

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5541 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

**and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | |
| 2 | To be referred to the Reporter or not ? | |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | |

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**PMW METAL AND ALLOYS PVT. LTD.
Versus
UNION OF INDIA & ORS.**

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Appearance:
PRIYANK P LODHA(7852) for the Petitioner(s) No. 1
MR SIDDHARTH H DAVE(5306) for the Respondent(s) No. 4
NOTICE SERVED for the Respondent(s) No. 1,2,3

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**CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

Date : 20/09/2024

ORAL JUDGMENT



(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr. Priyank P. Lodha for the petitioner and learned advocate Mr. Siddharath Dave for the respondent.
2. Having regard to the controversy involved which is in a very narrow compass, with the consent of the learned advocates for the respective parties, the matter is taken up for hearing.
3. Rule returnable forthwith. Learned advocate Mr. Siddharth Dave waives service of notice of rule on behalf of the respondent.
4. By this petition under Article 226 of



the Constitution of India, the petitioner has prayed for the following reliefs:

"(A) Issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ of order directing the Respondents to forthwith withdraw the negative block of the electronic credit ledger of the Petitioners and quash and set aside the impugned Action of negatively blocking the Input Tax Credit in the electronic credit ledger of the Petitioner amounting to Rs. 2,44,05,567/-on 8/12/2023;

B Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to direct the Respondents to forthwith withdraw the negative block of the electronic credit ledger of the Petitioners;

C Issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order directing either one of the Respondents to carry on with the investigation/ proceedings against the Petitioner;

D. Ex parte ad interim relief in terms of prayer B may kindly be granted;



E Such other or further reliefs as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness the Petitioner shall forever pray."

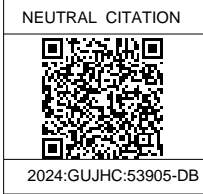
5. Brief facts of the case are that the petitioner company is incorporated under the provisions of the Companies Act, 1956 and is engaged in manufacturing of lead and lead based alloys, charging, assembly and packing of batteries. In the course of its business, the petitioner company procured inputs from various suppliers. The petitioner availed Input Tax Credit (ITC) of the supplies received under the provisions of Central/Gujarat State Goods and Services Tax Act, 2017 (For short "the GST Act").

6. The petitioner received an email dated



08.12.2023 from the respondent stating that Input Tax Credit amounting to Rs.2,44,05,567/- has been blocked by the Assistant Commissioner, Una, on 08.12.2023. The petitioner was also informed to view the credit ledger on the portal for details.

7. On verification of the portal, the petitioner could not find any order/notice explaining the reason for such blocking. The Electronic Credit Ledger of the petitioner on the GST portal only indicated that amount of blocked credit under the head of integrated tax was Rs.2,44,05,567/- and stated that block credit was due to "Credit claimed without receipt of goods/services". There was no context or reasons provided for blocking



the credit in the Electronic Credit Ledger. There was no balance of input tax credit (ITC) in Electronic Credit Ledger of the petitioner and therefore, in absence of any balance in Credit Ledger, Electronic Credit Ledger was reflecting negative balance of Rs.2,44,05,567/-.

8. The petitioner, therefore, on inquiry with the GST office, Una on 20.12.2023 was informed that such blocking of the credit was at the behest of officers of Surat Zonal Division of the Director General of GST Intelligence, respondent no.4 herein.

9. The petitioner therefore, addressed letter dated 28.12.2023 to respondent no.4 stating that the petitioner has not received any formal communication or



intimation after or prior to such action of blocking ITC. It was also stated in the said letter that on inquiry and search conducted by the Director General of GST Intelligence Head Quarter, New Delhi on 22.11.2023 at the premises of the petitioner, all physical and electronic documents and records including the gadgets like CPU were seized and consequently, the petitioner was not able to furnish any books of accounts or documents. It was also requested either to transfer the case along with required document to the Director General of GST Intelligence Head Quarter or to transfer all the case including the necessary documentation to the office of respondent no.4.



