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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 15th September, 2023***

\+ **W.P.(C) 4687/2021 & CM APPL. 11218/2022**

M/S POONAWALLA FINCORP LIMITED ..... Petitioner

Through: Mr. J. K. Mittal, Ms. Vandana Mittal and Ms. Aashna Suri, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Satyakam, Additional Standing Counsel, Govt. of NCT of Delhi for R-4.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner is, essentially, aggrieved by the blocking of its Input Tax Credit (hereafter '**ITC**').

2. According to the petitioner, it was entitled to avail cumulative ITC amounting to ₹2,30,35,228/- as on 01.07.2017 under the erstwhile Value Added Tax (hereafter '**VAT**') regime.

3. The petitioner filed the requisite form (GST Tran-I) on 07.10.2017 for transition of the ITC as available under the VAT regime, to the GST regime on its roll out with effect from 01.07.2017.

4. The petitioner claims that on 13.07.2018, it found that a credit amounting to ₹1,77,81,200/- had been blocked by the respondents in

June, 2018.

5. According to the petitioner, there were no plausible reasons for blocking the petitioner's ITC. It claims that its representatives made several visits to the GST officials in the month of July, 2018 to August, 2018, but could not ascertain the reason for blocking of the ITC.

6. The petitioner also submitted representations but the same were not considered. It is stated that on 27.11.2018, the petitioner also raised a ticket (Ticket No. 201811274349279), but was unsuccessful in eliciting a resolution of its complaint.

7. The petitioner claims that on 03.09.2019, it also made a complaint on the Centralised Public Grievance Redress and Monitoring System, which was registered as DORVU/E/2019/02126. But the said complaint elicited no response as well.

8. The petitioner filed the present writ petition, *inter alia,* praying that directions be issued to the respondents for unblocking its ITC of ₹1,77,81,220/-. The petitioner also claims interest at 12% per annum on the said amount on the ground that the respondents had illegally deprived the petitioner of its valuable resource, and therefore, the petitioner had to make payments in cash instead of utilising the ITC.

9. The respondents have filed an affidavit *inter alia* affirming that the petitioner's ITC was unblocked automatically with effect from 08.04.2022. Thus, the petitioner's grievance regarding blocking of the ITC does not survive.

10. After the petition was filed, the respondents issued a Show Cause Notice dated 25.03.2022 (hereafter '**the impugned show cause**

notice') under Section 73 of the Central Goods and Services Tax Act, 2017 (hereafter '**the CGST Act**'), the contents of which read as under:

Show Cause Notice under Section 73

It has come to my notice that tax due has not been paid or short paid or refund has been released erroneously or input tax credit has been wrongly availed or utilized by you or the amount paid by you through the above referred application for intimation of voluntary payment for the reasons and other details mentioned in annexure for the aforesaid tax period.

Therefore, you are directed to furnish a reply along with supporting documents as evidence in support of your claim by the date mentioned in table below.

You may appear before the undersigned for personal hearing either in person or through authorized representative for representing your case on the date, time and venue, if mentioned in table below.

Please note that besides tax, you are also liable to pay interest and penalty in accordance with the provisions of the Act.

If you make payment of tax stated above along with up to date interest within 30 days of the issue of this notice with applicable penalty then proceeding may be deemed to have been concluded.

Details of personal hearing etc.

Sr. No.	*Description*	*Particulars*
1	*Section under which show cause notice/statement is issued*	*73*
2	*Date by which reply has to be submitted*	*30/03/2022*
3	*Date of personal hearing*	*NA*
4	*Time of personal hearing*	*NA*
5	*Venue where personal hearing will be held*	*NA*

Demand details-

Sr. No.	Tax Rate (%)	Turn over	Tax period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
1	2	3	4	5	6	7	8	9	10	11	12	13
1	0	0.00	JULY 2017	MAR 2018	SGST	NA	1,77,81,200.00	0.00	0.00	0.00	0.00	1,77,81,200.00
Total							1,77,81,200.00	0.00	0.00	0.00	0.00	1,77,81,200.00

11. As is apparent from the above that the impugned show cause notice did not disclose any reason for blocking the petitioner's ITC or the shortfall in recovery of tax, penalty, and interest. However, the tabular statement in the impugned show cause notice indicated the proposed demand of tax as ₹1,77,81,200/- which is identical to the amount of ITC that was blocked.

