

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4899 OF 2025

M/s. Elitecon International Ltd.

...Petitioner

Versus

Union of India & Ors.

...Respondents

Dr. Sujay Kantawala a/w Anupam Dighe, Chandni Tanna, Renita Alex i/b. India
Law Alliance for Petitioner.

Mrs. S. D. Vyas, Addl.G.P. a/w A. R. Deolekar, AGP for Respondent No.2 & 3.

Mr. Jitendra Mishra a/w Sangeeta Yadav & Rupesh Dubey for Respondent Nos. 1,
4 & 5.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 25th MARCH 2026

Oral Judgment (Per Aarti Sathe J):-

1. Rule. Rule made returnable forthwith. With the consent of the parties,
heard finally.

2. This Petition under Article 226 of the Constitution of India is filed
praying for the following substantive reliefs: -

“a) That this Hon'ble Court may be pleased to issue a Writ of
Certiorari or Writ in the nature of Certiorari or any other appropriate
Writ, Order or Direction calling for records and proceedings dealing
with:-

i. the Impugned Provisional Attachment Orders dated 27.02.2025
issued by Respondent No. 2 vide FORM GST DRC 22 of the bank
accounts bearing Nos. 40963536902 and 921020036455317 held
with Respondent No. 6 and 7 respectively (Exhibit K-K1);

ii. the Impugned Intimation Letter dated 27.02.2025 issued by Respondent No. 3(Exhibit J);

iii. the Impugned Intimation/Communication Letter dated 13.03.2025 and 31.03.2025 issued by the Respondent No. 4 (Exhibit R & U respectively);

and after going into the legality, propriety, and validity thereof, to quash and set aside (i), (ii) & (iii) as mentioned above;

b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction directing Respondents, their servants, subordinates and agents:

i. to defreeze the Petitioner's Bank accounts bearing Nos. 40963536902 and 921020036455317 maintained with Respondent No. 6 and 7 respectively;

ii. to withdraw the Intimation Letter dated 27.02.2025 issued by Respondent No. 3(Exhibit J);

iii. to unblock the Petitioner's ECL vide reference no. BL2703250000079 dated 07.03.2025;

iv. to withdraw the Intimation/Communication Letter dated 13.03.2025 and 31.03.2025 issued by Respondent No. 4 (Exhibit R & U respectively);

c) That pending the hearing and final disposal of the Petition, the Respondents by themselves and their subordinates, servants and agents be directed by an interim order of this Hon'ble Court:

i. to defreeze the Petitioner's Bank accounts bearing Nos. 40963536902 and 921020036455317 maintained with Respondent No. 6 and 7 respectively;

ii. to withdraw the Intimation Letter dated 27.02.2025 issued by Respondent No. 3(Exhibit J);

iii. to unblock the Petitioner's ECL vide reference no. BL2703250000079 dated 07.03.2025;

iv. to withdraw the Intimation/Communication Letter dated 13.03.2025 and 31.03.2025 issued by Respondent No. 4 (Exhibit R & U respectively);”

3. The primary grievance of the Petitioner is to the actions of Respondent Nos. 2 and 3 in provisionally attaching the Petitioner's bank account under Section

83 of the Maharashtra Goods and Services Tax Act, 2017 (hereinafter referred to as the “MGST Act”) held with Respondent Nos. 6 and 7 vide FORM GST DRC-22 through orders dated 27th February 2025 (hereinafter referred to as the “impugned attachment orders”) as the same suffers from factual discrepancies. The Petitioner is also challenging the illegal blocking of the Petitioner’s Electronic Credit Ledger (ECL), as Respondent No.4 has not assigned any reason before blocking the Input Tax Credit (ITC) available in the ECL, as mandated under Rule 86A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the “CGST Rules”) and the guidelines issued by the CBIC (Central Board of Indirect Taxes and Customs) circular nor has Respondent No. 4 given any hearing to the Petitioner before blocking the ITC, in violation of the principles of natural justice.

4. It is the Petitioner’s contention that Rule 86A(3) of the CGST Rules mandates that the ITC which has been blocked in the ECL shall be unblocked on the expiry of one year from the date of imposing such restrictions. In view thereof, the Petitioner has submitted that the aforesaid issue is squarely covered by the decisions of this Court in **Seya Industries Ltd. Vs. State of Maharashtra**¹, as also in view of the order passed by this Court today in another Petition namely **NZS Traders Pvt. Ltd. Vs. Union of India and others**² and also by orders passed in **M/s. Armour Security (India) Ltd. Vs. Commissioner, CGST, Delhi East**

1 (2024) 20 Centax 466 (Bom.)