10. The letter of the petitioner was accompanied by Panchnama and summons issued dated 22.11.2023 and the details submitted by the petitioner in connection with the ITC availed against invoices received from M/s. Galaxy Enterprise. The petitioner also submitted challan for payment of Rs.34,18,849/- in form DRC-03 dated 24.11.2023 in respect of ITC availed for the month of April 2023 and Rs.29,79,402/- for the month of May 2023 on the basis of input received from M/s. Galaxy Enterprise pursuant to the investigation carried out on 22.11.2023.

11. It is also the case of the petitioner that prior to such proceedings being initiated by the Directorate General of GST Intelligence, Office of the State



Taxes and Excise, Central Enforcement Zone, Una Himachal Pradesh had initiated the proceedings by issuing GST DRC-01A dated 16.09.2022 followed by the show cause notice in Form DRC-1 dated 3.12.2022 for the years 2018-2019 to 2020-2021 in order to investigate supplies from various firms whose GST registrations were cancelled suo motu by the department and the petitioner cooperated in such inquiry and by order dated 26.07.2023 passed under section 74 of the GST Act, the ITC availed by the petitioner was accepted and the proceedings were closed without any demand. Moreover prior to such action, ITC amounting to Rs.33,26,512/- was blocked in Electronic Credit Ledger of the petitioner which was informed to the petitioner vide email dated 26.10.2023 without any notice



or order for such blocking as such amount was available in the Electronic Credit Ledger.

12. The petitioner however was not provided any reason for such blocking. Thereafter the impugned action by email dated 8.12.2023 was taken for blocking of ITC of Rs.2,44,05,567/- without there being any balance in Electronic Credit Ledger resulting into negative blocking.

13. The petitioner thereafter had written a letter dated 01.01.2024 to the Principal Additional Director General, DGGI, Headquarter at New Delhi with regard to blocking of ITC in Electronic Credit Ledger with a request to unblock the same followed by letter dated 04.01.2024 to the



Commissioner of CGST, Shimla, Himachal Pradesh requesting for unblocking the credit.

14. The petitioner thereafter by letter dated 06.01.2024 again requested the Assistant Commissioner, CGST, Una, Himachal Pradesh for unblocking the credit.

15. The petitioner received a reply to its letter from SIO Group-04, DCGI, SZU, Surat by email 05.02.2024 with a request to the petitioner to provide the details of the officer who has blocked the ITC. The petitioner thereafter by email of the same date again informed respondent no.4 that there was no mention of a specific officer's name in the mail dated



08.12.2023 and further requested to unblock the credit of ITC.

16. The petitioner thereafter sent email dated 21.02.2024 with a request to unblock the credit to which the petitioner received email dated 21.02.2024 to contact the Assistant Director, DGGI, SZU.

17. The petitioner thereafter preferred the writ petition being CWP No.821 of 2024 in the High Court of Himachal Pradesh, Shimla which was disposed of by order dated 28.02.2024 with a liberty to approach the appropriate jurisdictional High Court for the reliefs.

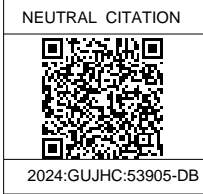
18. Pursuant to disposal of writ petition filed before Himachal Pradesh High Court, Shimla, the petitioner addressed an email



to DGGI Surat Zonal unit dated 08.03.2024 requesting for immediate attention for unblocking the credit followed by letter dated 13.03.2024 to the Assistant Director DGGI Surat Zonal Unit requesting for unblocking the credit.

19. Learned advocate Mr. Priyank Lodha for the petitioner submitted that in spite of various requests and communication made by the petitioner thereafter also in the month of March 2024, respondent authorities have not given any reason or opportunity of hearing to the petitioner with regard to the blocking of the ITC though there is no balance in Electronic Credit Ledger.

