

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

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WRIT PETITION (L) NO. 8566 OF 2022

Torane Ispat Udyog Pvt. Ltd.

....Petitioner

V/s.

Union of India and Ors.

...Respondents

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Mr. Prasannan S. Namboodiri a/w Mr. Virendra U. Pandey for Petitioner.

Mr. Siddharth Chandrashekhar for Respondent Nos.1, 2 and 5.

Ms. Uma Palsuledesai, AGP for Respondent Nos.3, 4 and 7.

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CORAM : K.R. SHRIRAM &  
GAURI GODSE, JJ.  
DATED : 22<sup>nd</sup> AUGUST 2022

PC. :

1. Petitioner is raising a grievance on action taken under Rules 86 A of the Central Goods and Services Tax Rules, 2017 (the CGST Rules).

2. Rules 86 A of the CGST Rules provides *“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 ....., 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 .....”*. Perusal of the rule makes it clear that the Commissioner, or an officer authorised by him, not below the

- a) The credit is availed by the registered person on the invoices or debit notes issued by a supplier, who is found to be non-existent or is found not to be conducting any business from the place declared in registration.
- b) The credit is availed by the registered person on invoices or debit notes, without actually receiving any goods or services or both.
- c) The credit is availed by the registered person on invoices or debit notes, the tax in respect of which has not been paid to the government.
- d) The registered person claiming the credit is found to be non-existent or is found not to be conducting any business from the place declared in registration.
- e) The credit is availed by the registered person without having any invoice or debit note or any other valid document for it.

The Commissioner, or an officer authorised by him, not below the rank of Assistant Commissioner, must form an opinion for disallowing debit of an amount from electronic credit ledger in respect of a registered person, only after proper application of mind considering all the facts of the case, including the nature of prima facie fraudulently availed or ineligible input tax credit and whether the same is covered under the grounds mentioned in sub-rule (1) of rule 86A. The amount of input tax credit involved; and whether disallowing such debit of electronic credit ledger of a person is necessary for restricting him from utilizing/passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue.

The Central Board of Indirect Taxes and Customs by a Circular No.CBEC-20/16/05/2021-GST dated 02/11/2021 in paragraph no.3.1.4 has advised as under :

*3.1.4 It is reiterated that the power of disallowing debit of amount from electronic credit ledger must not be exercised in a mechanical manner and careful examination of all the facts of the case is important to determine case(s) fit for exercising power under rule 86A. The remedy of disallowing debit of amount from electronic credit ledger being, by its very nature, extraordinary has to be resorted to with utmost circumspection and with maximum care and caution. It contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration of suspicion. The reasons are to be on the basis of material evidence available or gathered in relation to fraudulent availment of input tax credit or ineligible input tax credit availed as per the conditions/grounds under sub-rule (1) of rule 86 A.*

Even the CBITC has understood the possibility of this power

under Section 86 A being abused and hence has even advised that it should not be exercised in a mechanical manner but only on careful examination of all the facts of the case because it is an extra ordinary power by its very nature. CBITC has also advised that this extraordinary power has to be resorted to with utmost circumspection and with maximum care and caution.

3. Neither, petitioner has been made available copy of this reasons to believe nor has Respondent Nos.4 and 5 annexed copy of its reasons to believe in its reply. It is not even clear whether any such reasons to believe has been recorded in writing. In our view, the concerned officer is bound to furnish these reasons to the assessee. On receipt of such reasons, the assessee is entitled to file objections to taking of any such action and the concerned officer is bound to dispose the same by passing a speaking order.

4. Respondent No.5 is therefore, directed to make available to petitioner by 26<sup>th</sup> August, 2022 copy of “the reasons to believe”. Should petitioner wish to file a further affidavit in support to deal with the reasons to believe, petitioner may do so. If petitioner wish to amend the petition, petitioner may tender draft amendment on the next date.

5. Stand over to 30<sup>th</sup> August, 2022.

**(GAURI GODSE, J.)**

**(K.R. SHRIRAM, J.)**