BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **23.12.2021**

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THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD)No.22560 of 2021
and W.M.P.(MD)No.19085 of 2021

K.Vinodhkumar
(Petitioner's name amended as per
Order of this Court dated 23.12.2021
made in W.M.P.(MD)No.19310 of 2021) ... Petitioner

Vs.

1.Commissioner of GST and Central Excise,
Tiruchirapalli Commissionerate,
Head Quarters Office "A" Wing,
No.1, Williams Road, Cantonment,
Tiruchirappalli.

2.Assistant commissioner (CGST)
Division - II,
Tiruchirappalli Commissionerate,
Trichy - 620 001. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, directing the respondents to allow the petitioner to debit a sum of Rs.14,85,336/- (Fourteen Lakhs Eighty Five Thousand Three Hundred & Thirty Six Rupees only) from its electronic credit ledger as shown in the said ledger on 17.02.2020.

For Petitioner : Mr.Adithya Reddy

For Respondents : Ms.S.Ragaventhre,
Junior Standing Counsel for Central
Excise and Customs.

O R D E R

This common order will dispose of captioned main writ petition and the writ miscellaneous petition (WMP) therein viz., W.M.P.(MD) No.19085 of 2021.

2. Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 20.12.2021, which reads as follows:

'In the captioned main writ petition Mr. Aditya Reddy, learned counsel for the writ petitioner submits that the writ petitioner's electronic credit ledger has

been blocked on 17.02.2020 and a sum of Rs.14,85,336/- (Fourteen Lakhs Eighty Five Thousand Three Hundred and Thirty Six Rupees Only) stood to the credit of the writ petitioner on 17.02.2020.

2. Learned counsel submits that even post 17.02.2020 there have been ITC accruals.

3. The writ petitioner has not been put on notice, he has no clue about the reason for such blocking but it appears to be traceable to Rule 86-A of the C.G.S.T Rules, 2017 i.e., The Central Goods and Services Tax (CGST) Rules, 2017 (hereinafter 'said Rules' for the sake of convenience and clarity) is learned counsel's say.

4. To be noted, aforementioned Rule 86 A kicked in on and from 26.12.2019 by way of a post said Rules insertion, for convenience, I deem it appropriate to extract and reproduce entire Rule 86-A and the same reads as follows:

> *86.A* ***Conditions of use of amount available in electronic credit ledger (Chapter-IX: Payment of Tax)***
>
> *(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*
>
> *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.

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

5. Learned counsel for writ petitioner draws the attention of this court to Sub Rule (3) of Rule 86 A and submits that on a demurrer that even if the attachment is for a valid reason under 86 A, the same elapsed on 17.02.2021, on expiry of one year from the date of imposing of restriction.

6. Learned counsel also points out that the writ petitioner has sent a representation date 29.11.2021 and that has also not met with any reply or response.

7. Ms. S. Ragaventhre, learned Junior Standing Counsel for Central Excise and Customs, accepts notice on behalf of both the respondents.

8. Learned Revenue counsel submits that she has got oral instructions form the authorities, learned Revenue counsel confirms that the blocking is under Rule 86-A and it is owing to alleged wrong availment of input tax credit (ITC). However, it comes to light that no proceedings have been initiated as of today. Prima facie it appears that the blocking elapsed on 17.02.2021.

9. Learned counsel for writ petitioner submits that

Rule 86 A is akin to a provisional attachment in other fiscal statutes as it is in the nature of blocking prior to assessment and therefore the timeline vide Sub Rule (3) of Rule 86 A operates.

10. Faced with the above situation, learned Revenue counsel requests for a short accommodation to get further instructions and revert to this court.

11. Registry to show the name of aforementioned learned Revenue Counsel in and from the next listing.

12. List in the Admission Board i.e., Motion List on ***23.12.2021. '***

3. The above proceeding captures the crux and gravamen of the lis or in other words the issue on hand pithily. It also captures the trajectory the matter has taken thus far. The above proceedings shall be read as an integral part and parcel of this order. To be noted, the short forms and short references used in the earlier proceeding shall continue to be used in the instant order also.

4. Post earlier listing on 20.12.2021, Ms.S.Ragaventhre, learned Junior Standing Counsel for Central Excise and Customs, who accepted notice on behalf of both the respondents very fairly submits on instructions that the electronic credit ledger of the writ petitioner will be unblocked today or latest by close of working hours tomorrow. Learned counsel for writ petitioner submits that this douses the complaint of the writ petitioner in the captioned writ petition and that in effect means curtains down on the captioned main writ petition.

5. Captioned main writ petition is disposed of recording the aforementioned stated position of the learned Revenue Counsel. Consequently, captioned WMP therein is also disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsm

To

1.Commissioner of GST and Central Excise,
Tiruchirapalli Commissionerate,
Head Quarters Office "A" Wing,
No.1, Williams Road, Cantonment,
Tiruchirappalli.

2.Assistant commissioner (CGST)
Division - II,
Tiruchirappalli Commissionerate,
Trichy - 620 001.

+1 CC to M/s.ADITHYA REDDY, Advocate (SR-40497[F] dated 27/12/2021)

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and W.M.P.(MD)No.19085 of 2021
23.12.2021

AP (20.01.2022) 5P 4C