IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

RESERVED ON: 14.07.2022
DELIVERED ON: 28.07.2022

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE BIVAS PATTANAYAK

MAT 976 OF 2022
WITH
CAN 1 OF 2022

BASANTA KUMAR SHAW, PROPREITOR OF M/S. N.M.D. ENGINEERING WORKS

VERSUS

THE ASSISTANT COMMISSIONER OF REVENUE, COMMERCIAL TAXES AND STATE TAX, TAMLUK CHARGE AND OTHERS

Appearance:-
Mr. Ankit Kanodia, Adv.
Mr. Himanshu Kumar Ray, Adv.
Ms. Megha Agarwal, Adv.

.....for the Appellant

Mr. Anirban Ray, learned Government Pleader
Mr. T.M. Siddiqui, learned A.G.P.
Mr. D. Ghosh, Adv.
Mr. D. Sahu, Adv.

.....For the State Respondent

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

1. This intra Court appeal by the writ petitioner is directed against the order dated 20th June, 2022 in WPA 9820 of 2022. The said writ petition was filed by the appellant challenging the order No. 102 dated 23.05.2022 passed by the first respondent herein, in and by which disallowed debit of IGST from the electronic credit ledger in exercise of the power conferred under Rule 86A of the Central Goods and Services Tax Rules, 2017 (CGST Rules) and the West Bengal Goods and Services Tax Rules, 2017 (WBGST Rules) in terms of Clause (a) (ii) of Sub-Rule (1) of the said Rule for discharge of any liability under Section 49 of the WBGST / CGST or the claim of any refund of any unutilized input tax credit.

2. The appellant was issued three show-cause notices which were served in 20.01.2022 and 28.01.2022. It was stated that in terms of Section 42(1) (a) of WBGST / CGST Act the details of every inward supply furnished by a registered person for a tax period shall, in such manner and within such time as may be prescribed, be matched with the corresponding details of outward supply furnished by the corresponding registered person, the supplier, in his valid return for the same tax period or any preceding tax period. It was stated that as per the data based record, there is a mismatch between the appellant's input tax credit Form GSTR-2A (auto-populated) from details of outward supplies furnished by the appellant's suppliers in their respective GSTR-1 and GSTR-3B for the tax periods from April 2018 to March 2019, March 2019 to March 2020 and April 2020 to March 2021 which is inadmissible as per the provisions of the WBGST / CGST Act, 2017. The appellant was advised to

furnish an explanation by 4th February, 2022 or pay the amount of tax as assessed in the show-cause notices along with applicable interest through online mode failing which demand order containing tax, interest and penalty will be issued under Section 73(a) of the WBGST / CGST Act, 2017. On 30.03.2022 the appellant made a payment of Rs. 10 lakhs. To be noted that the appellant did not submit their reply to the show-cause notices within the time permitted. The first respondent by order dated 23.05.2022 in exercise of power under Rule 86A of the WBGST Rules disallowed the debit of IGST amounting to Rs. 2,67,96,042/- from the electronic credit ledger in terms of Clause (a)(ii) of Sub-Rule (1) of Rule 86A for the discharge of any liability under Section 49 of the WBGST/ CGST Act or the claim of any refund of any unutilized input tax credit. It is thereafter on 31.05.2022, the appellant submitted three representations requesting extension of time by two weeks from the date of the said letter to enable them to submit a detailed reply. The said representation is stated to have been received in the office of the first respondent on 09.06.2022. On 30.05.2022 the appellant is stated to have submitted a representation to the first respondent requesting to revoke the order of blocking the electronic credit ledger. On 13.06.2022 the appellant filed their reply to the said show-cause notices. Even before filing the reply dated 13.06.2022, the appellant approached this Court and filed the writ petition which was affirmed on 6th June, 2022. The writ petition has been disposed of by order dated 20.06.2022 by directing the first respondent to consider the reply filed by the petitioner to the show-cause notices on 30.06.2022 expeditiously and preferably within 3 weeks from the date of communication of the order in accordance with law and by passing a reasoned and a speaking

order after providing an opportunity of hearing and if the appellant is able to make out a case in the course of hearing for revoking the blocking of the electronic credit ledger, the officer concerned was directed to take immediate steps for revoking the same.

