



Court No. - 3

Case :- WRIT TAX No. - 583 of 2022

Neutral Citation No. - 2022:AHC:57443-DB

Petitioner :- M/S Samagrah Metal Trading Co.

Respondent :- Commissioner State Goods And Service Tax And 3 Others

Counsel for Petitioner :- Shubham Agrawal

Counsel for Respondent :- C.S.C.,Gaurav Mahajan

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Jayant Banerji,J.

1. Heard Sri Subham Agrawal, learned counsel for the petitioner, Sri B.P. Singh Kachhawah, learned Standing counsel for the respondent nos. 1,2, and 3 and Sri Gaurav Mahajan, learned Standing counsel for the respondent no.4.

2. This writ petition has been filed praying for the following relief:-

(i) *Mandamus directing the respondent authorities to forthwith unlock the electronic credit ledger, which has been debited by Rs. (-) 1,23,59,000/- (Annexure No.2);*

(ii) *Declaration holding that negative blocking of credit by respondent no.2 of Rs. 1,23,59,000/- was illegal;*

(iii) *Mandamus directing the respondent authorities to pay interest @ 18% for illegally blocking the credit;*

3. Learned counsel for the petitioner submits that blocking of input tax credit under Rule 86A of CGST/UPGST Rules, 2017 has resulted in negative blocking, which cannot be done.

4. Learned Standing counsel as well learned counsel for the respondent no.4 support the impugned order.

5. We have carefully considered the submissions of the learned counsels for the parties.

6. Controversy being raised in the present writ petition, is finally concluded by the judgment of Coordinate Bench of this Court dated **15.07.2021 in Writ Tax No. 434 of 2021 R.M. Dairy Products LLP Versus State of U.P. 2021(55) G.S.T.L. 524 (All.)**. Relevant paragraph 12,13,14,15,19,20,21,22,24,25 are extracted below:-

12. Plainly, the Rule does not contemplate any recovery of tax due from an assessee. It only provides, in certain situations and upon certain conditions being fulfilled, specified amount may be held back and be not allowed to be utilized by the assessee towards discharge of its liabilities on the outward tax or towards refund. It creates a lien without actual recovery being made or attempted.

13. The words 'input tax available' used in the first part of sub-rule (1) of Rule 86-A cannot be read as actual input tax available on the date of the order passed under that Rule. Those words are relevant for the purpose of laying down the first condition for the exercise of power by the Commissioner or the authorized officer.

Thus, for a valid exercise of power, the authorized officer must have 'reasons to believe' that any credit of 'input tax available' (i.e. that was available in the electronic credit ledger of an assessee) had either been fraudulently availed or the assessee was not eligible to avail the same.

14. The words 'input tax available' have to be read only in the context of the infringement being alleged by the revenue. i.e. fraudulent availment or availment dehors eligibility to the same. Consequently, if an assessee is found to have either fraudulently availed or to have availed such 'input tax credit' that he was ineligible to avail, he may expose himself to action under the Rule, in future, when such an event may come to the knowledge of the authorized officer, subject of course to the rule of limitation.

15. Thus the word 'available' used in the first part of sub-Rules of Rule 86-A would always relate back in time when the assessee allegedly availed input tax credit either fraudulently or which he was not eligible to avail. It does not refer to and, therefore, it does not relate to the input tax credit available on the date of Rule 86-A being invoked. The word "has been" used in Rule 86-A (1) leave no manner of doubt in that regard.

19. **As to the third submission** advanced by learned counsel for the petitioner, the provision of Rule 86-A is not a recovery provision. In fact, it does not allow the revenue to reverse or appropriate any part of the credit existing in the electronic credit ledger of an assessee or to adjust that credit against any outstanding demand or likely demand. **It is at most a provision to secure the interest of revenue, to be exercised in the presence of the relevant 'reasons to believe', as recorded.**

20. The Rule only enables the authorized officer to not allow debit of an amount equivalent to 'such credit'. The submission of Shri Mishra that the words 'such credit' refers only to any existing amount of positive credit in the electronic credit ledger or that it must be credit arising from the same seller, cannot be accepted as that intent is clearly non-existing in the Rule.

21. The operative portion of sub-rule (1) of Rule 86-A limits the exercise of power (by the authorized officer), to the amount that would be sufficient to cover the input tax that, according to the revenue, had either been fraudulently availed or to which the assessee was not eligible. It is an amount equal to that amount which has to be kept unutilised.

22. To that effect, the legislature has chosen the words 'not allow debit'. To not allow debit and to appropriate the same are two different things in the context of the Statute. They lead to different consequences. While the first only creates a lien in favour of the revenue by blocking utilization of that amount, appropriation of an amount would necessarily involve transfer of title over the money with the revenue. Plainly, the Rule does not contemplate or speak of such a consequence.

24. Since, according to us, the provision of Rule 86-A is not a recovery provision but only a provision to secure the interest of revenue and not a recovery provision, to be exercised upon the fulfillment of the conditions, as we have discussed above, we are not inclined to accept the further submission advanced by the learned counsel for the petitioner that there is any violation of the principle when a legislative enactment requires an act to be performed in a particular way it may be done in that manner or not at all.

25. It also stands to reason, **if there is no positive credit standing in the**

electronic credit ledger on the date of the order, passed under Rule 86-A, that order would be read to create a lien upto limit specified in the order passed as per Rule 86-A of the Rules. As and when the credit entries arise, the lien would attach to those credit entries upto the limit set by the order passed under Rule 86-A of the Rules. The debit entry recorded in the electronic credit ledger would be read accordingly.

(Emphasis supplied)

7. Thus, the contention being raised in the present writ petition has no force in view of Judgement of Coordinate Bench in **R.M. Dairy Products LLP (supra)** and, therefore, the contention is rejected.

8. That apart in a recent judgment dated **07.04.2022 in Writ Tax No. 212 of 2022 (M/s M.M. Traders Versus State of U.P. and 3 others** and other connected writ petitions), this Court in para 4 and 5 has held as under:-

*4. From perusal of Rule 86 A(2) of the C.G. & S.T./U.P. G. & S.T. Rules, 2017, and paragraph 3.4 of the aforementioned guidelines of the Commercial Tax we are of the view that the petitioners should **first approach the authorized Officer** raising objections against the blocking of the input tax credit and the said authority would be under an obligation to decide the objection within a time bound period.*

5. In view of the aforesaid, we disposed off all these writ petitions giving liberty to the petitioners to submit objections before the Commissioner or the authorised Officer, as the case may be, under Rule 86 A(2) of the C.G.S.T. /U.P.G.S.T. Rules, 2017, within two weeks from today alongwith certified copy of this order and in the event objections are submitted by the petitioners within the stipulated period, the same shall be decided by the concerned Authority Officer in accordance with law, by a speaking and reasoned order, within next three weeks, after affording reasonable opportunity of hearing to the petitioners.

9. Thus, against an action of the Commissioner or an authorized officer under Rule 86A(1), the petitioner has remedy to submit objection before the competent authority under Rule 86A(2) of CGST/UPGST Rules, 2017.

10. Learned counsel for the petitioner states that he has already filed objection before the respondent no.2 , which is pending.

11. In view of the aforesaid, we do not find any merit in this writ petition. Consequently, writ petition is **dismissed**. It is, however, provided that in case any objection of the petitioner is pending before the respondent no.2 under Rule 86A(2) of CGST/UPGST Rules, 2017, in that event, the respondent no.2 shall pass appropriate order on the objection, in accordance with law, expeditiously.

Order Date :- 20.4.2022

T.S.