2 Writ Petition No.4815 of 2024 on 25th March 2026

Commissionerate & another³ and K-9 Enterprises Vs. State of Karnataka and another⁴.

5. The facts lie in a narrow compass, which are as follows:-

- i. On 12th February 2025, a search was initiated by Respondent No. 3 in the Petitioner's premises, and thereafter on 13th February 2025, Respondent No.3 issued summons to Mr. Vipin Sharma, Director of the Petitioner to record his statement regarding the purchase and ITC availed from one M/s. Business Bay Agencies.
- ii. On 17th February 2025, in response to the summons dated 13th February 2025, Mr. Vipin Sharma sought for a short adjournment for medical reasons, and thereafter on 25th February 2025, Mr. Vipin Sharma vide letter of even date informed Respondent No. 3 of the ongoing Directorate General of Goods and Services Tax Intelligence (DGGI), Nashik investigation since February 2022, and requested that the present investigation be quashed as it was in respect of the same issue for which the investigations were being carried out by Respondent No. 3.
- iii. On 27th February 2025, Respondent No. 3 vide letter of even date, informed the Petitioner that ITC amounting to Rs. 54.09 crores had been accrued from their suppliers, whose registration was cancelled during the period of 2022-23 to 2024-25, and therefore it was requested to the Petitioner to make payment of Rs. 52.46 crores of the alleged ineligible ITC. By a letter of even date,

3 SLP© No. 6092 of 2025

4 2024 (10) TMI 491

Respondent No. 3 informed the Petitioner that in order to protect the government revenue, there was a strong need to attach the Petitioner's bank account maintained with Respondent No. 6 as ITC of Rs. 54,09,99,198/- was utilized which was availed from suppliers whose GST registration had been cancelled. Along with the aforesaid letter, Respondent No. 3 also issued FORM GST DRC-22 to Respondent Nos. 6 and 7 with respect to the bank account maintained with them by the Petitioner.

iv. On 8th March 2025, the Petitioner vide letter of even date addressed to the Branch Manager of Respondent Nos. 6 and 7 sought confirmation regarding the debit-freeze in the Petitioner's bank account and further on 11th March 2025, Respondent No. 3 issued summons to Mr. Vipin Sharma and Pravin Singh regarding their purchases from M/s Business Bay Agencies.

v. On 11th & 12th March 2025, ITC amounting to Rs. 13,75,52,871/- was blocked in the Petitioner's ECL, hence the Petitioner vide letter dated 11th March 2025 and email dated 12th March 2025 addressed to Respondent No. 4, requested to provide the reasons for the blocking of the ITC amount and details of the authority at whose behest the ITC had been blocked in the ECL. In response thereto, Respondent No. 4, by letter dated 13th March 2025, informed the Petitioner that the ITC had been blocked with reference to the internal letter dated 27th February 2025 received from Respondent No. 2.

vi. Thereafter, a series of correspondence was entered between the Petitioner and the Respondents. The Petitioner by letter dated 24th March 2025, informed

Respondent No. 5 and the Chief Commissioner CGST, Nagpur Zone, that it was still awaiting clarification on the 'reasons to believe' for the blocking of the ITC in their ECL.

vii. On 31st March 2025, the Petitioner was informed by Respondent Nos. 4 and 5 vide letter of even date that the "reasons to believe" were on the basis of Respondent No. 2's internal letter dated 27th February 2025 to Respondent Nos. 4 and 5, on the basis of which the ITC had been blocked in the ECL of the Petitioner.

viii. It is in the backdrop of the above facts that the Petitioner is aggrieved by the blocking of the ITC under Rule 86A and the consequent provisional attachment of its bank accounts

6. Learned Counsel Dr. Sujay Kantawala, along with Mr. Anupam Dighe, Chandni Tanna, and Renita Alex appeared for the Petitioner. Mrs. S. D. Vyas, learned Additional Government Pleader and Mr. A. R. Deolekar, learned Additional Government Pleader appeared on behalf of Respondent Nos. 2 and 3, and Mr. Jitendra Mishra, along with Mrs. Sangeeta Yadav & Mr. Rupesh Dubey appeared on behalf of Respondent Nos. 1, 4, and 5. We have heard learned Counsel for the parties and perused the papers and proceedings with the assistance of the learned Counsel for the parties.