3. Mr. Ankit Kanodia, learned Advocate appearing for the appellant submitted that the order impugned in the writ petition ought to have been quashed as the first respondent has initiated proceedings under Section 73 of the CGST/ WBGST Act and blocking of the input tax credit in the electronic credit ledger is not valid and bad in law as it would tantamount to recovery of demand without any adjudication. Further, it is submitted that Rule 86A of the said Rules provides for blocking of credit in the electronic credit ledger only to the extent the credit is available in the electronic credit ledger and on the date when the order was passed there was no credit available in the appellant's electronic credit ledger. Therefore, the blocking is in the nature of negative blocking which is not provided for under Rule 86A of the said Rules. Further, it is submitted that the learned Writ Court ought to have taken into account that when the reasons to believe by the proper officer that the credit of the input tax available in the electronic credit ledger has been fraudulently availed or ineligible as stated under Rule 86 of the said Rules has culminated into a show-cause notice under Section 73/74 of the Act, the blocking of the electronic credit ledger cannot be sustained. Further, it is reiterated that negative blocking of the electronic credit ledger would certainly amount to permanent recovery of the alleged ineligible input tax credit even before the conclusion of the adjudication as the appellant would have to additionally make the payment to the extent of the blocked input tax credit before

discharging its output liability by claiming the input tax credit for any subsequent period post the negative blocking of electronic credit ledger. Further, it is submitted that due to the blocking of the electronic credit, the appellant is unable to run its business and unable to file its monthly returns. Further, it is submitted that the appellant has been restricted to utilize the input tax credit which is a vested right of the appellant. In support of the contention Mr. Kanodia placed reliance on the decision of the High Court of Gujarat in ***Samay Alloys India Pvt. Ltd. Versus State of Gujarat*** [1]**.** It is submitted in the said decision that the question which fell for consideration was whether it is open to the authority to block the electronic credit ledger in exercise of power under Rule 86A of the Rules, more particularly, when the balance in such ledger is Nil. It is submitted that the Hon'ble Court held that Rule 86A of the CGST Rules empowers the Commissioner or his subordinates to freeze the debit of 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. Therefore, the condition precedent is that the input tax credit should be available in the electronic credit ledger before the power under Rule 86A is invoked by the authority. Further, it was pointed out that the primary conditions in order to invoke Rule 86A is that credit of input tax should be available in the electronic credit ledger and further, such credit should be claimed to have been (supported by reason to believe recorded in writing) fraudulently availed.

4. Further, it is submitted that the Court pointed out that in case where credit is fraudulently availed and utilized, proper proceedings under the

[1] MANU/GJ/0572/2022

provisions of Section 73 or Section 74 as the case may be, can be initiated and further, Rule 86A is not the Rule which provides for debarring the registered person from using facility of making payment through electronic credit ledger. Further, Rule 86A is invoked at a stage which is prior to the finalization of the assessment or raising a demand. The learned Advocate has also drawn our attention to the proceedings of the Court with regard to blocking of credit in cases of cross-utilization. It is further submitted that the decision in ***Samay Alloys India Pvt. Ltd.,*** was followed in ***New Nalbandh Traders Versus State of Gujarat and Ors.***[2] and ***Milap Scrap Traders Versus State/Commercial Tax Officer*** [3]**.** With the above submissions the learned Advocate prayed for setting aside the order dated 23.05.2022 passed by the first respondent thereby revoking the blocking of the appellant's electronic credit ledger.

5. Mr. T.M. Siddiqui, learned Additional Government Pleader appearing for the respondent submitted that the conduct of the appellant has to be taken note of. Though the show-cause notices were served on the appellant on 20.01.2022/ 28.01.2022, reply was submitted only on 13.06.2022 that too after the writ petition was filed before this Court. Further, the representation praying for extension of time to submit reply was given only on 31.05.2022 and by then the first respondent has already passed the order dated 23.05.2022 blocking the electronic credit ledger of the appellant. It is further submitted that proceedings have already been initiated under Section 73/74 of the Act and it is for the appellant to contest the show-cause notice and participate in the adjudication proceedings. Further, it is submitted that a

