

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2320 OF 2021

**Advent India PE Advisors }
Private Limited }
 Versus
The Union of India and Ors. } **Petitioner**
 Respondents**

Mr. Prakash Shah i/b. Patankar and Associates
for the petitioner.

Ms. Sangeeta Yadav for the respondents.

**CORAM :- DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE :- DECEMBER 3, 2021

PC :-

1. The petitioner by presenting this writ petition dated August 27, 2021 seeks the following relief: -

"a) this Hon'ble Court be pleased to Issue a writ of mandamus or a writ/direction in the nature of mandamus or any other appropriate writ, direction or order thereby directing the Respondent No. 2 to unblock the input tax credit of INR 1.17 Cr availed by the petitioner in its electronic credit ledger;

b) this Hon'ble Court be pleased to Issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, directions or order thereby directing the Respondent No. 2 to pay interest at applicable rate for period during which the Petitioner was deprived of its property."

2. Mr. Shah, learned advocate for the petitioner refers to the provisions of rule 86A of the Central Goods and Services

Tax Rules, 2017 and in particular sub-rule (3) thereof, which provides that restriction imposed under sub-rule (1) would cease to have effect after expiry of one year from the date of imposition thereof. Drawing our attention to Exhibit A, he contends that the input tax credit was blocked on January 26, 2020 and since more than 20 months have lapsed by now, by operation of law, the petitioner is entitled to relief claimed in this writ petition.

3. Ms. Yadav, learned advocate for the respondents has placed before us the written instructions received by her from the respondent no. 2, i.e., the Deputy Commissioner, Division-III, Mumbai Central CGST dated November 30, 2021. We quote below the instructions: -

"F.NO. CGST & EX/MC/D-III/
ADVENT/06/2020/571

Mumbai, the 30th November 2021

To,

1. Shri Sawpnil Bangur,
Sr. Panel Counsel
4th Floor, Currim Chambers,
NM Road, Fort, Mumbai 400 023

2. Ms. Sangeeta Yadav
Jr. Panel Counsel
Bhupen Chambers,
Office 60-D, 4th Floor
Dalal Street, Fort,
Mumbai-400 001

Madam/Sir,

Subject: - Unblocking of Credit i.r.o. M/s.
Advent India PE Advisors
Private Limited-reg.

The Input Tax Credit i.r.o. Advent India PE Advisors Private Limited bearing GSTIN-27AAHCA8817F1ZK situated at Unit No. 1702, 17th Floor, One Indiabulls Centre, Tower-II, Wing-A, 841, S. B. Marg, Lower Parel, Mumbai-400013 was blocked on 26.01.2020 on the basis of the information received from the office of the Principal

Chief Commissioner of CGST, CEx Mumbai in pursuance of Rule 86A to ensure that the ITC availed is eligible and not availed fraudulently.

This Department has consistently asked the taxpayer for submissions required for due verification of the Credit availed. However, the first submission which was incomplete, was received from the taxpayer on 17.03.2020. The Department was in communication with the taxpayer seeking reconciliation statements for the difference in their GST returns namely GSTR-2A and GSTR-3B from FY 2017-18 to 2020-21. The last letter from the department addressed to taxpayer was sent on 31.05.2021 asking for reconciliation between ITC stated in monthly returns and annual returns. However, the reply from the taxpayer is **still awaited**. Instead of furnishing the documents the taxpayer has filed a writ petition.

Due process for verification and unblocking is being followed by this office on priority basis and after completion of the due verification, if any mismatch in the Credit availment is noticed a Show Cause Notice (SCN) will be issued to the taxpayer and the Input Tax Credit will be unblocked immediately.

Yours Sincerely

S/d.

Ajay Anand Arya
Deputy Commissioner
Division-III
Mumbai Central CGST"

(bold in original)

4. It is the submission of Ms. Yadav that after the process of verification is complete, the input tax credit would be unblocked.
5. Curiously, the instructions do not refer to sub-rule (3) of rule 86A at all. The respondent no. 2 appears to be oblivious of such provision. Having regard to the statutory mandate in

sub-rule (3) of rule 86A, the petitioner is entitled to claim that the input tax credit ought to have been unblocked immediately after one year of the restriction being imposed under sub-rule (1) thereof. If indeed the respondents were of the view that the petitioner had not been cooperating with the department, they ought to have proceeded against it in a manner known to law. However, to say that reply is awaited and hence lifting of the restriction has not been resorted to is clearly illegal.

6. Having regard to the decision of this Court in Writ Petition (L) No. 128 of 2021 (**M/s. Aegis Polymers vs. Union of India and Ors.**), we find no reason to keep this writ petition pending. There shall be order in terms of prayer clause (a). We, however, decline prayer clause (b). The writ petition stands disposed of. There shall be no order as to costs.

7. If proceedings are initiated against the petitioner, the same shall be taken to their logical conclusion in accordance with law. All contentions are left open.

SALUNKE
J V

Digitally signed
by SALUNKE J V
Date: 2021.12.03
19:57:31 +0530

(M. S. KARNIK, J.)

(CHIEF JUSTICE)