7. Dr. Kantawala, learned Counsel for the Petitioner restricted his prayer and submissions to the grievance regarding the blocking of ITC in the ECL on the ground that the said blocking was contrary to the provisions of Rule 86A(3) of the

CGST Rules, inasmuch as such blocking ceases to have effect after the expiry of one year from the date of imposing of such blocking, as per the plain purport of the said provision. He submitted that in the facts of the present case, the Petitioner's ITC in the ECL ought to be unblocked as the period of one year expired on 7th March 2026, considering that the ITC was blocked on March 2025. He has also submitted that the issue stands covered by the decisions in Seya Industries (supra), Armour Security (India) Ltd. (supra), and K-9 Enterprises (supra) and that the provisional attachment which has been made by Respondent No. 3 is without jurisdiction, as per the provisions of Section 83(2) of the MGST Act and further that the provisional attachment will also cease to have effect as period of one year has expired on 27th February 2026.

8. Dr. Kantawala, learned Counsel for the Petitioner further sought to place reliance on the decision of the Supreme Court in Armour Security (India) Ltd. (supra), wherein it has been held that when two proceedings which seek to recover an identical tax liability from any particular contravention, the bar of Section 6(2)(b) of the CGST Act would be attracted and hence in the facts of the present case, Respondent No. 3 did not have any jurisdiction to make the provisional attachment as the DGGI, Nashik had already initiated an investigation into the same subject matter, i.e., ITC in respect of purchases made from M/s Business Bay Agency. He further submitted that Respondent No. 4 blocked the ITC on the basis of an internal letter issued by Respondent No. 2, and therefore there was no independent application of mind on the part of Respondent No. 4 to block the ITC in the ECL of the Petitioner. He further submitted that the 'reasons

to believe' were not provided to the Petitioner, and no pre-decisional hearing was held, which was a *sine qua non* prior to the blocking of the ITC under Rule 86A of the CGST Rules. In this context, he sought to place reliance on the decision in the case of K-9 Enterprises Vs. State of Karnataka & Anr. (supra).

9. *Per contra*, learned Counsel for the Respondent opposed the prayers in the present Petition to submit that the blocking of the ITC in the ECL of the Petitioner had rightly been done by Respondent Nos. 4 and 5, and hence their action could not be called into question. He submitted that there was no violation of the provisions of Rule 86A of the CGST Rules, as the Respondents had sufficient reasons to believe that ITC had been fraudulently availed insofar as the Petitioner is concerned. He also sought to place reliance on the affidavit-in-reply filed by one Mr. Sanjay Dnyandeo Pawar, Joint Commissioner of State Tax, Investigation B, Mumbai on behalf of Respondent Nos. 2 and 3. The relevant paragraphs of the said reply affidavit are reproduced below:

4. At the outset, it is submitted that the petitioner have approached this Hon'ble Court without exhausting the alternative, efficacious remedy available to him as per Rule 159(5) of the CGST/MGST Rules, 2017. It is submitted that Rule 159(5) provides that any person whose property is attached may file an objection in FORM GST DRC-22A to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in FORM GST DRC - 23. The present Writ Petition is thus liable to be dismissed on this ground alone.

5. As regards the contention of the petitioner that a pre-decisional hearing was not granted to the petitioner before blocking the with the officer and subjective satisfaction of the officer should be 2017, it is submitted that Rule 86A empowers the GST officer to block utilisation of input tax credit when fraud is suspected. Two prerequisites are required to be fulfilled before invoking Rule 86A of CGST/MGST Rules. Firstly, Material evidence should be available the said property by an order in FORM GST DRC - 23. The present based on such material. Secondly, recording of reasons is a must before blocking electronic credit ledger. These two pre-conditions were fulfilled before the blocking of ITC by CGST officer. However, it is submitted

that said that the power under Rule 86A is drastic and entails serious civil consequences. As there is no requirement of offering personal hearing before passing order, post-decisional or remedial hearing is always granted.

7. It is submitted that, the action taken by the respondents is just, legal and proper and there is no violation of the provisions of rule 86-A of GST Rules as alleged or otherwise. Respondent No. 3 had sufficient reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible.

8. It is submitted that, due to lack of facility for blocking ECL at the State Investigation Branch level, the inputs and recommendation were sent to the office of the Respondent No. 4 and 5 with a request for blocking of the said input tax credit. On receipt of inputs and recommendation, the Respondent No.4/5, after due consideration of the material facts, and having reasons to believe that the Petitioner has fraudulently and illegally availed of ITC, restricted the debit of the input tax credit by invoking the provisions of rule 86-A of the GST Rules. Similarly action of provisionally attaching petitioners bank account was taken after forming an opinion as mandated under section 83 of the CGST / MGST Act and following due process of law.

