

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY**  
**AND**  
**THE HONOURABLE SRI JUSTICE N.TUKARAMJI**  
**WRIT PETITION No.5256 OF 2024**

**ORDER:** *(per Hon'ble Sri Justice P.SAM KOSHY)*

Heard Mr.S.Dwarkanath, learned Senior Counsel appearing on behalf of Mr.Siddharth Gilda, learned counsel for the petitioner, Mr.Swaroop Oorilla, learned Special Government Pleader for respondent Nos.1 and 2 and Mr.Rajesh Reddy, learned counsel representing Mr.Gadi Praveen Kumar, learned Deputy Solicitor General of India for respondent No.3. Perused the material available on record.

2. The instant writ petition has been filed assailing the action on the part of the respondents in blocking the input tax credit against the petitioners to the tune of Rs.50,06,000/-, vide order dated 06.02.2024, for the period from 01.02.2024 to 13.02.2024.

3. The said action on the part of the respondents has been challenged on two primary grounds; firstly, that the impugned action of blocking the input tax credit to the

aforesaid amount was without issuance of any show cause notice to the petitioner. Secondly, the input tax credit has been blocked in contravention to the provisions of Rule 86 (A) of the CGST Rules 2017, where the blocking can only be done so far as the input tax credit available in the electronic credit ledger of the petitioner and could not have been by way of making negative credit.

4. On the previous date of hearing, we have asked the Standing Counsel for the State to seek instructions on these issues.

5. Today, the learned Standing Counsel for the State submits that upon instructions he has been informed to state that the impugned action of blocking the input tax credit was without issuance of any show cause notice. Thus the said action on the part of the respondents in passing the order of blocking the input tax credit to the tune of Rs.50,06,000/- by making a negative credit in the electronic credit ledger of the petitioner is *per se* bad in law and violative of principles of natural justice. As regards the second ground, there is a recent decision of the Division

Bench of the Gujarat High Court, in the case of **Samay Alloys India Pvt.Ltd. vs. State of Gujarat**<sup>1</sup> decided on 03.02.2022, dealing with the aspect of Rule 86(A) of the CGST Rules 2017, wherein in paragraph Nos.38 to 44 and 57 has held as under:

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, C/SCA/18059/2021 JUDGMENT DATED: 03/02/2022 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

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<sup>1</sup> C/SCA/18059/2021.

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 C/SCA/18059/2021 JUDGMENT DATED: 03/02/2022 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.

57. For all the foregoing reasons, this writ application succeeds and is hereby allowed. The respondents are directed to withdraw negative block of the electronic credit ledger at the earliest. We rule that the condition precedent for exercise of power under Rule 86A of the GST Rules is the availability of credit in the electronic credit ledger which is alleged to be ineligible. If credit balance is C/SCA/18059/2021 JUDGMENT DATED: 03/02/2022 available, then the authority may, for reasons to be recorded in writing, not allow the debit of amount equivalent to such credit. However, there is no power of negative block for credit to be availed in future. The writ applicants are also entitled to the refund of Rs.20 Lakh deposited by them to enable them

to file their return. The respondents shall refund this amount of Rs.20 Lakh to the writ applicants within a period of two weeks from the date of the receipt of the writ of this order.

6. The plain perusal of the impugned order under challenge in this writ petition also would show that the respondents have made an negative credit of Rs.50,06,000/- in the electronic credit ledger of the petitioner which otherwise is not permissible and what is permissible is only blocking the availing of the input tax credit to whatever is in credit of the petitioner.

7. Taking into consideration the decision of the Division Bench of Gujarat High Court which has also been relied upon by this High Court and by this very Bench in yet another writ petition i.e., W.P.No.31039 of 2023, decided on 20.11.2023, we find that the action on the part of the respondents in passing an order of negative credit to be contrary to Rule 86(A). In the event, if no input tax credit was available in the credit ledger, the rules does not provide for insertion of negative balance in the ledger and therefore what was permissible was only to the block the electronic credit ledger and under no circumstances could

there had been an order for insertion of negative balance in the ledger. If there is a credit balance available, then the authorities concerned in terms of provisions of Rule 86(A) may for reasons to be recorded in writing not allowed the credit of the said amount available equivalent to such credit. However, there is no power conferred upon the authorities for block of the credit to be availed by the petitioner in future.

8. For the aforesaid reasons, we have no hesitation in holding that the action on the part of the respondents also is in contravention to Rule 86(A) and also is in violation of the decisions rendered by the Gujarat High Court in the case of ***Samay Alloys India Pvt.Ltd. vs. State of Gujarat*** supra, and also the decision of this Bench in W.P.No.31039 of 2023 decided on 20.11.2023. The action on the part of the respondents is also not sustainable for the reason that blocking of the input tax credit effectively deprived the petitioner of his valuable right to discharge his liability and realize the value in monetary terms. In the event of the petitioner having wrongly availed input tax credit or have fraudulently availed the input tax credit, the right of the

respondents were always open to initiate appropriate recovery proceedings under Section 73 or also under Section 74 rather than invoking Rule 86(A) when there was no input tax credit available in the credit ledger of the petitioner. For this reason also, the writ petition deserves to and is accordingly allowed.

9. As a consequence, the impugned order is set aside/quashed. However, the right of the respondents stands reserved to take appropriate action in accordance with law. In the light of the impugned order getting quashed, the respondents are directed to immediately recall the order of blockage forthwith. Consequently, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

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**P.SAM KOSHY, J**

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**N. TUKARAMJI, J**

Date: 18.03.2024  
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