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

\+ W.P.(C) 14164/2024

M/S GOODLUCK ENTERPRISES .....Petitioner
Through: Mr. Siddarth Malhotra, Adv.

versus

UNION OF INDIA & ORS. .....Respondents
Through: Mr. Sushil Raaja, Sr. PC for R-1/UOI
Mr. Anurag Ojha, Sr. Standing Counsel with Mr. Dipak Raj and Mr. Subham Kumar, Advs. for R-2 and R-3
Ms. Anushree Narain, Sr. Standing Counsel for R-4

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

O R D E R

% **09.01.2025**

1. The order sheet would reflect that despite time having been granted on repeated occasions, the respondents have failed to file a reply on the instant writ petition. We thus find no justification to defer final disposal of the instant matter on that score.

2. This more so since the challenge would, in our considered opinion, be liable to be answered in favour of the writ petitioner, bearing in mind the judgment rendered by the Court in **Best Crop Science Pvt. Ltd. v. Principal Commissioner**[1].

3. The petitioner is essentially aggrieved by the blocking of the

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[1] 2024 SCC OnLine Del 6714

Electronic Credit Ledger[2] in terms of the orders impugned and which has resulted in a negative credit. This is evident and ex-facie apparent from a perusal of page 67 of our digital record.

4. In *Best Crop Science*, while dealing with an identical situation, we 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.
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> **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

[2] ECL

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.
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> **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.
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> **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)…"

Accordingly, and for reasons assigned in the aforesaid judgment, we find ourselves unable to sustain the action impugned before us.

5. Accordingly, the instant writ petition shall stand allowed. The impugned order dated 11 March 2024 resulting in negative blocking of the ITC ledger of the writ petitioner is hereby quashed and set aside.

6. Insofar as the allegation of an amount of INR 75,00,000/- having been illegally recovered during the course of proceedings

initiated by the respondents and under coercion, we permit the writ petitioner to move an appropriate representation before the competent authority of the respondents who shall examine and dispose of the same in accordance with law within a period of three weeks.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 09, 2025/*akc*