[2] MANU/GJ/0631/2022
[3] MANU/GJ/0796/2022

careful reading of Rule 86A of the Rules will make it clear that blocking of the electronic credit ledger is permissible if the authority concerned has reasons to believe that the credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible. In the instant case, the appellant has been informed in clear terms as to what was the reason which led to invoking the power under Rule 86A of the Act. Further, it is submitted that the word "available" in Rule 86A (1) of the Rules has to be read to mean that the credit of input tax which was available in the electronic credit ledger at the relevant time which in the opinion of the authority has been fraudulently availed or the appellant is ineligible to avail such credit. Therefore, to state that merely because the balance available in the electronic credit ledger is NIL, the Rule cannot be said to be inoperative. Further, it is submitted that after Clauses (a) to (d) in Rule 86A (1), power has been given to the authority not to allow debit of an amount equally and to such electronic credit ledger for discharge of any liability under Section 49 or for the claim of any refund of any unutilized amount. Therefore, it is submitted that Rule 86A of the Rules has to be read in its entirety and the interpretation sought to be given by the appellant is misreading the Rule and rather making the Rule unworkable which is impermissible under law. In support of his contention the learned Additional Government Pleader referred to the decision of the High Court of Allahabad in case of ***R M Dairy Products LLP Versus State of U.P. and 3 Ors.***; ***Writ Tax No. 434 of 2021*** dated 15.07.2021. It is submitted that in the said decision, the Court while interpreting Rule 86A held that the Rule does not contemplate any recovery of tax due from an assessee and it provides, in certain situations and upon certain conditions being fulfilled, specified amount may be held back

and were not allowed to be utilized by the assessee towards discharge of its liabilities on the outward tax or towards refund. It was further held that it creates a lien without actual recovery being made or attempted. Further, in the said decision it was held that the word "available" used in the first part of any Sub-Rule (1) of Rule 86A always relates back in time when the assessee allegedly availed input tax credit either fraudulently or which he was not eligible to avail and it does not relate to the input tax credit available on the date when Rule 86A of the Rules is invoked and in this regard, the word "has been" used in rule 86A was held to leave no manner of doubt in that regard.

6. Therefore, it is submitted that the appellant should be directed to participate in the adjudication proceedings and the first respondent should be at liberty to consider the submissions and take a decision in the matter. With the above submissions, the learned Additional Government Pleader prayed for dismissal of the appeal.

7. We have elaborately heard the learned advocates for the parties and the carefully perused the materials available on record.

8. Before we examine the correctness of the submissions made on either side and in what manner Rule 86 A of the said rules is to be interpreted, we need to clarify as to what is the right conferred on the appellant to be entitled to claim input tax credit. In the Memorandum of Appeal, the appellant has contended that the right to claim tax credit is a vested right and the authority is not entitled to restrict the appellant from exercising such vested right. This contention raised by the appellant is incorrect. The Hon'ble Supreme Court in

Jayam & Co. Versus Assistant Commissioner (Ct) and Another [4]**,** in the context of the Tamil Nadu Value Added Tax Act held that input tax credit is a concession and to be entitled to such credit the condition stipulated under the provisions has to be strictly complied with. This principle was reaffirmed by the Hon'ble Supreme Court in ***ALD Automotive Pvt. Ltd. Versus Commercial Tax Officer & Others*** [5]. The decision in ***Jayam and Co***. was followed by the Hon'ble Division Bench of the High Court of Madras in ***P.R. Many Electronics Versus Union of India WP No. 8890 of 2020*** etc. batch dated 13.07.2020 while examining the scope of Section 140 of the CGST Act read with Rule 117 of the CGST Rules, it was held that the assessee cannot claim that the input tax credit is in the nature of a property right as it was a concession granted to the assessee upon compliance of the provisions of relevant Act and rules.

9. In the light of the above settled legal position, the appellant cannot be heard to content that the availment of input tax credit is a vested right. The right conferred on the appellant is regulated by the provisions of the Act and it is a concession granted under the statute and unless and until the appellant complies with all the conditions scrupulously, they would not be entitled to avail the input tax credit. Having steered clear of this issue, we now proceed to examine the scope, effect and ambit of Rule 86 A of the said rules. For easy reference, the rule is quoted hereunder:-

[86A. Conditions of use of amount available in electronic credit ledger:-

[4] (2016) 15 SCC 125
[5] (2019) 13 SCC 225

(1) The Commissioner or an officer authorized by him in this behalf, not below the rank of an Assistant Commissioner, having reason 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 f 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 unutilized amount.

