorities will not have any power to issue the blocking orders since the petitioner is a State allotted taxable person. This legal position is admitted on either side and therefore, he would submit that once if any wrongful availment of credit came to the knowledge of State Authorities, though the jurisdiction was already exercised by the Central Authorities, still the State Authorities have power to pass blocking orders to protect the revenue of the State. Therefore, at any cost, the issue pertaining to concurrent jurisdiction for initiation of the proceedings cannot be linked with blocking of ECL by the State Authorities. Accordingly, he justified the initialisation of proceedings and issuance of ASMT-10 and blocking

10/35



W.P.No.29872 of 2024

of ECL of the petitioner by the State Authorities.

WEB COPY

3.5 The learned counsel appearing for the Central Authorities would submit that subsequent to the search conducted by the Central Authorities, the Directors were arrested and now they have been released on bail. Thereafter, a sum of Rs.1.2 Crores was deposited by the petitioner and upon receipt of the same, the bank accounts were released. Now on 08.09.2024, the DRC-01A was issued for the wrongful availment of credit up to September, 2024, to the extent of Rs.13.10 Crores. With regard to the other aspects, the Central Authorities had adopted the submissions made by the State Authorities.

4. I have given conscious consideration to the rival submissions made by the respective learned counsel and also perused the materials available on record.

5. In the present case, the issues that arises for consideration are as follows:

1) Whether the State Authorities are empowered to

11/35



WEB COPY



W.P.No.29872 of 2024

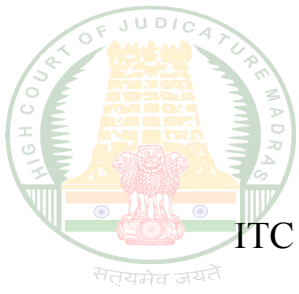
issue Form GST ASMT-10 dated 26.09.2024, subsequent to the search conducted by the Central Authorities on 13.03.2024?

2) Whether the blocking of ITC by virtue of the intimation dated 24.06.2024, 09.09.2024 and 10.09.2024 is in accordance with the provisions of Rule 86A of the GST Rules, 2017?

3) Whether the issuance of Form GST DRC-01A pertaining to a sum of Rs.71,798/- and remitting of the said amount by virtue of Form GST DRC03 and dropping of proceedings would amount to determination of the entire issue in Form GST ASMT-10?

6. ISSUE No.1 - Whether the State Authorities are empowered to issue Form GST ASMT-10 dated 26.09.2024, subsequent to the search conducted by the Central Authorities on 13.03.2024?:

6.1 As far as the 1st issue is concerned, in this case, initially, the Central Authorities have conducted search at petitioner's place of business on 13.03.2024. Thereafter, on 14.03.2024, the Statement of one of the Directors, Arun Balaji has been recorded. According to the Central Authorities, up to 31.03.2024, the petitioners have wrongfully availed the



W.P.No.29872 of 2024

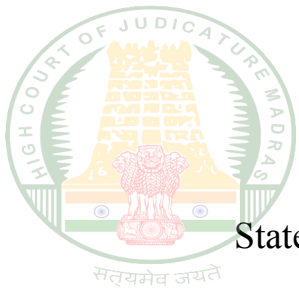
ITC to the extent of Rs.6.33 Crore.

WEB COPY

6.2 On 15.03.2024, the said Arun Balaji was arrested and bank account of the tax payer was freezed on 18.03.2024 under Section 83 of GST Act, 2017. Subsequently, on 23.05.2024, the tax payer has paid a sum of Rs.1.3 Crore to the respondents. Thereafter, the State Authorities have issued Form GST ASMT-10 on 26.09.2024 for wrongful availment of ITC for a sum of Rs.13.10 Crores.

6.3 The search conducted by the Central Authorities was pertaining to Rs.6.33 Crores, whereas the jurisdiction of the State Authorities is about Rs.13.10 Crores. Though the issue raised by the Central Authorities and State Authorities is similar, the quantum of amount demanded by them are entirely different and the period of demand also differs. Thus, the question of cross-empowerment would not arise. Therefore, to the extent of difference in amount and period, the State Authority will have power to issue Form ASMT-10 and hence, the

13/35



W.P.No.29872 of 2024

WEB COPY

State Authorities will certainly have power to impose further prosecution for the issues, which are left out by the Central Authorities.

