NC: 2025:KHC:15151
WP No. 9359 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 9359 OF 2025 (T-RES)

BETWEEN:

M/S. SAFAN FASTENERS,
GROUND, SURVEY NO. 206/2, B H ROAD,
OPP. HP PETROL BUNK, AMANIKERE,
TUMAKURU, KARNATAKA - 572 101
(GSTIN 29DMSPK0180E1ZU)

(A PROPRIETARY CONCERN,
REGISTERED UNDER THE GST ACTS,
REPRESENTED BY SRI WAHEED ULLA KHAN,
S/O AYUB KHAN, AGED ABOUT 34 YEARS)

…PETITIONER

(BY SRI. Y.C. SHIVAKUMAR, ADVOCATE)

AND:

1. ASSISTANT COMMISSIONER
YW, ADMN STATE,
CENTRAL GST OFFICE,
NORTH COMMISSIONERATE,
HMT BHAVAN, BELLARY ROAD,
GANGANAGAR, BENGALURU - 560 032.

2. THE COMMERCIAL TAX OFFICER
(ENFORCEMENT) - 35, SOUTH ZONE,
OFFICE OF THE ADDITIONAL COMMISSIONER
OF COMMERCIAL TAXES (ENFORCEMENT),
SOUTH ZONE, VTK-2, RAJENDRA NAGAR,

BENGALURU - 560 047.

3. THE SUPERINTENDENT,
RANGE-DND7, NORTH COMMISSIONERATE,
CENTRAL GST OFFICE, NO.59,
1ST FLOOR, HMT BHAVAN,
BELLARY ROAD, GANGANAGAR,
BENGALURU - 560 032.

...RESPONDENTS

(BY SRI. ARAVIND V. CHAVAN, ADVOCATE FOR R1 AND R3;
SRI. K. HEMAKUMAR, AGA FOR R2)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED COMMUNICATIONS BLOCKING THE CREDIT OF INPUT TAX OF RS. 3,13,07,146-00 FROM THE ELECTRONIC CREDIT LEDGER, DATED 13.03.2025 RECEIVED ONLINE THROUGH PORTAL OF THE PETITIONER AS AT ANNX-A 1

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, the petitioner seeks the following reliefs:

> *"a. Issue a writ of certiorari or any other writ or order or direction in the nature of certiorari quashing the impugned "Communications blocking the credit of input tax of Rs.3,13,07,146-00 from the Electronic Credit Ledgeer, dated 13.03.2025, received on-line through Portal of the petitioner, as at Annexure-A1..*

b. Issue a writ of certiorari or any other writ or order or direction in the nature of certiorari quashing the impugned "Blocked Credit Ledger dated 13.03. 3036" received on-line through portal or the petitioner, as at Annexure-A2;

c. Issue a writ of mandamus or any other writ or order or direction in the nature of writ of mandamus to unblock the input tax credit of Rs.3,13,07,146-00/- immediately; and

c. Grant any other relief that this Hon'ble deems fit in the facts and circumstances of the case including costs, in the interest of justice and equity. "

2. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material on record.

3. A perusal of the material on record will indicate that the Electronic credit ledger of the petitioner was blocked by the impugned order at Annexure - A dated 13.01.2025, by invoking Rule 86A of the Central Goods and Services Tax Rules, 2017 (for short ‘the CGST Rules’). In this context, learned counsel for the petitioner invited my attention to the material on record in order to point out that before passing the impugned order, pre-decisional hearing was not provided to the petitioner nor does the impugned order contain any reason to believe as to why it was necessary to block the Electronic credit ledger and in view of the aforesaid

contravention as held by the Division Bench of this Court in the case of ***K-9-Enterprises Vs. State of Karnataka*** reported in ***W.A.No.100425/2023 and connected matters,*** the impugned order deserves to be quashed.

4. *Per contra*, learned counsel for respondents supports the impugned order and submit that there is no merit in the petition and the same is liable to be dismissed.