12. The petitioner contends that the said show cause notice was issued in terms of Circular No. F.3(429)/GST/Policy/2022/1067-1072 dated 08.03.2022 issued by the Policy Branch of the Department of Trade and Taxes, Vyapar Bhawan, I.P. Estate, New Delhi-110002 (hereafter '**the Circular**')

13. The Circular requires a proper officer to take certain steps in cases where the ITC has been blocked. The relevant extract of the Circular is reproduced below:

> ***"II. In case of taxpayer registration has already been cancelled***
>
> *a. In case of taxpayer, whose ITC had been blocked, and whose registration has already been cancelled, first of all the reason of cancellation should be ascertained. In case the taxpayer was cancelled for being non-existing/non-functioning, then the ITC availed should be disallowed and blocked ITC be utilised after following the procedure mentioned in I (a) above.*

b. In case the taxpayer was cancelled for the reasons other than the reason of non-existing/non-functioning, then the ITC, to the extent it is believed to be availed fraudulently/ineligibly, should be disallowed and demand (DRC-07) should be created and finally the blocked ITC should be unblocked and utilised towards payment of the demand created through DRC 07, after following the procedure given in I(b) above.

c. As mentioned in I(c) above, only the remaining steps should be taken now and the matter should be taken to the logical conclusion.

The steps to be followed for utilising the blocked ITC, after unblocking the same, against the demand created through DRC-07 are as under:

Open https://boweb.internal.gst.gov.in

Go to ***Services*** *head and click to* ***Get Taxpayer Details***

Get Taxpayer Details – Enter GSTIN then Press Button

Go to Click to ***Quick Link*** *Button (on the right side of your screen)*

Go to ----- ***Payment Towards Demand*** *and view all outstanding demand*

And select your outstanding demand at ***Select Button***

Show your ***Outstanding Demand (₹)*** *and fill your* ***Amount Intended to be paid (₹)***

Then fill your demand to ***Cash Ledger Balance/Credit Ledger Balance*** *and press to* ***Set-off Button*** *then demand is set-off*

5. If the taxpayer has already responded to the notices issued earlier by the Proper Officer and the Proper Officer after examining the responses, has come to the conclusion that the unblocking may no longer be required then such blocked credit should be unblocked forthwith."

14. Clearly, the impugned show-cause notice issued to the petitioner cannot be sustained. It does not effectively provide any reasons for raising a demand. The opening sentence of the impugned

show-cause notice appears to be a mechanical reproduction of the statutory provision.

15. In so far as the Circular is concerned, the same cannot be read as permitting the proper officer to mechanically create a demand. The proper officer can issue a show cause notice only if he has reasons for raising any demand against the tax payer. The said reason must specifically be stated in the show cause notice. It does, *prima facie,* appear that the respondent had followed the said Circular in a mechanical manner.

16. Delhi Government, Department of Trade and Taxes had also issued another Circular dated 25.02.2022, which is in somewhat similar terms as the Circular. The said Circular dated 25.02.2022 was considered by this Court in ***W.P (C) 7017/2022*** captioned ***M/s Parity Infotech Solutions Pvt. Ltd. v. Government of National Capital Territory of Delhi & Ors.,*** decided on 07.03.2023, and this Court had held as under:

