

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2021

CORAM

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

W.A. No. 2341 of 2021

M/s. HEC India LLP
Represented by Authorized Signatory
New No. 41, Old No. 15/3, II Floor
Velachery Road, Little Mount
Saidapet, Chennai – 600 035.Appellant

Vs.

1. Commissioner of GST and Central Excise
Audit-II, Commissionerate
No.692, 6th Floor, MHU Complex
Anna Salai, Nandanam
Chennai – 600 035.

2. Assistant / Deputy Commissioner
of GST & Central Excise
E.V.R. Periyar Malligai
No. 690, Annasalai
Nandanam, Chennai – 600 035.
Respondents

Appeal filed under Clause 15 of Letters Patent, praying to allow

the above Writ Appeal by setting aside the order dated 30.07.2021 passed in W.P.No. 15938 of 2021 on the file of this Hon'ble Court and allow the Writ Petition.

For Appellant : Mr. Adithya Reddy
For Respondents : Mr. Mohana Murali
Senior Standing Counsel

J U D G M E N T

(Delivered by T.S.Sivagnanam, J.)

This appeal has been filed by the writ petitioner, which is registered on the file of the second respondent under the provisions of the Goods and Services Tax Act.

2. The writ petition was filed for issuance of a direction upon the respondents to permit the petitioner to debit a sum of Rs.47,30,457/- from its electronic credit ledger as shown in the ledger. The Learned Writ Court by order dated 30.07.2021 disposed of the Writ Petition, giving liberty to the petitioner to redress their grievances before competent authorities, as the Court cannot issue a direction as prayed for. Aggrieved

by the same, the appellant is before us by way of this writ appeal.

3. We have heard Mr. Adithya Reddy, Learned counsel for the appellant and Mr. Mohana Murali, Learned Senior Standing Counsel, who accepts notice for the Respondents.

4. We agreed with the ultimate conclusion arrived at by the Learned Single Bench that the prayer sought for by the writ petitioner cannot be granted, while exercising jurisdiction under Article 226 of the Constitution of India, as the appellant sought for permission to debit a particular sum of money from its electronic credit ledger.

5. After hearing the Learned counsel appearing on either side for considerable length of time, we find that the prayer sought for in the writ petition was not very happily worded and the grievance of the appellant before the Learned Writ Court was blocking of the credit available in the credit ledger of the appellant by invoking Rule 86-A of Central Goods and Services Tax Rules, 2017 ('CGST Rules' for short). The said provisions confers powers on the Commissioner or an officer authorized by him not

below the rank of any Assistant Commissioner, having reasons to believe that credit of input tax available in the credit ledger has been fraudulently availed or is ineligible, 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 of the Act or for claim of any refund of any unutilised amount. In Rule 86-A of CGST Rules, the various activities, which would render the assessee is ineligible to avail credit have been set out in Clauses (a) to (d) of Rule 86-A(1).

6. The appellant would contend that the prayer sought for by the writ petitioner was permitted them to adjust the credit available in their credit ledger. Because, no order invoking the power under rule 86-A was communicated to the appellant.

7. Learned Senior Standing Counsel appearing for the respondents submitted that the show cause notice was issued to the appellant by the second respondent on 17.12.2020 and the appellant had submitted his reply on 12.01.2021 and thereafter, he has made a representation on

22.06.2021. The show cause notice dated 17.12.2020 issued by the Assistant Commissioner of GST & Central Excise is proposing a demand for recovery of certain sums of money, on the alleged ground of non-payment of IGST on ocean freight charges; wrong/ excess availment of Input Tax Credit etc. The reply given by the appellant-assessee would be considered by the authority and appropriate orders would be passed, pursuant to the same.

8. However, the power exercised by the respondents is under Rule 86-A. Undoubtedly, this power is a very drastic power conferred on the authority and precisely for such reason, the rule enumerates the various circumstances, under which, such a power could be exercised and they are relatable to any fraudulent activity or an activity, which would render the assessee ineligible to credit.