5. In ***K-9-Enterprises*** supra, the following points were answered in favour of the petitioner- assessee by holding as under:

> ***8.3*** *The first question that arises for consideration is as to whether the respondents were justified in not providing/granting a pre- decisional hearing before blocking the ECL of the appellants and whether a post decisional hearing was sufficient in the facts and circumstances of the instant cases. In this context, a plain/bare reading of rule 86A will indicate that there is absolutely no express provision for compliance with principles of natural justice; however, there could arise occasions/situations when principles of natural justice can be read into statutory provisions though they are not expressly present in the provisions.*

8.4 *In C.B. Gautam's case 35, the Constitution Bench of the apex court held as under (pages 553-555 in 199 ITR):*

> *"28. In the light of what we have observed above, we are clearly of the view that the requirement of a reasonable opportunity being given to the concerned parties, particularly, the intending purchaser and the intending seller must be read into the provisions of Chapter XX-C. In our opinion, before an order for compulsory purchase is made under section 269UD, the intending purchaser and the intending seller must be given a reasonable opportunity of showing cause against an order for compulsory purchase being made by the appropriate authority concerned. As we have already pointed out, the provisions of Chapter XX-C can be resorted to only where there is a significant undervaluation of property to the extent of 15 per cent. or more in the agreement of sale, as evidenced by the apparent consideration being lower than the fair market value by 15 per cent. or more. We have further pointed out that, although a presumption of an attempt to evade tax may be raised by the appropriate authority concerned in case of the aforesaid circumstances being established such a presumption is rebuttable and this would necessarily imply that the concerned parties must have an opportunity to show cause as to why such a presumption should not be*

drawn. Moreover, in a given transaction of an agreement to sell, there might be several bona fide considerations which might induce a seller to sell his immovable property at less than what might be considered to be the fair market value. For example: he might be in immediate need of money and unable to wait till a buyer is found who is willing to pay the fair market value for the property. There might be some dispute as to the title of the immovable property as a result of which it might have to be sold at a price lower than the fair market value or a subsisting lease in favour of the intending purchaser. There might similarly be other genuine reasons which might have led the seller to agree to sell the property to a particular purchaser at less than the market value even in cases where the purchaser might not be his relative. Unless an intending purchaser or intending seller is given an opportunity to show cause against the proposed order for compulsory purchase, he would not be in a position to rebut the presumption of tax evasion and to give an interpretation to the provisions which would lead to such a result would be utterly unwarranted. The very fact that an imputation of tax evasion arises where an order for compulsory purchase is made and such an imputation casts a slur on the parties to the agreement to sell leads to the conclusion that, before such an imputation can be made against the parties concerned, they must be given

an opportunity to show cause that the undervaluation in the agreement for sale was not with a view to evade tax. Although Chapter XX-C does not contain any express provision for the affected parties being given an opportunity to be heard before an order for purchase is made under section 269UD, not to read the requirement of such an opportunity would be to give too literal and strict an interpretation to the provisions of Chapter XX-C and, in the words of judge learned Hand of the United States of America 'to make a fortress out of the dictionary.' Again, there is no express provision in Chapter XX-C barring the giving of a show-cause notice or reasonable opportunity to show cause nor is there anything in the language of Chapter XX-C which could lead to such an implication. The observance of the principles of natural justice is the pragmatic requirement of fair play in action. In our view, therefore, the requirement of an opportunity to show cause being given before an order for purchase by the Central Government is made by an appropriate authority under section 269UD must be read into the provisions of Chapter XX-C. There is nothing in the language of section 269UD or any other provision in the said Chapter which would negate such an opportunity being given. Moreover, if such a requirement were not read into the provisions of the said Chapter, they would be seriously open to challenge on the ground of

violation of the provisions of article 14 on the ground of non-compliance with the principles of natural justice. The provision that, when an order for purchase is made under section 269UD, reasons must be recorded in writing is no substitute for a provision requiring a reasonable opportunity of being heard before such an order is made.