> *"34. The impugned instructions also set out the indicative steps that may be taken by the proper officer on an urgent basis. In case of a taxpayer whose registration is active, the indicative steps, as directed to be taken, reads as under:*
>
> > *"a. An immediate field visit of all such GSTINs whose credit have been blocked, be conducted and in case the firm is found non-existing, suspension and cancellation of registration of the firm may be carried out. Further, a show cause notice (DRC-01) should be issued proposing to create a demand by disallowing the ITC availed and thereafter demand should be created (DRC-07) in case of no reply or no satisfactory reply is received from the registered person, as per law. If considered appropriate, summary assessment under section 64 may also be considered. Finally, the blocked ITC should be unblocked*

and utilised towards payment of the demand created.
b. In case, during the field visit the taxpayer is found existing, then a show cause notice (DRC-01) should be issued proposing to create a demand by disallowing the ITC to the extent, fraudulently availed or for which the taxpayer is not eligible, keeping in view the provisions of clause (a) to (d) of sub rule (1) of rule 86A. Thereafter, DRC 07 should be issued, if no response or non satisfactory response is received, as per the law and finally, the blocked ITC should be unblocked and utilised towards payment of the demand created through DRC-07.
c. Here, it should also be kept in mind that earlier when the ITCs were blocked, some or all of these steps might have already been taken, so only the remaining steps should be taken now and the matter should be taken to the logical conclusion as mentioned above.
d. In the above said cases, proper officer should also search whether the said firm exists in the name of some other firm (same PAN), and if such cases are found then intimation of those firms, claiming the wrong ITC, shall also be sent to the concerned jurisdictional authority (other firm).”

35. The directive to issue a show cause notice proposing to create a demand by disallowing the ITC and thereafter, creating a demand cannot be read in isolation and in disregard of the provisions of the Act and the Rules. If the impugned instructions are understood to mean that a show cause notice be issued mechanically and a demand be created to appropriate the blocked ITC, the same would be contrary to law. A show cause notice can be issued only if the conditions under section 74 of the CGST Act are satisfied. In case relating to ITC, the show cause notice can be issued only if the proper officer believes that ITC has been “wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax”. No show cause notice can be issued without the proper officer forming at least a prima facie view that the tax has not been paid or short paid or erroneously refunded or the ITC had been wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.

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> *37. It is also clear from a plain reading of the impugned instructions that it suggests that the exercise of issuing a show cause notice and creating a demand should be completed before unblocking the ITC notwithstanding that the period of one year has elapsed after the blocking of the ITC. This is contrary to the express provisions of rule 86A(3) of the Rules. It is apparent that the impugned instructions, to the aforesaid extent, has been issued only to overcome the provisions of rule 86A(3) of the Rules and the impugned instructions, to this extent, cannot be sustained."*

17. The aforesaid decision is equally applicable to the Circular, which is the bone of contention in this case.

18. Mr. Satyakam, learned Counsel for the respondents submits that there is sufficient material with the proper officer to believe that the ITC transition by the petitioner from the VAT regime to the GST regime is erroneous. He has drawn the attention of this Court to the averments made in the Counter Affidavit to the effect that the petitioner's stock position on the date of transition was zero, and the petitioner's DVAT returns for the period prior to transition was ₹642/-.

19. Learned Counsel for the petitioner stoutly contests the averments made in the counter affidavit.

20. We do not think it apposite to enter this controversy as the same is required to be addressed by the proper officer in the first instance. Since the impugned show cause notice does not contain any allegations as stated in the counter affidavit filed by the respondents, the proceedings initiated pursuant to the impugned show cause notice cannot cover the said allegations.

21. In any view of the matter, the impugned show cause notice is liable to be set aside as the same fails to disclose any reason for proposing the recovery and is incapable of eliciting any meaningful response.

22. The impugned show cause notice is, accordingly, set aside.

23. However, it is clarified that the respondents are not precluded from taking any steps as permissible in accordance with law.

24. In so far as the petitioner's prayer for interest is concerned, there is no statutory provision for granting interest for the period when the ITC is blocked. We also do not consider this a fit case for entertaining any claim for interest given the controversy as raised by the respondents in their counter affidavit.

25. The petition is disposed of in the aforesaid terms.

26. All pending applications also stand disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

SEPTEMBER 15, 2023
"SS"