20. It was submitted that there is no



power under the provision of the GST Act to negatively block any ITC which is to be availed in future. Reference was also made to Rule 86A of the Central Goods and Service Tax Rules, 2017 (for short 'CGST Rules') which empowers the Commissioner or his subordinates to freeze the debit in the Electronic Credit Ledger provided he has reasons to believe that the credit of input tax available in the Electronic Credit Ledger has been fraudulently availed or is ineligible. It was therefore, submitted that in the facts of the case, the respondent authorities have failed to consider that the balance in the Electronic Credit Ledger of the petitioner was Nil when blocking of Rs. 2,44,05,567/- was imposed on 8.12.2023 and therefore, it was contended that if no



input tax credit was available in the ledger, the blocking of Electronic Credit Ledger under Rule 86A of the GST Rules and insertion of negative balance in the ledger would be wholly without jurisdiction and illegal.

21. In support of his submissions reliance was placed on the decision of this Court in case of **Samay Alloys India Pvt. Ltd. v. State of Gujarat** reported in (2022) 91 GST 338 (Gujarat) wherein it is held that on a plain reading of Rule 86A(1) of the CGST Rules, power conferred under such rule can be exercised by the respondent authorities if credit balance of ITC is available in the Electronic Credit Ledger and the Commissioner or officer authorised by him is having reason to believe that such



credit has been fraudulently availed or is ineligible and such reasons to believe are recorded in writing.

22. It was therefore, submitted that none of the conditions to invoke Rule 86A of the CGST Rules is fulfilled in the facts of the present case and as such, there is no authority for negatively blocking of the credit to be availed in future by debiting the Electronic Credit Ledger of the petitioner and the respondent therefore, has no jurisdiction to negatively block the ITC of Rs.2,44,05,567/-. It was therefore, submitted that impugned action on part of the respondent is required to be quashed and set aside.

23. It was further submitted that blocking



of ITC has been done merely on suspicion of wrongdoing without issuing any show cause notice or providing any opportunity of hearing and without any order passed under sections 73 and 74 of the GST Act. It was also submitted that there is no prima facie evidence that credit availed by the petitioner was illegal or in violation of any provisions of GST Act.

24. It was submitted that blocking done by the respondent is therefore, only on basis of presumption and assumption more particularly, when the petitioner is readily assisting with all the investigations carried out by different offices of the respondent authorities situated at Himachal Pradesh as well as in Delhi.



25. Learned advocate Mr. Lodha therefore, submitted that due to impugned intimation dated 8.12.2023 for negative blocking of ITC, the petitioner is unable to carry out the business as any credit of ITC would be adjusted against the negative balance in Electronic Credit Leger and the petitioner is not able to file any monthly GST returns as the petitioner is not able to claim any fresh ITC as the same would be adjusted against the negative balance resulting into severe financial constrain and the petitioner is also incapable to fulfill its commitments to its suppliers.

26. It was also submitted that blocking of Electronic Credit Ledger of the petitioner and debiting of ITC without issuance of



any communication bearing a Documentation Identification Number (DIN) is also illegal and void ab initio.

27. Learned advocate Mr. Lodha also referred to and relied upon the decision of this Court in case of **Milap Scrap Traders v. State/Commercial Tax Officer** (judgment dated 23.03.2022 rendered in Special Civil Application No.12986 of 2021) wherein in similar facts, Division Bench of this Court has analysed the provisions of Rule 86A of the CGST Rules along with circulars and notifications and allowed the petition by directing the respondent to withdraw the negative blocking of Electronic Credit Ledger.

28. Learned advocate Mr. Lodha also



referred to the decision of Telangana High Court in case of **M/s. Laxmi Fine Chem v. Assistant Commissioner, Malkajgiri-II Circle, Hyderabad** (judgment dated 18.03.2024 rendered in Writ Petition No.5256 of 2024), wherein decision of this Court in case of **Samay Alloys India Pvt. Ltd. v. State of Gujarat** (supra) has been followed.