6.4 At the time of issuance of ASMT-10 by the State Authorities, i.e., 26.09.2024, only the search was conducted by the Central Authorities and no notice was issued by them with regard to the wrongful availment of a sum of Rs.13.10 Crores. Therefore, under these circumstances, one cannot assume or presume that in the present case, the cross empowerment will come into picture against the State Authorities. However, now, the Form GST DRC-01A was issued by the Central Authorities on 08.10.2024 with regard to the wrongful availment of ITC for a sum of Rs.13.10 Crores up to the month of September, 2024. Due to this development, certainly, the State Authorities cannot proceed based on the Form GST ASMT-10, however, in the absence of any further orders, subsequent to the issuance of ASMT-10 by the State Authorities, it is pre-mature to decide as to whether the State Authorities are barred by cross empowerment or not. Even if the State Authorities are barred by cross empowerment for initiation of proceedings against the petitioner, the blocking of ITC will always be the domain of State Authorities,

14/35



W.P.No.29872 of 2024

WEB COPY

which was also accepted by the Central Authorities, since the petitioners are registered person of the State Authorities.

6.5 Therefore, this Court is of the considered view that in this case, the State Authorities have acted well within their power/jurisdiction and it is pre-mature to come to the conclusion as to whether the cross empowerment will come into picture or not.

7. ISSUE No.2 - Whether the blocking of ITC by virtue of the intimation dated 24.06.2024, 09.09.2024 and 10.09.2024 is in accordance with the provisions of Rule 86A of the GST Rules, 2017?

7.1 The State Authorities, by virtue of intimation dated 24.06.2024, 09.09.2024 and 10.09.2024, had issued the blocking orders under Rule 86A of the GST Rules, 2017. The main contention put forth before this Court is that in this case, the State Authorities have issued the blocking orders without any amount available in the ECL of the petitioners, i.e., at the time of blocking, the position of ITC was “Nil” in ECL. Therefore, it was contended by the petitioner that the said blocking

15/35



W.P.No.29872 of 2024

WEB COPY

is contrary to the provisions of Rule 86A as well as the law laid down by the Hon'ble Division Bench of Gujarat High Court and Hon'ble Delhi High Court in the aforementioned case laws.

7.2 Now, let me analyse the situation, under which, the State Authorities had issued the intimation with regard to blocking of ITC. At this juncture, it would be apposite to extract the Rule 86A, which reads as follows:

“86A. Conditions of use of amount available in electronic credit ledger.-

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as

a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36- i. issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or ii. without receipt of goods or services or both; or



WEB COPY



W.P.No.29872 of 2024

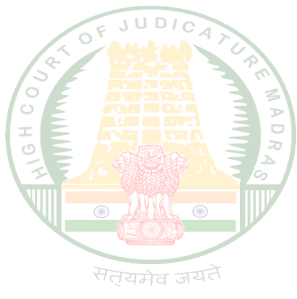
b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

(2)The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.



WEB COPY



W.P.No.29872 of 2024

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.”

7.3 A reading of the above Rule would show that if the Commissioner or an Officer, not below the rank of Assistant Commissioner, having reason to believe that the credit of ITC available in ECL has been fraudulently availed or ineligible under the circumstances mentioned in Clauses (a) to (d) of Rule 86A(1) of GST Rules, for the reasons to be recorded in writing, not allow the debit of amount equivalent to such credit in ECL for discharge of any liability under Section 49 of the GST Act.

7.4 This Rule was literally interpreted by the Hon'ble Division Bench of Gujarat High Court in the judgement of *Samay Alloys case* at paragraph Nos.26, 28, 33 and 34, which read as follows:

“26. Having heard the Learned Counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration



WEB COPY



W.P.No.29872 of 2024

is whether it is open for the authority to block the electronic credit ledger in exercise of powers under Rule 86A of the Rules, more particularly, when the balance in such ledger is Nil.

27.