(2) The Commissioner, or the officer authorized 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.]

10. Rule 86A deals with conditions of use of amount available in electronic credit ledger. In terms of sub Rule 1, the Commissioner or the officer authorized by him in that behalf, (the first respondent herein), having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible on account of contingencies mentioned in clauses (a) to (d) may for reasons to be recorded in writing, not allowed debit of any 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 unutilized amount. In terms of sub Rule 3, such restrictions shall cease to have effect after the expiry of a period of one year from the date of imposing such restrictions. The key word which falls for interpretation is the word "available". In ***Samay Alloys***, it was held that the word "available" shall mean that on the date when Rule 86A is invoked a electronic credit ledger should have a positive balance and in cases where the credit is NIL, the power under Rule 86A of the Act cannot be invoked. In our respectful view, the Rule 86A has to be read in its entirety to arrive at a correct interpretation as regards the purport of the rule. The cardinal principle of statutory interpretation is to read a provision so as to give its full meaning and purport and the presumption is no words used in the statute are useless and an interpretation which will make the statutory provision redundant has been frowned upon. In our respectful view, we are not able to persuade ourselves to the interpretation given in ***Samay Alloys*** rather we are persuaded by the interpretation of the Rule given in ***M/s. R M Dairy Products LLP***. The word "available" occurring in

Rule 86 (1) cannot be read in isolation and it has to be read along with the remaining words which is “in the electronic credit ledger has been fraudulently availed or is ineligible”, “has been fraudulently availed” would undoubtedly denote a situation which has occurred in the past. This becomes clear if we peruse the allegations contained in the show cause notice. It has been stated therein that as per the data base record, there is a mismatch between the input tax credit from GSTR-2A and GSTR-3B for the periods mentioned above which in the prima facie view of the first respondent is inadmissible as per the provisions of WBGST/CGST Act, 2017. In this regard, the first respondent has referred to Section 42(1)(a) of the WBGST/CGST Act, 2017. The said provision deals with matching, reversal and reclaim of input tax credit. Sub-Section 1 of Section 42 of the CGST Act states that the details of every inward supply furnished by a registered person (recipient) for a tax period shall in such manner and within such time as may be prescribed to be matched with the corresponding details of outward supplies furnished by corresponding registered person (supplier) in his valid return for the same tax period or any preceding tax period. Therefore, the allegations based on which the show cause notice has been issued is due to the mismatch. Section 42(1)(a) not only refers to the mismatch in the returns for the same period but also for any preceding tax period. Therefore, to state that Rule 86A can be invoked only if there is a balance available in the credit ledger would tantamount to making the rule redundant and defeating the very purpose of enacting such a rule. It cannot be disputed rather to be admitted that the power is invoked prior to the finalization of the assessment or raising the demand. Equally it cannot be disputed that Rule 86A has not been framed to recover the credit fraudulently

availed. Thus, the purport of Rule 86A appears to act as a deterrent pending adjudication of the alleged fraudulent availment or ineligible availment. Thus, in all situations when the returns of the appellant, the recipient and the returns of the other end dealer are compared and when mismatch is noticed, Section 42 will come into play. This is precisely what has occurred in the appellant's case. To put it more clearly, the information available with the department for the tax period in question was examined and it was found that there is a mismatch between the appellant's input tax credit to that of the return filed by the appellant's supplier. The first respondent on noticing the mismatch was of the prima facie opinion that credit to the tune of Rs. 2,67,96,042/- for the period covered in the three show cause notices is inadmissible. Therefore, the allegation in the show cause notice is that the first respondent has the reason to believe that the credit of input tax available (at the relevant time) availed by the appellant is ineligible. Therefore, the power under Rule 86 A has been invoked in respect of availment of the input tax credit by the appellant for the period from April 2018 to March 2021, during which the period credit was available in the appellant's electronic credit ledger. This interpretation is fortified by the use of the words "has been" in Rule 86 A (1). At this juncture, it would be beneficial to refer to the decision in *RM Dairy Products LLP:-*

> *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.

