IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8630 OF 2023

Ashapura Steel Metal, through … Petitioner
Velaram Viraji Choudhary
Having office at CTS No. 5196, S.No. 103/2
Near Indian Oil Petrol Pump
Pimpri Waghere, Haveli
Pune – 411 018.

Versus

1. Union of India, through the Revenue Secretary …Respondents
Ministry of Finance Department of Revenue
2. State of Maharashtra, through the Secretary, Ministry of Finance, Finance Department, Mantralaya
3. State Tax Officer, PUN-VAT-C-131, Nodal Division-1, Yerwada, Pune – 06.
4. Joint Commissioner of State Tax, Nodal Division – 1 Yerwada, Pune – 06.

Mr. Bharat Raichandani a/w. Mr. Prathamesh Gargate for the petitioner.
Ms. Shruti D. Vyas, AGP for the State.

CORAM: G. S. KULKARNI & JITENDRA JAIN, JJ.
DATED: 17 October, 2023

Oral Judgment (Per. G. S. Kulkarni, J.)

1. Rule, made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. This petition under Article 226 of the Constitution of India primarily challenges the order dated 10 March, 2023 passed by the State Tax Officer whereby the petitioner’s input tax credit (ITC) has been blocked under the

Central Goods and Service Tax Act (for short "**CGST Act**") and under the Maharashtra Goods and Service Tax Act (for short **"MGST Act"**). Such credit has been blocked exercising authority under Rule 86-A of the CGST / MGST Rules 2019 namely, an amount of Rs.23,76,520.88 under the CGST Act and an equivalent amount under the MGST Act, totalling to Rs.47,53,041.76.

3. The reasons for blocking of the petitioner's credit as available in the credit ledger, is on the ground that the petitioner had availed such input tax credit fraudulently during the period from 2021-22 and 2022-23 and the same was apparent from the records. The impugned order records that there were substantive reasons to believe the blocking of the said credit. In regard to the issues as raised in the petition, the relevant extract of the said order is required to be noted, which reads thus:

> *"Therefore, as you have not fulfilled the conditions for utilizing the credit of following amount of credit available in your credit ledger, and in order to safeguard Government Revenue, it is hereby directed that no debit of an amount, equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of refund of any unutilized amount of input tax credit.*

Name of vendor	GST No.	Total Taxable value	IGST Act, 2017	CGST Act, 2017	MGST Act, 2017	Total Tax
JAI BHAVANI TRADING	27BAWPP7812E1Z7	6082820.00	0.00	547453.80	547453.80	1094907.60
M/s. NESA PROJECTS & LOGISTICS LLP	27AARFN2859FIZT	16845730.00	0.00	1516115.70	1516115.70	3032231.40
M/s. Salphon Traders	27ASLPC7495CIZK	3477237.50	0.00	312951.38	312951.38	625902.76
TOTAL				**2376520.88**	**2376520.88**	**4753041.76**

The restriction shall remain in force for a period of one year from the date of this order or till removal of such restriction by competent authority, whoever is earlier.

(D) If you have any grievance against this Order, you may submit your reply electronically on Common Portal and electronically, through E-mail at in anytime, in support of your claims. Accordingly, you will be heard and after recording reasons if your claim found valid that is eligibility to use such blocked credit, this order will be withdrawn either partially or fully, depending on the evidence produced by you. Also depending on changes in factual matrix in electronic records on common portal, suo-moto modification in this order will be executed as may be found needful.

O R D E R

M/s. ASHAPURA STEEL METAL (VELARAM VIRAJI CHOUDHARY) holding GSTN27AFKPC7447NIZX has availed input tax credit fraudulently during the period of 2021-22 & 2022-23 and the same is apparent on the records. Therefore, Input Tax credit availed fraudulently at Rs.23,76,520.88 under the CGST and Rs.23,76,520.88 availed under head SGST is blocked under the provisions of Section 86A of CGST/MGST Act, 2017.

