

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.26661 of 2021 (O&M)
Date of Decision : 31.05.2022**

Rajnandini Metal Ltd.

....Petitioner

Versus

Union of India and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Jagmohan Bansal, Senior Advocate assisted by
Mr. Naveen Bindal, Advocate and
Mr. Aman Garg, Advocate
for the petitioner.

Mr. Anshuman Chopra, Sr. Standing Counsel
for the respondents.

PANKAJ JAIN, J.

Aggrieved by the action of the respondents of blocking his Input Tax Credit by proceeding under Rule 86A of the Central Goods and Services Tax Rules, 2017 (for short, the CGST Rules), the petitioner has approached this Court seeking quashing of the order dated 17th of December, 2021 (Annexure P-18).

2. The petitioner, a Public Limited Company is engaged in manufacturing of copper wire rod and submersible winding wire and is registered under the Central Goods and Services Tax Act, 2017. As per the petitioner, respondents blocked Input Tax Credit amounting to Rs.1.9 Crore lying in Electronic Credit Ledger on 2nd of September, 2021. The petitioner

filed representations objecting to such action of the respondents which remained undecided. The petitioner was constrained to approach this court by way of CWP No.23917 of 2021 which was decided vide the following order dated 6th of December, 2021 :-

“We find that by this petition the petitioner is aggrieved of the action taken by the respondents in blocking the Input Tax Credit of the petitioner. We further find that by way of representation dated 10.11.2021 (Annexure P-14), the petitioner has raised a grievance before respondent No.2 and had objected to the blocking of the Input Tax Credit.

In the circumstances, we deem it appropriate to dispose of this petition with a direction to respondent No.2 to decide the said representation in accordance with law by passing a speaking order thereon within a period of seven days from the date of receipt of certified copy of this order.

Ordered accordingly. For this purpose, the petitioner is directed to appear before respondent No.2 on 10.12.2021 at 10:00 am or on any other date on which the said authority may require its appearance.”

3. The petitioner submitted a detailed written submission on 10th of December, 2021 in support of his representation. Respondent vide order dated 17th December, 2021 rejected the representation of the petitioner seeking unblocking of its Input Tax Credit. It is the aforesaid order that the petitioner has impugned in the present writ petition.

4. Ld. Senior Counsel for the petitioner submits that as per the impugned order the basis for initiating action against the petitioner is a communication received from Delhi North Commissionerate, as per which

one of the suppliers of the petitioner is found to be non-existing. He submits that the said supplier is one M/s Bhagwati Metals. He submits that Show Cause Notice for cancellation of registration was issued to M/s Bhagwati Metals on 5th February, 2021. The same was however dropped vide order dated 23rd February, 2021 and the suspension of registration of said M/s Bhagwati Metals was revoked by the said communication which is placed on record as Annexure P-20. His contention is thus that once the very basis of proceeding against the petitioner stands withdrawn by the respondents themselves and that too on 23rd of February, 2021, there was no reason to block the Input Tax Credit of the petitioner in September, 2021 and, thus, the impugned order dated 17th of December, 2021 deserves to be set aside.

5. He further submits that the intent and purport of Rule 86A is to secure interest of revenue and it is sort of preventive measure. The petitioner is a running manufacturing unit having turn-over running into multiple Crores, thus there is no possibility of fly by night. The interest of revenue is always secured. The mis-appropriation or fraud, if any has been committed by suppliers of the petitioner for which petitioner cannot be deprived from his valuable right of ITC. The denial of ITC is violative of Article 19(1)(g) and Article 21 of the Constitution of India.

6. Per contra, Ld. Senior Standing Counsel for the respondents would contend that though the proceedings against M/s Bhagwati Metals initiated vide Show Cause Notice dated 5th of February, 2021 were dropped

vide order dated 23rd February, 2021 (Annexure P-20) however, on 1st July, 2021, the proceedings against the said M/s Bhagwati Metals were again initiated and the GSTIN was thereafter cancelled on 27th of July, 2021. He further submits that the reason for initiating proceedings against the petitioner has been clearly spelled out in Para No.4 of the additional affidavit filed today in Court which reads as under :-