9. It is most respectfully submitted that the petitioner has nowhere in this petition contended or urged about genuineness of the transaction. It is submitted that the petitioner has approached the Hon'ble Court with unclean hands and has suppressed the information about the proceedings related to the impugned supplier. In view of the facts of the case and wrong availment of the input tax credit, the action of restricting the debit of the ITC from the Electronic Credit Ledger, to the extent of the ITC availed by petitioner from the supplier whose registration is cancelled ab initio, is legal and there is no violation of the provisions of rule 86-A of GST Rules.

10. Further, it is submitted that, as the petitioner / Directors has not attended the ongoing investigation proceedings under GST Act till date; it is humbly prayed that this Hon'ble Court may direct petitioner to attend the investigation proceedings and provide necessary cooperation before the investigating authority or, as the case may be, the Respondent No.3.

10. Having heard learned Counsel for the parties and having perused the record, we are of the considered view that there appears to be much substance in the submissions made on behalf of the Petitioner, that the blocking of ITC in the ECL of the Petitioner beyond the period of one year is against the mandate of Rule 86A(3) of the CGST Rules. This is further clear from the very language of the aforesaid Rule, which provides that the restriction as envisaged, of blocking of the ITC will cease to have effect after expiry of the period of one year from the date of imposing such restriction. Rule 86A (3) thus provides for an automatic unblocking

of credit post the expiry of one year. In NZS Traders Pvt. Ltd. v/s Union of India Ors.⁵, a similar issue had fallen for consideration of the Division Bench. When considering the mandate of the said provision, the Court had held that there could not have been blocking of the ITC beyond the period as envisaged by Rule 86A. The relevant extracts of the said decision need to be noted:-

“6. Having heard learned Counsel for the parties and having perused the record, we find much substance in the contentions as urged on behalf of the Respondents. Rule 86A(3) of the CGST Rules, 2017 clearly mandates that the restriction on the electronic credit ledger cannot continue beyond a period of one year from the date of imposition of such restriction. In the present case, the restriction was imposed on 16th February 2024, and thus, upon expiry of one year, the same could not have been continued. This position is also acknowledged by the Department in its reply affidavit. Therefore, by operation of law, the credit ought to have been unblocked. The Petitioner was not required to approach this Court seeking a declaration, as the benefit flows directly from the statutory provision itself.

7. Mr. Raichandani is justified in placing reliance on the decision in *Seya Industries Ltd. vs. State of Maharashtra* (supra), wherein a similar view has been taken.

8. Insofar as the contention raised by Mr. Adik, learned Counsel for the Respondent-Department, that the registration of the Petitioner stands cancelled and that unblocking of the credit would be subject to any further action the Department may propose to take, including issuance of a show cause notice, the same cannot be accepted for the purposes of the present proceedings.

9. Insofar as the reliefs sought in the present Petition are concerned, it is required to be observed that any consequences in law arising out of cancellation of the Petitioner's registration, including issues relating to eligibility or utilization of credit, would necessarily have to be dealt with in accordance with the provisions of the Act and the Rules. However, insofar as the Petitioner's entitlement to the relief prayed for is concerned, the same flows by operation of law, and accordingly, it is required to be held that the impugned attachment/blocking of the credit has ceased to operate.

10. In view of the above, we are not required to delve into the other issues. All contentions of the parties are expressly kept open.

11. The Petition is disposed of by setting aside the impugned blocking of the Petitioner's credit dated 16th February 2024, as the same has ceased to operate upon expiry of the statutory period of one year.

12. It is clarified that both the Petitioner and the Respondent-Department shall be at liberty to adopt appropriate proceedings in accordance with law in respect of any other issues, including those relating to Input Tax Credit (ITC).”

(emphasis supplied)

11. A similar view has also been taken by a co-ordinate Bench of this Court in the case of *Seya Industries Ltd. Vs. State of Maharashtra (supra)*, wherein it has been held that the alleged ITC availed by the assessee which is blocked in the ECL should be unblocked after the expiry of the period of one year in view of Rule 86A(3) of the CGST Rules. The relevant paragraph of the aforesaid decision is reproduced below:-

7. Rule 86A empowers 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 electronic credit ledger has been fraudulently availed or is ineligible in as much as, 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. Sub-rule (3) of Rule 86A provides that such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction. The restriction was imposed on 23rd November 2022 and one year period expired on or about 23rd November 2023. Therefore, by operation of law itself, the restriction imposed has lapsed. Ordered accordingly.