4. Mr. Raichandani, learned counsel for the petitioner in assailing the impugned order has mounted a two fold challenge. The first challenge is on the ground that the "State Tax Officer" (Respondent No.2) who is an officer under the State machinery and appointed under the MGST Act would not have jurisdiction to block the credit under the CGST Act, as he would have jurisdiction only under the MGST Act. In support of such contention, Mr. Raichandani has placed reliance on the provisions under which such blocking of the credit has been resorted, namely, Rule 86-A of the CGST Rules, 2017. To appreciate such challenge, we may note the provisions of Rule 86-A of the CGST Rules, which reads thus:

86-A Conditions of use of amount available in electronic credit ledger -

(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 any 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 unutilized 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. Rule 86A of the MGST Rule, 2017 is a similar provision which reads thus:-

86A : Conditions of use of amount available in electronic credit ledger.

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of State Tax Officer, 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 unutilized 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."

6. Mr. Raichandani referring to Rule 86-A(1) of the CGST Rules would submit that the said Rule itself is clear when it mandates that the Commissioner or an officer authorized by him in this behalf, "not below the rank of an Assistant Commissioner", can be the only officer who can take an action under Rule 86-A, having reasons to believe, that the credit of input tax has been fraudulently availed or is ineligible, inter alia being the condition as set out in the said Rule. It is thus Mr. Raichandani's contention that ex-facie

the State Tax Officer had no jurisdiction to block the input tax credit under the CGST Act as it would be contrary to Rule 86-A of the CGST Rules, as the State Tax Officer certainly is not an officer below the rank of an Assistant Commissioner.

7. Countering such submissions, Ms. Vyas, learned counsel for the State / MGST authorities would submit that the State Tax Officer would be the competent officer to exercise powers not only under Rule 86-A of the CGST Rules which are to be implemented by the State Authority, but also the equivalent Rules framed under the MGST Rules, namely Rule 86A of the MGST Rules. To buttress such submission, Ms. Vyas has drawn our attention to an order dated 24 January, 2020 passed by the Commissioner of State Tax in exercise of the powers conferred by sub-section (1) and (3) of Section 5 of the MGST Act, 2017, whereby the Commissioner of State Tax has delegated the powers and duties conferred or imposed upon the Commissioner to all the Deputy Commissioners of State Tax, to all the Assistant Commissioners of State Tax and to all the State Tax Officers, for carrying out the purposes under sub-rule (1) and (2) of Rule 86A of MGST Rules, 2017. It would be necessary to extract the said order which is notified in the Government Gazette dated 24 January, 2020, which reads thus:

"ORDER

MAHARASHTRA GOODS AND SERVICES TAX ACT, 2017

> No. D.C.(A&R)-2/GST/PWR/Section/2017-18/ADM-8. - In exercise of the powers conferred by sub-section (1) and (3) of Section 5 of the Maharashtra Goods and Services Tax Act, 2017 (Mah.XLIII of 2017), the Commissioner of State Tax, Maharashtra State, hereby pleased to delegate the powers and duties conferred or imposed upon the Commissioner, to all the Deputy Commissioners of State Tax, to all the Assistant Commissioners of State Tax and to all the State Tax Officers, for carrying out the purposes under sub-rule (1) and (2) of Rule 86A of Maharashtra Goods and Services Tax Rules, 2017.
>
> The powers and duties delegated under this order shall be exercised within their jurisdiction subject to such conditions and restrictions as the Commissioner may impose from time to time.
>
> sd/-
>
> Commissioner of State Tax
> Maharashtra State, Mumbai."

8. Ms. Vyas would also submit that the contention as urged on behalf of the petitioner that the State Tax Officer would not have jurisdiction to block the credit under the CGST Act would not be correct, also in view of the clear provisions of Section 6 of the CGST Act, which provides for "Authorization of officers of State Tax or Union Territory Tax, as proper officer in certain circumstances". We may note the provisions of Section 6 of the CGST Act, which reads thus:

> **Section 6 - Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances:**
>
> *(1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.*
>
> *(2) Subject to the conditions specified in the notification issued under sub-section (1),-*
>
> *(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union*

> *Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;*
>
> *(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.*