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. available in the electronic credit ledger of an assessee) had either been fraudulently availed or the assessee was not eligible to avail the same.

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.

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.

11. We are required to be conscious of the fact that the subject matter of interpretation is a taxation enactment. It had been pointed out by the Hon'ble Supreme Court in ***Commissioner of Income Tax, Madras Versus Kasturi***

and Sons Limited [6], referring to the principles of statutory interpretation by Justice G.P Singh, 6th Edition, 1996, it was held that in a taxing Act one has to look merely at what is clearly said; there is no room for any intendment; there is no equity about the tax; there is no presumption as to tax and nothing is to be implied.

12. In ***Sammy Alloys***, a circular issued by the Government of Kerala State Goods and Services Tax Department dated 24.05.2021 has been referred to. The circular is in the nature of guidelines to the officers of the tax department. Clause 12 of the circular has been referred to which reads as follows:-

> *If there is NIL balance or insufficient balance in the tax head to which the credit is to be blocked the credit available in other tax heads, equivalent to the amount fraudulently availed, can be blocked. In such scenario, it should be kept in mind that, this shall be subject to limitations imposed by law on cross-utilization of ITC. That is, across utilization of CGST credit to SGST liability and vice versa is not permitted of GST Laws. In case of blocking of CGST credit availed fraudulently, blocking of SGST credit shall not be done, if no credit is available in CGST tax head. As such, for blocking of IGST credit availed fraudulently, if there is no credit balance in IGST tax head, the amount equivalent to the credit fraudulently availed can be blocked from the ITC credit availed in CGST head and/or SGST head and vise versa.*

13. A reading of the above clause shows that there is no indication that the electronic credit ledger cannot be blocked if there is NIL balance or insufficient balance. But the said guidelines informs the officers of the department that credit available in other tax heads equivalent to the amount fraudulently availed can be blocked, subject to the law on cross utilization. The said

[6] (1999) 3 SCC 346

circular does not in any manner give the interpretation that Rule 86 A (1) can be invoked only if there is a positive balance available in the electronic credit ledger but speaks of the power of the authority to block the credit available in the other tax heads. Therefore, in our view the said circular cannot be of assistance to the case of the assessee.

14. What is the duty of the Court? It is to examine the true intention of the legislature. It is the domain of the legislature to determine what is best for the public good and to provide for it by proper legislation, it is the domain of a Court to expound the law not to legislate. It is the duty of the Court to interpret the legislation by liberally interpreting the statute ***(Directorate of Enforcement Versus Deepak Mahajan[7]).***

15. In ***Utkal Contractors & Joinery (P) Ltd. Versus State of Orissa [8],*** it was held:

> *"The reason for a statute is the safest guide to its interpretation. The words of a statute take colour from the reason for it. The reasons can be discovered from the external and internal aids. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. Further, Parliament is neither expected to use unnecessary expressions nor is expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is*

[7](1994) 3 SCC 440
[8](1987) 3 SCC 279

called for. Again, while the words of an enactment are important, the context is no less important. The general words should be read in the context and not in isolation. The context of an Act may well indicate the wide or general words should be given a restrictive meaning. But the rules of construction are mere aids to construction, presumption and pointers, having no binding force. In each case, court must look at all relevant circumstances and decide the weight to be attached to any particular rule of construction."

16. In ***State of West Bengal Versus UOI*** [9]**,** it was held:

"The aim, object and scope of the statute to be read in its entirety. The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the others parts of the law, and the setting in which the clause to be interpreted occurs."

17. In ***Sevantilal Versus CIT*** [10]**,** it was held:

"On the contrary, the object of the enactment of the section is to prevent avoidance of tax or reducing the incidence of tax on the part of the assessee by transfer of his assets to his wife or minor child. It is a sound rule of interpretation that a statute should be so construed as to prevent the mischief and to advance the remedy according to the true intention of the makers of the statute."