9. Before invoking the power under Rule 86-A, the Authority should have reasons to believe that the credit of input tax available in the electronic credit ledger has been fraudulently availed or the assessee is

ineligible, on account of anyone of the contingencies in clauses (a) to (d) of Rule 86-A(i). That apart, the Rule contemplates that the said authorities has to record the reasons in writing and not allowed to debit any amount equivalent to such credit in the credit ledger. It is not clear as to why the appellant-assessee has not been intimated in writing as to what are the reasons, which waved the mind of the authority to invoke the power under Rule 86-A. The respondent cannot be heard to say that they can invoke the power under Rule 86-A without having reasons to believe and without recording such reasons in writing. This is a pre-requisite and in the absence any reason, which has been recorded, the invocation of power under Rule 86-A should be held to be unauthorised, illegal and without jurisdiction. Probably, if the respondent is right in saying that prior to the order of not allowing the debit of the credit, the assessee cannot expect a show cause notice to be issued. But nevertheless the power under Rule 86-A has been invoked and reasons have been recorded that needs to be communicated to the assessee so as to enable the assessee to put forth his objections and pray for release of the blocking of the electronic credit ledger. It is no doubt true that there is no such

procedure provided for under Rule 86-A. Nevertheless, we are required to read the principles of natural justice into the said Rule.

10. In this regard, we rely on the decision of the Hon'ble Supreme Court in the case of **GKN Driveshafts (India) Limited Vs. ITO** reported in (2003) 259 ITR 19 (SC), wherein, the Hon'ble Supreme Court has laid down a procedure, which is required to be adopted by the Assessing Officer in cases, where the assessments are reopen under Section 143(3) of the Income Tax Act, 1961. The Hon'ble Supreme Court has held that the assessee is entitled to seek for reasons for reopening and if sought for, the Assessing Officer is bound to furnish the same. It is thereafter, the assessee is entitled to file their objections to the reopening of the assessment and the objections is required to be disposed of by the Assessing Officer by passing a speaking order.

11. Courts have held as against such order passed by the Assessing Officer rejecting the objections to the reopening, the Act having not provided any remedy, Writ Petitions are entertained by the Court under

Article 226 of the Constitution of India. The unrelying principles, which can be culled out from the decision of the Hon'ble Supreme Court is that, the assessee should be afforded an opportunity of hearing and he is entitled to know as to why the assessment is sought to be reopened and he is also entitled to object to such reopening done by the Assessing Officer. The same analogy can be applied to the case on hand. If the authority concerned has reasons to believe that the credit of input tax available in the electronic credit ledger has been fraudulently availed or the assessee is ineligible on anyone of the grounds set out in the clauses from (a) to (d) of Rule 86-A(1), then, the authority, after recording the reasons may not allow to debit of any amount equivalent to such credit in the electronic credit ledger. But, after doing so, the authority is bound to communicate the reasons, which weighed in his mind to pass such an order and not allow credit of any amount equivalent to such credit in the electronic credit ledger. On receipt of such reasons, the assessee is entitled to put forth his submission/objection requesting for lifting of such order and establishing a case that there has not been any fraudulent availment of credit or the assessee would not fall within anyone of the contingencies

mentioned in clauses (a) to (d) of Rule 86-A(1) so as to make them ineligible for the credit.

12. In the light of the above, we are of the clear view that the authority viz., respondents are bound to consider the Appellant's representation dated 22.06.2021. The representation given by the Appellant dated 22.06.2021 is by stating that they have availed credit in accordance with the provisions of the Act and Rule, and they have also pleaded the hardship caused on account of the order passed under Rule 86-A. Since the appellant-assessee did not have the benefit of the reasons on what ground the order under Rule 86-A was passed, the representation is only general in nature. Therefore, for an effective representation to be made the Appellant is entitled to know the reasons, based on which the power under Rule 86-A was invoked by the second respondent.