29. Learned advocate Mr. Lodha referred to the decision of the Hon'ble Supreme Court in case of **Mary Pushpam v. Telvi Curusumary & Ors.** rendered on 03.01.2024 in Civil Appeal No.9941 of 2016 to point out that Hon'ble Supreme Court has held that the rule of judicial discipline and propriety and the doctrine of precedents has a merit of promoting certainty and



consistency in judicial decisions providing assurance to individuals as to the consequences of their actions. It was submitted that Division Bench of this Court way back in 2022 has held that no negative blocking can be made by invoking Rule 86A of the GST Rules, the same would be binding to the respondent authorities and the respondent authorities could not have passed the impugned order dated 8.12.2023 for negative blocking.

30. Learned advocate Mr. Lodha also referred to the minutes of the 38th GST Council Meeting held on 18th December, 2019 wherein in relation to agenda item No.6(ii), with regard to insertion of Rule 86A so as to block the ineligible ITC to control the menace of fake invoices but at



the same time it was pointed out that by notification dated 26.12.2019 when Rule 86A was inserted it contained safeguard that said rule can be invoked after the reasons to be recorded in writing with regard to the satisfaction that credit of ITC has been availed fraudulently or on the basis of invoices issued by the registered person who has been found non-existent or without receipt of goods or services or both.

31. It was therefore, submitted that the impugned action/order of the respondent is liable to be quashed and set aside by directing the respondents to withdraw the negative blocking placed upon Electronic Credit Ledger of the petitioner as the petitioners have always cooperated in



investigation and inquiry which are initiated by the respondent authority.

32. On the other hand, learned advocate Mr. Siddharth Dave for the respondent authority submitted that the petitioner is not required to be provided any opportunity of hearing. Rule 86A of the CGST Rules was inserted so as to protect the Government revenue which was utilised by tax payer from ITC passed by non-existent unit. It was submitted that the petitioner is free to carry on his business activities by effecting payment of requisite amount of tax into his account and all that has been prevented is that the petitioner would not be entitled to adjust the tax by availing the credit upto the limit of blocked input tax



credit, if available in his Electronic Credit Ledger.

33. It was further submitted that as per Rule 86A of the CGST sRules, blocking of input tax credit does not contemplate any recovery of tax due from the petitioner and it only provides in certain situations and upon certain conditions being fulfilled, specified amount may be held back and be not allowed to be utilised by the petitioner towards discharge of its liabilities on the outward tax or towards refund and just creates a lien without actual recovery being made or attempted and there was no mention of personal hearing before invoking the provisions of Rule 86A of the CGST Rules.



34. Learned advocate Mr. Siddharth Dave further submitted that the contention raised on behalf of the petitioner that no intimation has been given regarding the blocking of the ITC is not true and correct as in the facts of the case, ITC availed by the petitioner needed to be blocked instantly in view of Rule 86A of the CGST Rules to safeguard the Government revenue which has been taken on the basis of fake invoices issued by the non-existent firms pursuant to search and investigation which has been carried out at the premises of the petitioner and blocking of ITC was made on the GST portal online which automatically intimate the taxpayer about the blocking of ITC through SMS/E-mail.



35. In support of his submissions, reliance was placed on the following decisions:

1) Decision of Calcutta High Court in case of **Basanta Kumar Shaw v. The Assistant Commissioner of Revenue Commercial Taxes & Ors** reported in 2022 SCC OnLine Cal 4544.

2) Decision of Hon'ble Supreme Court in case of **Basanta Kumar Shaw v. The Assistant Commissioner of Revenue Commercial Taxes & Ors** (rendered on in Petition(s) for Special Leave to Appeal (C) No.20268-20269/2022 dated 07.08.2023)

3) Decision in case of **M/s. R M Dairy Products LLP v. State of Uttar Pradesh &**



Ors reported in 2021;AHC;73172-DB.

