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W.P.No.1387 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.1387 of 2024

Tvl.J.M.Traders
Represented by its Proprietor,
Mr.K.Jamal Mohideen (M/ A 44 Years),
Old No.60, New No.56,
2nd Floor, Sembudoss Street,
Chennai 001.

... Petitioner

-vs-

1.The Deputy Commissioner (ST)
Zone 1, Chennai North,
Chennai.

2.The Commercial Tax Officer,
North-I, Admin,
Greems Road, Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Mandamus, to direct the first respondent to unblock the input tax credit to a tune of Rs.9,90,126/- which is illegal and arbitrary in nature.



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WEB COPY For Petitioner : Mr.J.Ashish

For Respondent : Ms.Amirta Poonkodi Dinakaran, GA (T)

ORDER

The petitioner seeks a direction to the first respondent to raise the block on Input Tax Credit (ITC) to the extent of Rs.9,90,126/-. The petitioner states that ITC to the extent specified above was blocked by the second respondent by issuing a text message on 11.12.2023. The present writ petition was filed in those circumstances.

2. Learned counsel for the petitioner submits that the respondent acted in contravention of Rule 86A of the Tamil Nadu Goods and Services Tax Rules, 2017 (TNGST Rules). He relies on the judgment of the *Gujarat High Court in New Nalbandh Traders v. State of Gujarat and others Manu/GJ.0631/2022* in this regard.



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WEB COPY 3. In response to these contentions, learned Government Advocate submits that a show cause notice was issued subsequently to the petitioner on 26.12.2023. She also submits that even prior to receipt of such show cause notice, the petitioner submitted an explanation on 20.12.2023. Therefore, she contends that no prejudice was caused to the petitioner and that the response of the petitioner is under consideration. Besides, she contends that if the petitioner is permitted to utilize the ITC, at this juncture, revenue would be put to loss.

4. The matter hinges on Rule 86A of the TNGST Rules. The said Rule is set out below:

"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 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 inasmuch 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 documents 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. The power under Rule 86A may be exercised by any of the persons specified in sub-rule (1) thereof if such person has reasons to believe that the ITC available in the electronic credit ledger was fraudulently availed or that the registered person was not eligible for such credit. The text of Rule 86A indicates two requirements: the objective satisfaction of the officer concerned and the communication of reasons for so believing in writing to the assessee concerned.



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While Rule 86A does not stipulate a prior notice, the language thereof and the nature of power exercised by resort thereto require the contemporaneous communication of reasons in writing to the assessee. In the case at hand, apart from mentioning the name of the supplier in the electronic credit ledger, no reasons were provided. Therefore, the petitioner is entitled to the unblocking of ITC.

6. Hence, W.P.No.1387 of 2024 is disposed of by directing the first respondent to take necessary action to remove the block on the ITC in the electronic credit ledger pertaining to the assessee. It is, however, open to the respondents to initiate de novo action under Rule 86A by complying with the terms thereof. There shall be no order as to costs.

08.02.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No



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To

- 1.The Deputy Commissioner (ST)
Zone 1, Chennai North,
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- 2.The Commercial Tax Officer,
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SENTHILKUMAR RAMAMOORTHY,J

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