28. Rule 86A of the CGST Rules empowers the Commissioner or his subordinates to freeze the debit in the electronic credit ledger provided he has reasons to believe that the credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible. **Thus, the condition precedent is that the input tax credit should be available in the electronic credit ledger before the power under Rule 86A is invoked by the authority.** In the case on hand, it is not in dispute that the amount of input tax credit available in the electronic credit ledger as on the date of blocking of ledger was Nil. **If no input tax credit was available in the ledger, the blocking of electronic credit ledger under Rule 86A of the Rules and insertion of negative balance in the ledger would be wholly without jurisdiction and illegal.**

29 to 32.

33. One of the primary conditions in order to invoke Rule 86A is that the credit of input tax should be available in the electronic credit ledger. Further, such



WEB COPY



W.P.No.29872 of 2024

credit should be claimed to have been (supported by reason to believe recorded in writing) fraudulently availed.

34. Accordingly, in case where (i) Credit of input tax is not available in the electronic credit ledger or (ii) such credit has already been utilised, the powers conferred under Rule 86A cannot be invoked.

(Emphasis supplied)

7.5 At paragraph 34 of the above judgement, the Hon'ble Division Bench of Gujarat High Court has arrived at a conclusion that the power conferred under Rule 86A to block the credit cannot be invoked by the State Authorities in the case, where

- i) Credit of ITC is not available in ECL or
- ii) Such credit has already been utilised.

7.6 A similar view was also taken by the Hon'ble Delhi High Court in **Best Crop case**, wherein, it was held as follows:

“56. On a plain reading of the opening sentence of Rule 86A(1) of the Rules, the necessary conditions to be satisfied at the threshold are:

- (a) that there is a credit of input tax available in the Electronic Credit Ledger;



WEB COPY



W.P.No.29872 of 2024

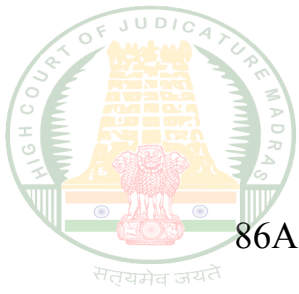
and,

(b) that the Commissioner or an officer authorized on his behalf has reasons to believe that the credit of input tax available has been fraudulently availed or is ineligible on account of the reasons us set out in Clauses (a) to (d) of Rule 86A (1) of the Rules.

57. In view of the aforesaid, it follows that if there is no credit of input tax available in the ECL, one of the necessary conditions for passing an order under Rule 86A(1) of the Rules would not be satisfied. The fact that the Commissioner (or an officer authorized by him) may have reasons to believe that in the past a taxpayer had availed and utilized ITC by debiting its ECL is not the condition precedent for passing an order under Rule 86A(1) of the Rules."

7.7 By referring the above judgements, the learned Senior counsel appearing for the petitioner has made an attempt to impress this Court by submitting that in this case, admittedly no credit was available at the time of blocking orders. Further, it was submitted by him that to apply Rule 86A of GST Rules, the ITC should have been available in the petitioner's ECL. In the absence of such ITC, no blocking orders can be issued. However, in this case, the entire ITC, which was availed by the petitioners, has already been utilised. Therefore, it was contended by him that the blocking orders were issued contrary to the provisions of Rule

21/35



W.P.No.29872 of 2024

86A of the GST Rules.

WEB COPY

7.8 At this juncture, though the Hon'ble Division Bench of Gujarat and High Court of Delhi had already analysed the first part of the provisions of Rule 86A alone, this Court feels that it would be appropriate to analyse the said Rule 86A once again in whole.

7.9 The 1st part of Rule 86A contains that “*The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible*”. This part of Rule 86A(1) alone was interpreted by both the Courts while giving their findings. The literal interpretation of this 1st part of the provisions of Rule 86A(1) would shows that if the Commissioner or the Assistant Commissioner having reason to believe that the ITC available in ECL has been fraudulently availed or ineligible, the said ECL can be blocked under the circumstances mentioned in Rule 86A(1)(a) to (d) of GST Rules.



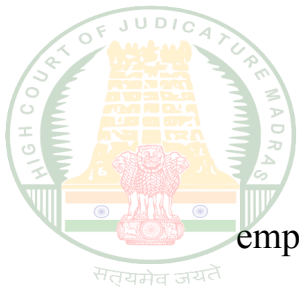
W.P.No.29872 of 2024

7.10 The 2nd part of the Rule 86A of GST Rules, 2017, states as

WEB COPY

“may, for the reasons to be recorded in writing, not allow debit of an amount equivalent to such credit available in electronic credit ledger for discharge of liabilities under Section 49”, which means the Officers have to record the reasons in writing not to allow the debit of amount equivalent to such credit for discharge of liabilities under Section 49. The word “amount equivalent to such credit for discharge of liabilities” would mean that not only the fraudulently availed ITC amount available in the ECL, but an amount equivalent to fraudulently availed credit utilised for discharge of liabilities under Section 49.