> *(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act."*

9. Ms. Vyas has also drawn our attention to the provisions of Section 5 of the MGST Act, which provides for "Powers of Officers". Sub-section (1) of Section 5 provides that subject to such conditions and limitations as the Commissioner may impose, an Officer of State Tax may exercise powers and discharge duties conferred or imposed on him under the said Act. Sub-section (2) provides that an officer of State tax may exercise the powers and discharge the duties conferred or imposed under this Act or any other officer of State tax who is subordinate to him. Sub-section (3) is relevant in the present context, which provides that the Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any officer who is subordinate to him. It would be relevant to note the provisions of Section 5 of MGST Act, which reads thus:

<u>Section 5 - Powers of Officers</u>

> *(1) Subject to such conditions and limitations as the Commissioner may impose, an officer of State tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.*

(2) An officer of State tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of State tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.

(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of State tax."

10. Ms. Vyas has also drawn our attention to the provisions of Section 6 of the MGST Act, which provides for "Authorization of Officers of central tax as proper officer in certain circumstances", which is a mirror provision equivalent to what Section 6 of the CGST Act would provide in respect of State officers.

11. Thus, referring to the aforesaid provisions, Ms. Vyas would contend that the State tax officer would be the officer with appropriate jurisdiction to pass an order under Rule 86-A of the CGST Rules as also the MGST Rules.

12. We find much substance in the contention urged by Ms. Vyas, for the reason that in regard to the powers being conferred on the Officers either under the CGST Act or the MGST Act, the provisions of both these Acts as noted by us, are required to be read in conjunction and not in a manner which is destructive to each other. The entire regime of the Goods and Service Tax, to be levied falls under the scheme of parallel enactments, namely, the CGST Act and the MGST Act. This is clear from the plain reading of the substantive

provisions of Section 6 of the CGST / MGST Acts as noted by us hereinabove, insofar as such provision confers powers/authority on the officers of the Central Tax or of the State Tax or Union Territory as Officer under the said enactments being Officers authorized to exercise appropriate powers.

13. We cannot read Rule 86-A of the CGST Rules to override the powers which are conferred on the Commissioner under Section 5 of the MGST Act. We also cannot read Rule 86-A of the CGST Rules to be contrary to the provisions of Section 6 of the CGST Act. We further cannot read that Section 5 of the MGST Act to be contrary or in conflict him the provisions of Section 6 of the CGST Act. The legislature is clear in its intention, when the provisions of sub-section (1) of Section 6 of the CGST Act itself mandates that the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorized to be the proper officers for the purpose of CGST Act. The latter part of sub-section (1) which provides that subject to such conditions as the Government shall, on the recommendations of the Council, by notification specify, would not defeat the earlier part of the provision, which categorically authorizes the officers appointed under the State Goods and Services Tax Act to be the proper officers for the purposes of the CGST Act.

14. It is also quite clear that the provisions of Section 5 and Section 6 of the CGST Act are *pari materia* to the provisions of Sections 5 and 6 of the MGST

Act. For that matter, the substantive implication of Rule 86-A of the CGST and the MGST Rules is also not different when it provides the conditions for use of amounts available in electronic ledger, which would permit the officer to block the input tax credit in a given situation. It would bring about an incongruity if the State Tax Officer is not recognized to exercise powers under Rule 86-A of the CGST Rules when he is permitted to do so under Rule 86 A of the MGST Rules.

15. Thus, on a cumulative reading of the statutory scheme as brought about by these provisions and rules, in our opinion such provisions as conferring powers on the State Officers under the CGST Act are required to be read harmoniously. It cannot be conceived that the intention in framing Rule 86-A of the CGST Rules would be to denude the powers which are conferred on the State Tax Officer to exercise powers under Rule 86A as permitted by Section 5 of the MGST Act read with a clear authorization under Section 6 of the CGST Act.

16. For the above reasons, we are unable to persuade ourselves to agree with Mr. Raichandani when he contends that the State tax officer did not have the jurisdiction to pass the impugned order invoking Rule 86-A of the CGST Rules.