36. Learned advocate Mr. Dave also placed on record the reasons for blocking the ITC forwarded to the petitioner on 21.03.2024. However, learned advocate Mr. Lodha submitted that the petitioner has not received any communication or reasons recorded for blocking ITC as stated by the learned advocate Mr. Dave.

37. Having heard the learned advocates for the respective parties and considering the scheme of the GST Act and the CGST Rules framed thereunder, Rule 86A was inserted by Notification No.75/2019-Central Tax dated 26.12.2019 whereby condition of use of amount available in Electronic Credit Ledger is prescribed. Rule 86A of the CGST



Rules reads as under:

"86A (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 in as much 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 document 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.”



38. As per the eventualities provided in clauses (a) to (d) of Sub-rule (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 after reasons to be recorded in writing, is authorised not to allow the debit of an amount equivalent to such credit in Electronic Ledger for discharge of any liability under section 49 of the GST Act or for claim of any refund of any unutilised amount.

39. Section 49 of the GST Act stipulates for payment of tax, interest, penalty and other amounts. Sub-section(2) of section 49 refers to the input tax credit as self-



assessed in the return of a registered person by crediting the Electronic Credit Ledger in accordance with section 41 of the Act. Section 41 of the GST Act provides for availment of input tax credit.

40. This Court had an occasion to consider the issue arising in this petition in case of **Samay Alloys India Pvt. Ltd. v. State of Gujarat** (supra) wherein while considering the applicability of Rule 86A of the Rules, the Court has observed as under:

"28. Rule 86A of the CGST Rules empowers the Commissioner or his subordinates to freeze the debit in the electronic credit ledger provided he has reasons to believe that the credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible. Thus,



the condition precedent is that the input tax credit should be available in the electronic credit ledger before the power under Rule 86-A is invoked by the authority. In the case on hand, it is not in dispute that the amount of input tax credit available in the electronic credit ledger as on the date of blocking of ledger was Nil. If no input tax credit was available in the ledger, the blocking of electronic credit ledger under Rule 86-A of the Rules and insertion of negative balance in the ledger would be wholly without jurisdiction and illegal.

29. On a plain reading of the opening part of Rule 86A(1) of CGST Rules, 2017, it transpires that the power conferred under Rule 86A can be exercised by the Commissioner or an officer authorised by him (not below the rank of an Assistant Commissioner). Further the powers can be exercised if the following cumulative conditions are satisfied. i) Credit of input tax should be available in the electronic credit ledger, ii) The Commissioner or an officer authorised by him should have reason to believe that such credit has been fraudulently availed or is ineligible, iii) The reason to



believe are be recorded in writing.

30. In case the above referred conditions are satisfied, a proper officer can invoke Rule 86A. Upon invocation of Rule 86A, a proper officer can - a) Disallow debit from the electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount. b) Such restriction should be for an amount equivalent to the amount claimed to have been fraudulently availed or is ineligible.

31. Rule 86A (1) of CGST Rules, 2017 is broadly divided into two parts. The opening part of the rule deals with the conditions required to be fulfilled in order to invoke the powers under the rule. The second part of the rule provides for the consequences in case Rule 86A is invoked.

32. In other words, in case the conditions prescribed for the invocation of Rule 86A are not fulfilled, the officer cannot invoke the rule, and in such scenario, the consequences provided in the rule becomes ex-facie inapplicable.

33. One of the primary conditions



in order to invoke Rule 86A is that the Credit of input tax should be available in the electronic credit ledger. Further, such credit should be claimed to have been (supported by reason to believe recorded in writing) fraudulently availed.

34. Accordingly, in case where (i) Credit of input tax is not available in the electronic credit ledger or (ii) such credit has already been utilised, the powers conferred under Rule 86A cannot be invoked.