7.11 Thus, a conjoint reading of 1st and 2nd parts of Rule 86A would clearly reveal that the word “available in the ECL” referred in 1st part would mean that the amount available after the fraudulent availment of credit at any point of time, whether it was available in the ECL or utilised at the time of passing the blocking orders. Hence, the 2nd part of Rule 86A empowers the Authorities not to allow the debit of amount equivalent to the fraudulently availed credit for discharge of liabilities under Section 49. If it was already utilised, the Officials are also



W.P.No.29872 of 2024

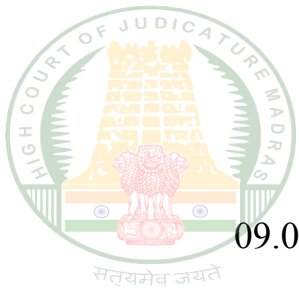
WEB COPY

empowered to pass blocking orders to the extent of amount equivalent to such credit, which was already utilised, along with the unutilised fraudulently availed ITC amount available in the ECL at the time of passing the blocking orders.

7.12 Both the Hon'ble Division Bench of Gujarat High Court and the Hon'ble Delhi High Court have taken into consideration of the 1st part of the Rule 86A and literally interpreted the same. On the other hand, a conjoint reading of 1st part along with the 2nd part of Rule 86A would shows that “the amount available in the ECL” refers to the fraudulently availed ITC, which was made available in the ECL at any point of time before utilisation. In the present case, admittedly, the entire fraudulently availed credit was already utilised. Therefore, to the extent of utilisation of fraudulently availed ITC, the State Authorities are empowered to pass blocking orders for the payment of output tax liabilities.

7.13 However, in this case, though the State Authorities are empowered to pass blocking orders to the extent of Rs.13.10 Crores, they had only blocked Rs.2.48 Crores vide blocking orders dated 24.06.2024,

24/35



09.09.2024 and 10.09.2024.

WEB COPY



W.P.No.29872 of 2024

7.14 In majority cases, the prosecuting Authorities may not have any chance to know about the wrongful availment of ITC immediately upon such availment/utilisation. It will come to their knowledge subsequently and by that time, the ITC could have been utilised by the registered person. Keeping the said aspects in mind, the Rule 86A was incorporated.

7.15 As stated above, the initiation of proceedings by the Department will come into picture only after the fraudulent availment/utilisation in most of the cases and certainly, the fraudulently availed ITC would not be available in the ECL at the time of blocking. Therefore, the right way of interpretation of Rule 86A of GST Rules, 2017, is as to whether the fraudulently availed credit was made available for the payment of output tax liabilities at any point of time subsequent to the said fraudulent availment. Thus, the Rule 86A would apply to pass blocking orders by the State Authorities to the extent of fraudulently

25/35



W.P.No.29872 of 2024

WEB COPY

availed credit in ECL, whether it is available at the time of passing the blocking orders or not. If any amount is credited to the ECL subsequently, to the extent of amount mentioned in the blocking orders, the ECL cannot be debited.

7.16 Thus, it is clear that after the fraudulent availment of ITC, if the same was available in ECL, for debit, at any point of time, the Department is entitled not to allow the debit of amount equivalent to such credit in ECL whether it is utilised or not and in the event, if the ITC was utilised upto the accumulation of credit to the extent of fraudulently availed/utilised credit.

7.17 In a Statute, if the literal interpretation of a portion of Rule which would defeat the object of the said Rule, the same has to be interpreted in entirety. In such event, if the interpretation of whole Rule exhibits the object and purpose of the legislature and beneficial for the Revenue, the interpretation of Rule in entirety will supersede the interpretation, which was made with a portion of the Rule.