29. The recording of reasons which led to the passing of the order is basically intended to serve a twofold purpose: (1) that the 'party aggrieved' in the proceeding before the authority acquires knowledge of the reasons and, in a proceeding before the High Court or the Supreme Court (since there is no right of appeal or revision), it has an opportunity to demonstrate that the reasons which persuaded the authority to pass an order adverse to his interest were erroneous, irrational or irrelevant, and

(2) that the obligation to record reasons and convey the same to the party concerned operates as a deterrent against possible arbitrary action by the quasi-judicial or the executive authority invested with judicial powers.

30. Section 269UD(1), in express terminology, provides that the appropriate authority may make an order for the purchase of the property 'for reasons to be recorded in Writing'.

Section 269UD(2) casts an obligation on the authority that it 'shall cause a copy of its order under sub-section (1) in respect of any immovable property to be served on the transferor'. It is, therefore, inconceivable that the order which is required to be served by the appropriate authority under sub-section (2) would be one which does not contain the reasons for the passing of the order or is not accompanied by the reasons recorded in writing. It may be permissible to record the reasons separately but the order would be an incomplete order unless either the reasons are incorporated therein or are served separately along with the order on the affected party. We are, of the view that the reasons for the order must be communicated to the affected party."

8.5 *In Sahara India (Firm)'s case 26, the apex court held that before ordering special audit of the books of the assessee, the assessee was to be heard as that would entail civil consequences as under(pages 412- 417 in 300 ITR):*

"11. Rules of 'natural justice' are not embodied rules. The phrase 'natural justice' is also not capable of a precise definition. The underlvina principle of natural justice. evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a

duty to act fairly, i.e., fair play in action. As observed by this court in A.K. Kraipak v. Union of India 37, the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. (Also see: Income- tax Officer v. Madnani Engineering Works Ltd. 38

12. In Swadeshi Cotton Mills Co. Ltd. v. Union of India, R.S. Sarkaria J., speaking for the majority in a three-judge Bench, lucidly explained the meaning and scope of the concept of 'natural justice'. Referring to several decisions, his Lordship observed thus:

'Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice, viz., (i) audi alteram partem, and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle-as distinguished from an absolute rule of uniform application-seems to be that where a statute does

not, in terms, exclude this rule of prior hearing but con templates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.'

13. Initially, it was the general view that the rules of natural justice would apply only to judicial or quasi-judicial proceedings and not to an administrative action. However, in State of Orissa v. Dr. (Miss) Binapani Dei, the distinction between quasi-judicial and administrative decisions was perceptively mitigated and it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. Since then the concept of natural justice has made great strides and is invariably read into administrative actions involving civil consequences, unless the statute, conferring power, excludes its application by express language.

14. Recently, in Canara Bank v. V.K. Awasthy, the concept11, scope, history of development and significance of the principles of natural justice have been discussed in extenso, with reference to earlier cases on the subject. Inter alia, observing that the principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights, the court said:

'Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.'

15. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of the principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is

made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial.

16. We may, however, hasten to add that no general rule of universal application can be laid down as to the applicability of the principle of audi alteram partem, in addition to the language of the provision. Undoubtedly, there can be exceptions to the said doctrine. Therefore, we refrain from giving an exhaustive catalogue of the cases where the said principle should be applied. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of all these matters that the question of application of the said principle can be properly determined. (See: Union of India v. Col. J.N. Sinha42)

17. In Mohinder Singh Gill v. Chief Election Commissioner 43, explaining as to what is meant by the expression 'civil consequence', Krishna

Iyer J., speaking for the majority, said: "Civil consequences" undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.'

