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

\+ W.P.(C) 15972/2024 and CM APPL. 67107/2024 (Interim Relief)

SUPER PRODUCTS (REGD) .....Petitioner

Through: Mr. Ram Naresh, Mr. Ajay Kumar Jain & Mr. S Malhotra, Advs.

versus

DIRECTOR GENERAL OF GOODS AND SERVICE TAX INTELLIGENCE, GURUGRAM AND ANR

.....Respondents

Through: Mr. Harpreet Singh, SSC with Ms. Suhani Mathur & Mr. Shivang Chawla, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

% **26.11.2024**

1. This writ petition impugns the attachment of the bank accounts of the petitioner in terms of Section 83 of the **Central Goods and Services Tax Act, 2017**[1], as well as the blocking of its **Electronic Credit Ledger**[2] in purported exercise of powers conferred by Rule 86A of the **Central Goods and Services Tax Rules, 2017**[3].

2. Before us, submissions were confined to the negative blocking of the ECL with it being submitted that the petitioner chooses not to pursue a challenge to the provisional attachment of bank accounts at

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[1] Act
[2] ECL
[3] Rules

this stage. We in consequence proceed to consider the writ petition bearing in mind the statement made and noticed above.

3. Learned counsel for the writ petitioner drew our attention to the order dated 08 October 2024 passed by the respondents imposing a block on its ECL along with a screenshot of the ledger and which ex facie indicates the balance in the ECL being in the negative.

4. In light of the above, it is apparent that for the purposes of securing an amount of INR 1.87 crores, the respondents sought to invoke the powers conferred by Rule 86A even though it would lead to a negative balance in the ECL.

5. It is in that backdrop that we bear in consideration the following principles which had been enunciated by the Court in **Best Crop Science (P) Ltd. vs. Commr.**[4]:

> "**78.** It is necessary to bear in mind that not allowing debit of an ITC is a temporary measure, which is imposed only if the conditions set out in Rule 86A of the Rules are satisfied. It is not necessary for any proceedings to be initiated against the taxpayer prior to passing an Order under Rule 86A(1) of the Rules. The said order can be passed at any stage if the Commissioner or an officer authorized by him has reasons to believe that the credit available in the ECL of a taxpayer has been fraudulently availed or is ineligible. This is clearly an emergent provision, which enables the Commissioner to withhold the available ITC in the ECL, which he has reason to believe has been fraudulently availed or is ineligible. An Order under Rule 86A(1) of the Rules does not require a prior show cause notice to be issued to a taxpayer as it is by its very nature an emergent provision to immediately block the usage of the ITC credited in the ECL, which the Commissioner or an officer authorized by him has reasons to believe has been fraudulently availed or is ineligible. The concerned authorities are required to proceed to determine whether a taxpayer has wrongly availed or utilized the ITC, under Sections 73 or 74 of the CGST Act and if it is found that the taxpayer has wrongly availed of the ITC the proper officer is required to pass an order to determine the amount of tax, interest or penalty payable. The demand as raised are required to be determined under Sections 73 and 74 of the CGST Act.

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[4] 2024 SCC OnLine Del 6714

79. If at any stage the Commissioner or an officer authorized by him is satisfied that the conditions for disallowing debit no longer exists, Sub-rule (2) of Rule 86A of the Rules requires such officer to permit debit from the taxpayer's ECL. In any event, by virtue of Sub-rule (3) of Rule 86A of the Rules, the order passed under Rule 86A(1) of the Rules is operative only for a maximum period of one year from the date of passing the said order.

80. Rule 86A of the Rules is not a machinery provision for recovery of tax or dues under the CGST Act. It is not a part of the scheme of the machinery provisions for assessment and determination of the tax and dues as payable under the CGST Act. It is an emergent measure for protection of revenue by temporarily not allowing debit of available ITC in the ECL, which the Commissioner or an officer authorized by him has reasons to believe has been wrongfully availed.

81. As noted above, the revenue authorities are required to proceed under Sections 73 and 74 of the CGST Act for determination of the amount due. After the proceedings under Chapters XII, XIV and XV of the CGST Act have commenced and the Commissioner is of the opinion that for the purpose of protection of government revenue, it is necessary to do so, he may pass an order under Section 83(1) of the CGST Act, provisionally attaching any property including the bank account of a taxpayer. This is also one of the measures that may be resorted to pending conclusion of the proceedings.

82. Rule 86A(1) of the Rules does not contemplate an order, the effect of which is to require a taxpayer to replenish his ECL with valid availment of ITC, to the extent of ITC used in the past, which the Commissioner or an officer authorized by him has reasons to believe, was fraudulently availed or was ineligible. Such an interpretation would in effect amount to construe an Order under Rule 86A(1) of the Rules as an order for recovery of tax. This is obvious because the taxpayer would now have to incur a larger cash outflow for payment of taxes as he would be denied utilization of validly availed ITC, which he would require to accumulate to compensate for the ITC availed and utilized which the Commissioner or an officer authorized by him, has reasons to believe was fraudulently availed or was ineligible.

83. In view of the above, the petitions are allowed and the orders impugned in the present petitions, as tabulated below, are set aside to the extent the impugned orders disallow debit from the respective ECL of the petitioners, in excess of the ITC available in the ECL at the time of passing of the impugned orders (referred to as Negative blocking by the counsel during the course of their submissions)…"

6. In view of the aforesaid and insofar as the issue of negative blocking of the ECL is concerned, we find ourselves unable to sustain the action impugned before us.

7. We, accordingly, and for the aforenoted reasons, partly allow the present writ petition and quash the impugned order insofar as it imposes a blocking of the ECL of the writ petitioner. The respondents are consequently directed to lift the negative blocking of the ECL forthwith.

8. The writ petition shall stand disposed of on the above terms.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 26, 2024
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