WEB COPY



W.P.No.29872 of 2024

7.18 Further, in the provisions of Rule 86A, nowhere it has been stated that the negative blocking is prohibited. When the Statute has not stated anything in the statutory term, it has to be construed that the word “blocking” includes both positive and negative blocking. If the intention of the legislature is not to allow the negative blocking, they are supposed to have specifically prohibited the same by virtue of *proviso* or otherwise. In this case, no such prohibition is available and hence, in the absence of any such prohibition for negative blocking, the blocking referred in Rule 86A has to be construed for both positive and negative blocking. Therefore, the question of barring of negative blocking would not arise.

7.19 If any contrary view is taken, the purpose of the Rule 86A will get defeated and the same was not the intention of the Legislature while enacting the Rules. In this case, we are dealing with the Statute of recovery Tax and it is not a beneficial legislation, where the Rules can be interpreted liberally to benefit the aggrieved person. The Statute of Tax is

27/35



W.P.No.29872 of 2024

pertaining to the Revenue to the exchequer and hence, it has to be interpreted strictly along with the intention and object of the legislature.

7.20 When a literal interpretation of Rule provides a meaning, which is not in consonance with the object and purpose of a Rule, that too in a Statute of Tax, the Court necessarily has to look into the object and purpose of the Statute and interpret it in a purposive manner, in order to reflect the real intention, object and purpose of the Rule. In the case on hand, the Rule was incorporated to stop debiting the ITC from ECL, which was availed fraudulently by virtue of bogus invoice and other situations mentioned in Clauses (a) to (d) of Rule 86A(1) of GST Rules. Thus, the object of Rule 86A is to prohibit the debiting of ITC from the ECL to the extent of fraudulently availed credit. Therefore, at no stretch of imagination, one could construe that no blocking orders can be passed at the time of zero balance of ITC in the ECL. Since the negative blocking can continue up to the stage of accumulation of ITC to the extent of wrongful availment of credit in the ECL, the blocking orders can be issued even at the time of zero balance of ITC in the ECL.



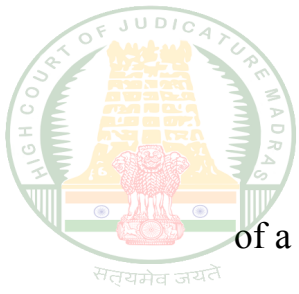
W.P.No.29872 of 2024

WEB COPY

7.21 Therefore, the Hon'ble Division Bench of Gurajat High Court and the Hon'ble Delhi High Court had no occasion to discuss with regard to the later part of the provisions of Rule 86A in the aforesaid case laws, as discussed above. Thus, in the absence of non-consideration of later part of provisions of Rule 86A, and in view of the above discussions, this Court is unable to follow the same.

7.22 For the above reasons, this Court is of the considered view that the negative blocking is well within the scope of provisions of Rule 86A of GST Rules. The blocking of ITC can be made to the extent of wrongful availment of credit, for which Rule 86A empowers State Authority not to allow debit of the amount equivalent to such wrongful availment of credit to the extent of available ECL at any point of time. Therefore, at the time of blocking, the availability of ITC in the ECL is immaterial. The blocking orders would cover both the amount available in the ECL at the time of passing orders and the amount to be accumulated subsequently into the ECL to the extent of the amount mentioned in the blocking order. Thus, the Authorities are empowered to pass the blocking orders, in the present case, up to the maximum extent

29/35



W.P.No.29872 of 2024

of a sum of Rs.13.10 Crores towards the wrongful availment of credit.

WEB COPY

8. ISSUE No.3 - Whether the issuance of Form GST DRC-01A pertaining to a sum of Rs.71,798/- and remitting of the said amount by virtue of Form GST DRC03 and dropping of proceedings would amount to determination of the entire issue in Form GST ASMT-10?

8.1 With regard to the issuance of GSTR DRC-01A by the Authorities concerned, the same is pertaining to Rs.71,798/- alone, which is relating to the intimation of blocking order issued on 24.06.2024 whereas, the ASMT-10 was issued by the State Authorities for a sum of Rs.13.10 Crores. With regard to the other issues, the State Authorities are yet to initiate the proceedings, however, due to the subsequent development of issuance of blocking orders dated 09.09.2024 and 10.09.2024 and the issuance of ASMT-10 for a sum of Rs.13.10 Crores by the State Authorities, for the remaining issues, if any, the State Authorities are empowered to initiate proceedings.