17. In such context, Mr. Raichandani has also brought to our notice the orders of the Division Bench of this Court, Bench at Nagpur in Writ Petition N0. 5645 of 2022 (***Guru Storage Batteries vs. State of Maharashtra)*** in which the Court in the facts of the case has held that Rule 86-A of the CGST Rules would not permit delegation of power to an officer who is below the rank of the Assistant Commissioner. However, in citing such orders Mr. Raichandani would fairly submit that the mandate of the substantive provisions of Section 5 of the MGST Act as also Section 6 of the CGST Act were not brought to the notice of the Court. In any event, in the context in hand, what is starring at the petitioner is the clear mandate of the provisions of Section 6 of the CGST Act and Section 5 of the MGST Act which the Court can neither overlook nor disregard when a question of authority of the officer is posed before the Court. Also as pointed out by Ms. Vyas in such case there was no challenge, either to the notification dated 24 January, 2020 issued by the Commissioner of State Tax in exercise of powers conferred by sub-section (1) and (3) of Section 5 of MGST Act, conferring powers on the Sales Tax Officer to pass orders under Rule 86A.

18. Insofar as Mr. Raichandani's contention on the merits of the order dated 10 March, 2023 is concerned, we find that the State tax officer in paragraph (D) of the order, as noted by us, has recorded that if the petitioner has any grievance against such order, a reply may be submitted electronically on

common portal and electronically, through e-mail at anytime and accordingly, on such reply, the petitioner would be heard and after recording reasons if the claim of the petition is found valid and appropriate, an action to unblock credit can be taken. Mr. Raichandani has brought to our notice that after such order was passed by the State tax officer, the petitioner had addressed a detailed e-mail dated 28 March, 2023 to the State Tax Officer raising objections in regard to the blocking of the petitioner's input tax credit by the impugned order. The petitioner had set out grounds as to why such order was required to be reversed / withdrawn along with supporting documents. It appears from the reply affidavit as filed on behalf of the respondent that by roznama order dated 10 April, 2022 (sic 10 April, 2023), the State Tax officer has purportedly considered such objection of the petitioner, however such order was not communicated to the petitioner. On a perusal of such order, it appears that none of the contentions of the petitioner on merits have been addressed by the State Tax Officer. In fact what the State Tax Officer has observed is that the petitioner has a remedy of appeal under section 107(1) of the CGST/MGST Act if the petitioner was to be aggrieved by the decision of the State Tax Officer on the orders passed under Rule 86A of the CGST/MGST Rules, 2017.

19. In our opinion, the order as passed by the State Tax Officer is neither in consonance with the observations as made by the very officer in the impugned

order providing for an opportunity to the petitioner to make out a case against such blocking of input tax credit, as also the same would be contrary to the provisions of Rule 86-A (2) of the CGST / MGST Rules, which itself provides that the Commissioner or the Officer authorized by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger, no longer exist, allow such debit. Sub-rule (2) of Rule 86-A therefore certainly provides for a window or an opportunity available to the assessee to make out a case against the action of the department to disallow the benefit of credit to the assessee.

20. For the aforesaid reasons, we are of the clear opinion that the roznama order dated 10 April, 2023 passed by the State Tax Officer in rejecting the petitioner's objection cannot be sustained and it would be required to be set aside. We, accordingly dispose of this petition by the following order:

ORDER

i) The order dated 10 April, 2023 passed by the State Tax officer, being roznama order, rejecting the petitioner's objection is quashed and set aside;

(ii) The State tax officer is directed to hear the petitioner on the contentions as raised by the petitioner against blocking of the petitioner's input tax credit under the impugned order dated 10

March, 2023, on the basis of the documents as submitted by the petitioner by its email dated 28 March, 2023. After according an opportunity of a hearing to the petitioner, a detailed order be passed by the State Tax Officer in accordance with law.

(iii) All contentions in that regard are expressly kept open.

(iv) The petitioner is directed to appear before the State Tax Officer in the first instance on 27 October, 2023 at 3 p.m.

(iv) The State Tax Officer shall make an endeavour to hear the petitioner as expeditiously as possible and in any event pass appropriate order on or before 10 November, 2023.

(v) Needless to observe that the petitioner may avail an opportunity of placing on record of the State Tax Officer additional submissions and documents.

(JITENDRA JAIN, J.) **(G. S. KULKARNI , J.)**