35. Further, Rule 86A is not the rule which entitled the proper officer to make debit entries in the electronic credit ledger of the registered person. The rule merely allows the proper officer to disallow the registered person debit from the electronic credit ledger for the limited period of time and on a provisional basis. In case debit entries are made by the proper officer, the same will tantamount to permanent recovery of the input tax credit and certainly permanent recovery is governed by the statutory provisions (Section 73 of 74 of CGST Act) and it certainly travels beyond the plain language and underlined intent Rule 86A.



36. Reference may be made to a judgement of the Patna High Court in the case of Rohtas Industries Limited Vs. Superintendent of Central Excise (2000) 123 ELT 124, wherein the High Court in context of central excise law held that the proper officer cannot make debit entries in the personal ledger account maintained by the assessee. A personal ledger account is like a bank account maintained by the assessee with the excise department. Similarly, the electronic credit ledger is a credit account maintained by the registered person with the department and revenue cannot be authorised to make debit entries in such account without express provision of law.

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38. The revenue may legitimately argue that such an interpretation may make the entire Rule 86A toothless as parties can claim and immediately utilise the credit fraudulently availed by filing monthly returns. Accordingly, it may be practically impossible to invoke Rule 86A in large number of cases. This may be the actual implication of the present interpretation, however, the Government in its wisdom has framed Rule 86A and this rule is



not framed to recover the credit fraudulently availed. In case where credit is fraudulently availed and utilised, appropriate proceeding under the provisions of section 73 or section 74, as the case may be, can be initiated. Secondly, Rule 86A is not the rule which provides for debarring the registered person from using the facility of making payment through the electronic credit ledger. In case the intention was to disallow future debits or credit in electronic credit ledger, the text of the rule would be entirely different.

39. Accordingly, even though Rule 86A may be invoked in very limited number of cases, this cannot be the basis to invoke the rule in the cases which are not supported by the plain language of the rule.

40. The Rule 86A empowers the proper officer to disallow debit from the electronic credit ledger for an amount equivalent to the amount claimed to have been fraudulently availed. Accordingly, the rule provides for restriction on an amount and not on the very credit which is fraudulently availed. Accordingly, the rule can be invoked even when the credit fraudulently availed is utilised.



41. In the aforesaid regard, first the language of an amount equivalent appears in the later portion of the rule which provides for the consequences in case the conditions for invocation of the rule are satisfied. As already discussed, the rule itself can be invoked only in case where the credit of input tax is available in the electronic credit ledger and accordingly, the consequence of the invocation cannot determine the applicability of the rule. Secondly, once the input tax credit is claimed in electronic credit ledger, the credit becomes part of one fungible pool and the credit cannot be separately identified. Having regard to the same, the rule provides for restriction on an equivalent amount and not the credit itself. However, the rule presupposes existence of such credit in the electronic credit ledger.

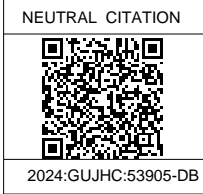
42. A doubt may also arise that a registered person may persistently and continuously avail and utilise the fraudulent credit and in such scenario the strict interpretation of Rule 86A will defeat the underlying purpose of enacting such a preventive provision. In this regard. Rule 86A is not the only measure available with the Government. The Government can



certainly initiate proceedings under the provisions of section 73 or section 74, as the case may be, for recovery of credit wrongly claimed. Further, the Government in an appropriate case may initiate proceeding for Cancellation of registration (either of the supplier of the recipient or both) under Section 29 of CGST Act. Furthermore, the Government can also provisionally attach any property, including bank account, belonging to the taxable person under Section 83 of CGST Act

43. Accordingly, the fact or possibility of registered person availing and utilising the fraudulent credit persistently and continuously cannot be the basis to invoke Rule 86A.