13. In the result, the Writ Appeal is allowed and the order passed in the writ petition is set aside and writ petition is disposed of by directing the respondents or any other officers, who have been authorized by the first

respondent to communicate the reasons recorded in writing before invoking the powers under Rule 86-A to the appellant, within a period of one week from the date of receipt of a copy of this order and on receipt of the same, the appellant is entitled to file his objections within a period of three (3) days, thereafter, and on receipt of the objections, the concerned authorities shall pass an order and if the concerned authority is satisfied with the explanation may revoke the order passed under Rules 86-A or otherwise pass a speaking order as to why the request made by the appellant cannot be complied with and communicate to the appellant within a period of seven (7) days, thereafter. In such an event, it will be open to the appellant to question the said order in the manner known to law. No costs.

[T.S.S., J.] [S.S.K., J.]
16.09.2021

Maya/Sp

Index: Yes/ No
Speaking Order : Yes/ No

To

1. Commissioner of GST and Central Excise
Audit-II, Commissionerate
No.692, 6th Floor, MHU Complex
Anna Salai, Nandanam
Chennai – 600 035.

2. Assistant / Deputy Commissioner
of GST & Central Excise
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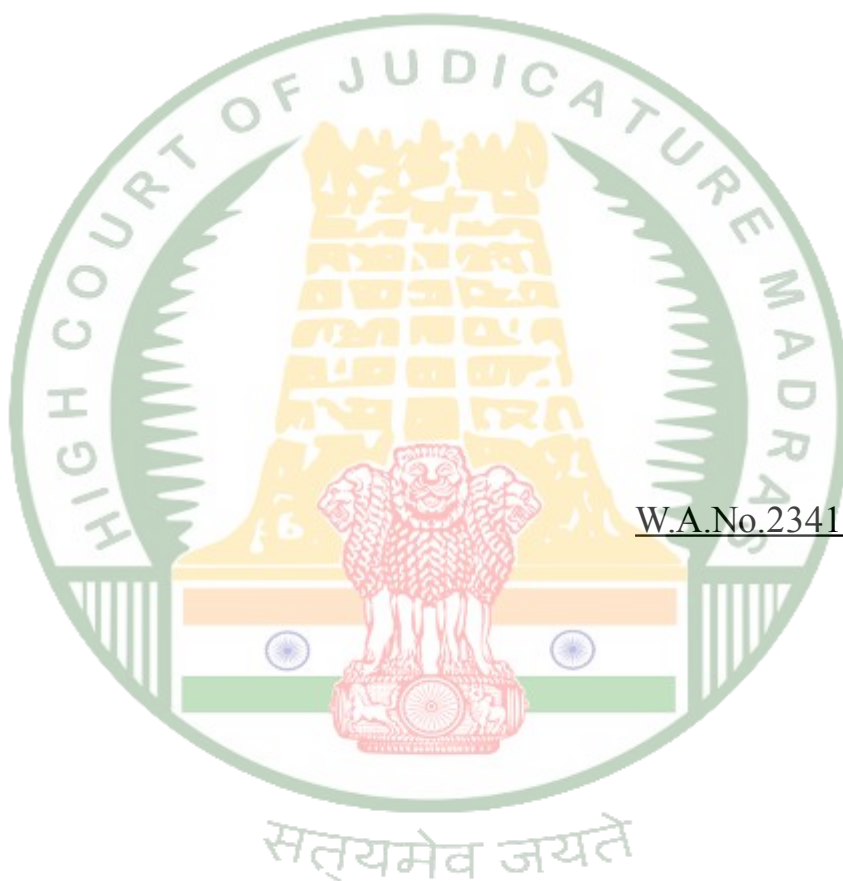


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W.A.No.2341 of 2021

T.S.Sivagnanam, J.
and
Sathi Kumar Sukumara Kurup, J.

(Maya)



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