(emphasis supplied)

12. We are in agreement with the submissions made on behalf of the Petitioner that prior to blocking of the ITC in the ECL of the Petitioner, a hearing needs to be given to the Petitioner, and the absence of a pre-decisional hearing would be in violation of the principles of natural justice. This, in view of the fact that blocking of the ITC in the ECL of the Petitioner entails civil consequences, and would have a crippling effect on the business of the Petitioner, which would require that a hearing be granted prior to the blocking of the ITC in the ECL. In such context, in *K-9 Enterprises Vs. State of Karnataka & Anr. (supra)*, the Karnataka High Court held as under:-

“8.11 As stated supra, principles of natural justice necessarily had to be observed and adhered to by the respondents-revenue before passing the impugned orders blocking the ECL of the appellants which would entail and visit them with serious civil consequences; so also, in the absence of extraordinary reasons or exceptional circumstances obtaining from the material available with them which would obviate

or dispense with the requirement of pre-decisional hearing, it was also incumbent upon the respondents-revenue to provide/grant a pre-decisional hearing to the appellants before invoking Rule 86A and blocking the ECL of the appellants by passing the impugned orders which are vitiated and failure to appreciate this by the learned Single Judge has resulted in erroneous conclusion.

8.12 It is also significant to note that in the event the respondents-revenue had not provided/granted a pre-decisional hearing to the appellants before blocking its ECL by invoking Rule 86A, the only consequence flowing from the same would be that there would be a possibility of the appellants taking steps to utilizing/availing the ITC available in the ECL; the said process of the appellants utilizing/availing the ITC is not instantaneous/immediate unlike bank accounts, from which monies can be withdrawn, if the same are not attached and the said process culminating in the ITC being converted to actual benefit in favour of the appellants would consume time as explained by the Gujarat High Court in Samay Alloys' case supra; in other words, it was not physically possible for the appellants to immediately/forthwith encash/withdraw the ITC available in its ECL so as to warrant emergent/urgent blocking of the ECL without providing a pre-decisional hearing to the appellants; at any rate, upon the respondents-revenue issuing appropriate notices to the appellants providing pre-decisional hearing proposing to invoke Rule 86A, the respondents-revenue would be entitled to supervise/monitor the proceedings including the ECL of the appellants and if circumstances so warrant, respondents-revenue would be entitled to block the ECL even before completion of pre-decisional hearing was completed; viewed from this angle also, the impugned orders passed by the respondents-revenue blocking the ECL of the appellants without providing/granting pre-decisional hearing and confirmed by the learned Single Judge deserve to be set aside.

8.13 In view of the aforesaid discussion, we are of the considered opinion that the learned Single Judge clearly fell in error in coming to the conclusion that a pre-decisional hearing was not required to have been provided/granted to the appellants by the respondents-revenue prior to passing the impugned orders blocking the ECL of the appellants and consequently, the said findings recorded by the learned Single Judge deserve to be set aside.”

(emphasis supplied)

13. We are in complete agreement with the aforesaid view of the Karnataka High Court. Thus, in our view, considering the settled principles of law and the facts of the present case, the blocking of the alleged ITC in the ECL of the Petitioner beyond the period of one year is an action which is against the mandate of Rule 86A of the CGST Rules, rendering the impugned action to be arbitrary and illegal. We, therefore, deem it appropriate to dispose of this writ petition in terms of the following order:-

ORDER

- a) The impugned provisional attachment order dated 27th February 2025 issued by Respondent No. 2 vide FORM GST DRC-22 of the bank accounts bearing nos. 40963536902 and 921020036455317 held with Respondent Nos. 6 and 7 respectively is hereby quashed and set aside. Consequent thereto, the blocking of the Petitioners ECL vide Reference No. BL2703250000079 dated 7th March 2025 stands unblocked, available to be used in the normal course of the Petitioner's business as may be permissible in law. The Petitioner's bank account bearing No. 40963536902 and 921020036455317 maintained with Respondent Nos. 6 and 7 stands defreezed.
- b) It is however clarified that the Petitioner and the Respondent-Department are at liberty to adopt appropriate proceedings, as may be permissible in law in respect of any other issues, including those of ITC.
- c) Rule made absolute in the aforesaid terms. No costs.

(AARTI SATHE, J.)**(G. S. KULKARNI, J.)**