[9]AIR 1963 SC 1241
[10]AIR 1968 SC 697

18. In ***State of T.N. Versus M.K. Kandaswami***[11]**,** while examining the scope of Section 7-A of the Madras General Sales Tax Act, 1959, it was held:

> *"Section 7-A of the Madras General Sales Tax Act, 1959, is at once a charging as well as a remedial provision. Its main object is to plug leakage and prevent evasion of tax. In interpreting such a provision a construction which would defeat its purpose and in effect obliterate it from the statute-book should be eschewed. If more than one construction is possible, one which preserves its workability and efficacy has to be preferred to the one which would render it otiose or sterile."*

19. Bearing in mind the above decisions, if we examine Rule 86A(1) of the Rules, we find the key words are "available in" and "has been". Oxford Dictionary defines "available" as "able to be used" or "obtained"; "at someone's disposal". The word "available" is to be read in conjunction with the words "has been", if done so, it clearly manifests that what was "available" in the electronic credit ledger at the relevant time has been fraudulently availed or is ineligible. This interpretation alone would be in consonance with the object of the Act and Rules. One of the objectives of the CGST Act is to incentivize tax compliance by tax payers. An interpretation of Rule 86A which would render the object of the enactment is to be avoided.

20. Rule 86A falls in Chapter IX of the Rules which deals with payment of tax. Rule 85 deals with Electronic Liability Register. In terms of Sub-rule (7) of Rule 85, a registered person shall, upon noticing any discrepancy in his electronic liability ledger, communicate the same to the officer exercising

[11] (1975) 4 SCC 745

jurisdiction in the manner, through common portal in FORM GST PMT- 04. Rule 86 deals with Electronic Credit Ledger, Sub-Rule (6) states that a registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT- 04.

Chapter IX of the CGST Act would be relevant which deals with "Returns". Section 37 deals with Furnishing details of outward supplies, Section 38 - Furnishing details of inward supplies, Section 39 -Furnishing of returns, Section 41 –Claim of input tax credit and provisional acceptance thereof, Section 42 –Matching, reversal and reclaim of input tax credit, Section 43 – Matching, reversal and reclaim of reduction in output tax liability. The procedure under Chapter IX is comprehensive, in such circumstance the question would be whether a tax payer can feign ignorance when the details are auto-populated. We refrain from expressing any opinion as the show-cause notice is yet to be adjudicated.

21. The appellant has used the expression "negative blocking". We find no such expression in Rule 86 A. It appears that such expression is used in common parlance among dealers. If the statute does not use the expression negative balance, such theory cannot be imported to justify the contention that there should be a positive balance to invoke Rule 86 A. Such interpretation would render the rule redundant and it can be also rewarding the assessee at times. Thus, we are of the clear view that the Rule 86A (1) read in its entirety will clearly shows that there is no requirement under the

Rule that the electronic credit ledger should contain sufficient balance for the purpose of blocking the credit by invoking the said rule.

22. Mr. Kanodia submitted that on account of the blocking of the electronic credit ledger, the appellant is unable to file its return and if he does not do so for a period of more than three months, the appellant would be liable for action being initiated by the department for revoking his registration. We are not persuaded by the said submission. The appellant has not been prevented from carrying on his business activities, all that has been done is to prevent him from operating the electronic credit ledger. Thus, the appellant would be free to carry on his business activities by effecting payment of the requisite amount of tax into his account and all that has been prevented is that the appellant would not be entitle to adjust the tax by availing the credit, if available in his electronic credit ledger.

23. Thus, for the reasons given above, we are not inclined to interfere with the order passed by the learned Single Bench. Accordingly, the appeal fails and the same is dismissed.

24. The first respondent is directed to consider the reply given by the appellant dated 13.06.2022, afford an opportunity of personal hearing to the appellant or his authorised representative consider documents and records which the appellant may produce during the personal hearing and adjudicate the show cause notice and pass a reasoned order on merits and in accordance with the law.

25. Since the order blocking the electronic credit ledger had been passed on 23.05.2022 and the period for which the wrong availment has been alleged is from April 2018 to March 2021, the first respondent is directed to

expeditiously conclude the proceedings subject to the appellant cooperating in the adjudication and pass orders in terms of the above directions within 8 weeks from the date of receipt of the server copy of this order.

(T.S. SIVAGNANAM, J.)

I agree.

(BIVAS PATTANAYAK, J.)

(P.A.-PRAMITA/SACHIN)