8.2. Subsequent to the issuance of blocking orders and Form

30/35



W.P.No.29872 of 2024

WEB COPY

ASMT-10 by the State Authorities, the Central Authorities had also issued the Form GST DRC-01A on 08.10.2024. Therefore, in view of the above, it is for the State Authorities to decide as to whether all the issues pertaining to Form GST ASMT-10 issued by them are covered by Form GST DRC-01A issued by the Central Authorities, for which, the petitioner has to file their reply. Upon considering the said reply filed by the petitioner, the State Authorities has to consider the same and decide with regard to the continuation of proceedings initiated by them.

9. In view of the above, this Court finds no force in the submissions made by the learned Senior counsel appearing for the petitioner on all the three issues and accordingly, the same is rejected. Therefore, this Court is of the considered view that this writ petition is liable to be dismissed.

10. A submission was made by the learned Senior counsel appearing for the petitioner that even at the time of filing an appeal against the assessment order, there will be an automatic stay and all the

31/35



W.P.No.29872 of 2024

WEB COPY

attachment orders will get vacated upon payment of 10% of the disputed amount. However, in this case, the said aspect would come into picture only after the passing of assessment order and the same cannot be applied at the stage of investigation/initiation of proceedings before the passing of assessment order. If any intelligence is given for the said submission, the provisions of Rule 86A will become redundant and the Official will be empowered to block only 10% of the fraudulently availed credit, which was not the intention and wisdom of the Rule maker. Therefore, the said submission is hereby rejected.

11. In fine, to put it in a nutshell, this Court holds as follows:

i) As per the provisions of Rule 86A of GST Rules, 2017, the appropriate reasons were assigned by the Authorities in all the blocking orders dated 24.06.2024, 09.09.2024 and 10.09.2024.

ii) The word “credit of ITC available in ECL” referred in Rule 86A(1) of GST Rules, 2017, would mean that after the fraudulent availment of ITC, the same should have been made available in ECL, at any point of time, for debiting the ECL to discharge the output tax



WEB COPY



W.P.No.29872 of 2024

liabilities. Thus, the word “available” cannot be interpreted as the ITC should be made available at the time of passing of blocking order. On the other hand, the word “available” shall be interpreted in such a way that the ITC has to be available in the ECL, at any point of time, for the purpose of debiting the ECL.

iii) The State Authorities are empowered to pass blocking orders to the extent of credit, which was fraudulently availed and available in ECL for discharge of output tax liabilities either at the time of blocking or subsequently, in the event if the same was already utilised.

iv) Though the issues raised by the Central and State Authorities are similar in nature, if the period, for which the notice was issued, is different, both the Authorities are empowered to initiate the proceedings for the respective period.

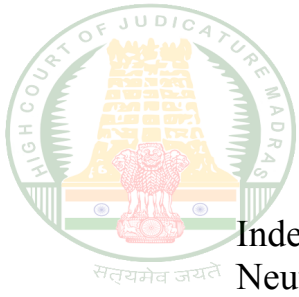
12. In the result, this writ petition is dismissed. No costs.

Consequently, the connected miscellaneous petitions are also closed.

28.11.2024

Speaking/Non-speaking order

33/35



W.P.No.29872 of 2024

Index : Yes / No

Neutral Citation : Yes / No

WEB COPY

To

- 1.The Commissioner of Customs,
Chennai Import, Chennai II,
Commissionerate, Customs House,
No.60, Rajaji Salai,
Chennai 600 001.
- 2.The Additional Commissioner of Customs (Group-1),
Chennai Import, Chennai II,
Commissionerate, Customs House,
No.60, Rajaji Salai,
Chennai 600 001.
- 3.The Assistant Commissioner of Customs,
Import, Chennai II,
Commissionerate, Customs House,
No.60, Rajaji Salai,
Chennai 600 001.
- 4.The Assistant Commissioner of Customs (SIIB),
Chennai III,
Commissionerate, Customs House,
No.60, Rajaji Salai,
Chennai 600 001.



WEB COPY



W.P.No.29872 of 2024

KRISHNAN RAMASAMY.J.,

nsa

W.P.No.29872 of 2024
and W.M.P.Nos.32579, 32574 & 32575 of 2024

28.11.2024