44. The power to restrict debit from the electronic credit ledger is extremely harsh in nature. The rule outreaches the detailed procedure provided in the legislature for determination of input tax credit wrongly availed or utilised provided in Section 73 and 74 of CGST Act and empowers the officer to unilaterally impose certain restrictions in compelling circumstances. In other words, Rule 86A is invoked at a stage which is anterior to the



finalization of an assessment or the raising of a demand. Accordingly, it should be governed strictly by specific statutory language which conditions the exercise of the power.”

41. After referring to the decision of Hon'ble Apex Court in case of **Commissioner of Income Tax, Madras vs. Kasturi & Sons Ltd.**, reported in (1999) 3 SCC 346 and in case of **Kapil Mohan vs. Commissioner of Income Tax, Delhi** reported in (1999) 1 SCC 450, the Court observed thus:

“49. Thus, the principle of law discernible from the aforesaid two decisions of the Supreme Court is that there can be no action based on any supposed intendment of the provision. Since the plain language of Rule 86A does not permit its exercise without there being availability of credit, the same could not have been invoked in the present case.”



42. After referring to Circular No.4 of 2021 dated 24.05.2021 issued by the Office of the Commissioner of State Tax, State Goods & Services Tax Department, Kerala with regard to blocking of the credit, it was observed that if there is Nil or insufficient balance in a particular tax head in the Electronic Credit Ledger, then the balance in another tax head can be blocked only if the cross-utilization from such head is permissible in law. But such cross-utilization between CGST and SGST is not permissible and therefore, the SGST credit ledger cannot be blocked if sufficient credit balance is not available under the CGST head and vice versa.

43. Reference was also made to the decision of this Court in case of **S.S. Industries vs. Union of India**, reported in



(2021) 87 GSTR 71 (Guj.), and thereafter final conclusion is summarised as under:

“65. Our final conclusions may be summarized as under:-

(I) The invocation of Rule 86A of the Rules for the purpose of blocking the input tax credit may be justified if the concerned authority or any other authority, empowered in law, is of the prima facie opinion based on some cogent materials that the ITC is sought to be availed based on fraudulent transactions like fake/bogus invoices etc. However, the subjective satisfaction should be based on some credible materials or information and also should be supported by supervening factor. It is not any and every material, howsoever vague and indefinite or distant remote or far-fetching, which would warrant the formation of the belief.

(II) The power conferred upon the authority under Rule 86A of the Rules for blocking the ITC could be termed as a very drastic and far-reaching power. Such power should be



used sparingly and only on subjective weighty grounds and reasons.

(III) The power under Rule 86A of the Rules should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.

(IV) The aspect of availing the credit and utilization of credit are two different stages. The utilization of credit is a vested right. No vested right accrues before taking credit.

(V) The Government needs to apply its mind for the purpose of laying down some guidelines or procedure for the purpose of invoking Rule 86A of the Rules. In the absence of the same, Rule 86A could be misused and may have an irreversible and detrimental effect on the business of the person concerned. In this regard, the Government needs to act promptly."

44. Thus, the issues raised in this petition are already answered in favour of



the petitioner as there cannot be any blocking of the credit in Electronic Credit Ledger if there is no sufficient balance available.

45. The decision in case of **Samay Alloys India Pvt. Ltd. v. State of Gujarat** (supra) was also followed in case of **Milap Scrap Traders v. State/Commercial Tax Officer** (supra) by allowing the petition.

46. In view of the aforesaid, this petition also succeeds and is hereby allowed. The respondents are directed to withdraw the negative block of the Electronic Credit Ledger at the earliest to the extent of Rs.2,44,05,567/- and whatever balance remained in the Electronic Credit Ledger after the removal



of the balance of the negative figure, the same shall not be utilised by the petitioner till the show cause notice is issued, if any, under sections 73 or 74 respectively of the GST Act. The petitioner, therefore, would be able to file the returns with appropriate tax, penalty and interest after removal of the negative block which may be determined in accordance with law.

47. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(NIRAL R. MEHTA, J)

RAGHUNATH R NAIR