“4. That an Intelligence Report dated 30.08.2021 received from CIU, CGST-Vadodara Zone, forms the basis of instant investigation against the petitioner as well as blocking of its ITC under Rule 86A of CGST Rules, 2017. As per this intelligence report the petitioner had received ITC from as many as seven different suppliers (based in Delhi & Jaipur), who part of a chain/racket involved in generation and passing on of fake ITC, without any inward supply at root level. The petitioner is one of the beneficiaries of ineligible ITC from said chain/racket. The petitioner alone has received ITC worth Rs.52.79 Crores from seven suppliers in said chain/racket including ITC worth Rs.10.72 Crores received from M/s Bhagwati Metals, Delhi (GSTIN-07DMXPM2903J1ZJ). All seven suppliers are based out of jurisdiction of CGST-Faridabad; therefore, this office has written to jurisdictional CGST authorities of these seven suppliers to verify their existence and genuineness of ITC passed by them to the petitioner. Report dated 29.11.2021 in this regard has been received from CGST-Delhi North in respect of M/s Bhagwati Metal, holding the supplier as non-existent. Report in respect of remaining six suppliers is yet awaited from their jurisdictional CGST authorities.”

7. We have heard Ld. Counsel for the parties and have carefully gone through the records of the case.

8. The respondents have proceeded against the petitioner in exercise of power conferred under Rule 86A of the CGST Rules. The same reads as under :-

“86A. (1) The Commissioner or an officer authorized 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."*

9. From bare perusal of the aforesaid provision, it is evident that the power under Rule 86A of the CGST Rules is exercised where the prescribed officer has reason to believe that credit of input tax available in the Electronic Credit Ledger has been fraudulently availed or the assessee is ineligible. The exercise vested in the prescribed Authority is subject to a satisfaction recorded by the said Authority and forming opinion to the effect that the Credit Ledger has been fraudulently availed or the assessee is ineligible in the situations as prescribed under the Rule itself.

10. Gujarat High Court while dealing with the provision contained in Rule 86A of the CGST Rules in '**M/s New Nalbandh Traders vs. State of Gujarat and 2 other**' (R/Special Civil Application No.17202 of 2021

D/d. 23.2.2022) held as under -

“11. Analysis of the Rule 86A:-

A. Supplier found non-existent or not conducting business at its registered place- It has been availed on the basis of the documents prescribed under Rule 36 i.e. tax invoice, debit note etc issued by a registered supplier who has been found non-existent or not to be conducting any business from any place for which registration has been obtained.

B. Non receipt of goods or services or both: It has been availed on the basis of the documents prescribed under Rule 36 i.e. tax invoice, debit note etc without receipt of goods or services or both.

C. Tax not paid into the Government treasury: It has been availed on the basis of documents prescribed against which no tax has been paid into the Government treasury.

D. Recipient found non-existent or not conducting business at its registered place: It has been availed on the basis of documents prescribed under Rule 36 i.e. tax invoice, debit note etc issued by a registered person availing the credit (i.e. recipient) who has been found non-existent or not to be conducting any business from any place for which registration has been obtained.

E. Availing of credit without documents: 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.

12. Rule 86A undoubtedly could be said to have conferred

drastic powers upon the proper officers if they have reason to believe that the activities or invoices are suspicious. The Rule 86A is based on "reason to believe". "Reason to believe" must have a rational connection with or relevant bearing on the formation of the belief. It is a subjective term and can be interpreted differently by different individuals."

11. The impugned order in the present case when tested on the touchstone of the provision contained in Rule 86A and the law referred to herein above, we find that the reason to invoke the power conferred under Rule 86A of CGST Rules against the petitioner is an intelligence report received from Principal Chief Commissioner, Central Excise and Central Tax, Vadodara Zone regarding a racket of firms indulging in fake judicial and passing of illicit ITC. Merely by recording that some investigation is going-on a drastic far-reaching action under Rule 86A of the CGST Rules cannot be sustained. There is no reason recorded by the Authority for exercising power under Rule 86A of the CGST Act, 2017 which would show independent application of mind that can constitute reasons to believe which is *sine qua non* for exercising power under Rule 86A of the CGST Rules. It is trite law that a speaking order has to be self sustainable and respondents at this stage cannot be allowed to justify the same by adding reasons to it by filing additional affidavits. From the reading of the order it is evident that it is bereft of any material or 'reason to believe' that the petitioner is guilty of fraudulent transaction or is ineligible under Section 16 of the CGST Act.

12. Consequently, the present writ petition is allowed. The impugned order dated 17th December, 2021 (Annexure P-18) is set aside.

13. Needless to say that it shall be open to the respondents to proceed against the petitioner in case any incriminating material is found during investigation which can form basis of independent opinion as contemplated under the Act.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

May 31, 2022

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No