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

\+ W.P.(C) 92/2025 & CM APPL. 363/2025 (STAY)

M/S JAINCO PACKAGING THROUGH ITS PROPRIETOR RAMAN JAIN .....Petitioner

Through: Mr. Vaibhav Gupta and Mr. Mohit Gupta, Advs.

versus

COMMISSIONER, CGST GST COMMISSIONERATE DELHI WEST ZONE & ORS. .....Respondents

Through: Mr. Gibran Naushad, SSC for R-1 and 2.
Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Subham Kumar and Mr. Deep Raj, Advs. for R-3.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

O R D E R

% **30.01.2025**

1. Learned counsel for the writ petitioner states that relief A and which seeks to raise a challenge to the **Show Cause Notice**[1] dated 04 August 2024 is not pressed. We consequently leave it open to the writ petitioner to take appropriate remedies and to respond to the said SCN.

2. The principal grievance which was raised in the instant writ petition is to the negative blocking of the **Electronic Credit Ledger**[2] of the writ petitioner. Pursuant to our last order, the petitioner has filed an affidavit to place on record the status of the balance available

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[1] SCN
[2] ECL

in the ECL and from which it becomes apparent that the blocking has resulted in a negative debit of INR 37,54,908/-.

3. We, in this regard, bear in mind the principles which had come to be handed down by a Division Bench of this Court in **Best Crop Science Pvt. Ltd. v. Principal Commissioner, CGST Commissionerate, Meerut and others**[3] and where while commenting upon a negative blocking of ECL, the Court had held as follows: -

> "**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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> **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.

[3] 2024 SCC online Del 6714

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):....."

4. In view of the aforesaid, we find ourselves unable to sustain the negative blocking of the ledger of the writ petitioner.

5. We accordingly allow the writ petition in part. The blocking of the ECL is consequently quashed and set aside.

6. Undisputedly, the SCN dated 16 December 2024 rests solely on the allegation of a non-filing of Returns and which occurred on account of the negative blocking of the ECL.

7. Since, we have already quashed the order in terms of which the ECL had been blocked, we find no justification for proceedings on this SCN being continued. The SCN dated 16 December 2024 too shall in consequence stand quashed and set aside. This order, however, shall not preclude the respondents from concluding the proceedings emanating from the SCN dated 04 August 2024 in accordance with law.

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

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 30, 2025/nd