18. The question in regard to the requirement of opportunity of being heard in a particular case, even in the absence of provision for such hearing, has been considered by this court on a number of occasions. In Olga Tellis v. Bombay Municipal Corporation while dealing with the provisions of section 314 of the Bombay Municipal Corporation Act, 1888, which confers discretion on the Commissioner to get any encroachment removed with or without notice, a Constitution Bench of this court observed as follows:

'It must further be presumed that, while vesting in the Commissioner the power to act without notice, the Legislature intended that the power should be exercised sparingly and in cases of urgency which brook no delay. In all other cases, no departure from the audi alteram partem rule ("Hear the other side") could be presumed to have been intended. Section 314 is so designed as to exclude the principles of natural justice by

way of exception and not as a general rule. There are situations which demand the exclusion of the rules of natural justice by reason of diverse factors like time, place the apprehended danger and so on. The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence.'

19. Again, in C.B. Gautam v. Union of India 45, a question arose whether in the absence of a provision for giving the concerned parties an opportunity of being heard before an order is passed under the provisions of section 269UD of the Act, for purchase by the Central Government of an immovable property agreed to be sold on an agreement to sell, an opportunity of being heard before such an order could be passed should be given or not. Relying on the decisions of this court in Union of India v. Col. J.N. Sinha and Olga

Tellis 47 it was held that:

'Although Chapter XX-C does not contain any express provision for the affected parties being given an opportunity to be heard before an order for purchase is made under section 269UD, not to read the requirement of such an opportunity would be to give too literal and strict an interpretation to the provisions of Chapter XX-C and in the words of judge learned hand of the United States of America "to make a fortress out of the dictionary." Again, there is no express pro vision in Chapter XX-C barring the giving of a show-cause notice or reasonable opportunity to show cause nor is there anything in the language of Chapter XX-C which could lead to such an implication. The observance of principles of natural justice is the pragmatic requirement of fair play in action. In our view, therefore, the requirement of an opportunity to show cause being given before an order for purchase by the Central Government is made by an appropriate authority under section 269UD must be read into the provisions of Chapter XX-C. There is nothing in the language of section 269UD or any other provision in the said Chapter which would negate such an opportunity being given. Moreover, if such a requirement were not read into the provisions of the said Chapter, they would be seriously open to challenge on the ground of

violations of the provisions of article 14 on the ground of non-compliance with the principles of natural justice. The provision that when an order for purchase is made under section 269UD reasons must be recorded in writing is no substitute for a provision requiring a reasonable opportunity of being heard before such an order is made.'

20. Dealing with the question whether the requirement of affording an opportunity of hearing is to be read into section 142 (2A), in Rajesh Kumar it has been held that prejudice to the assessee is apparent on the face of the said statutory provision. It has been observed that on account of the special audit, the assessee has to undergo the process of further accounting despite the fact that his accounts have been audited by a qualified auditor in terms of section 44AB of the Act. An auditor is a professional person. He has to function independently. He is not an employee of the assessee. In case of misconduct, he may become liable to be proceeded against by a statutory authority under the Chartered Accountants Act, 1949. Besides, the assessee has to pay a hefty amount as fee of the special auditor. Moreover, during the audit of the accounts again by the special auditor, he has to answer a large number of questions. Referring to the decision of this court in Binapani Dei wherein

it was observed that when by reason of an action on the part of a statutory authority, civil or evil consequences ensue, the principles of natural justice are required to be followed and in such an event, although no express provision is laid down in this behalf, compliance with the principles of natural justice would be implicit, the learned judges held that by virtue of an order under section 142(2A) of the Act, the assessee suffers civil consequences and the order passed would be prejudicial to him and, therefore, the principles of natural justice must be held to be implicit. The court has further observed that if the assessee was put to notice, he could show that the nature of accounts is not such which would require appointment of special auditors. He could further show that what the assessing officer considers to be complex is, in fact, not so. It was also open to him to show that the same would not be in the interests of the Revenue.

21. In the light of the aforenoted legal position, we are in respectful agreement with the decision of this court in Rajesh Kumar that an order under section 142(2A) does entail civil consequences. At this juncture, it would be relevant to take note of the insertion of the proviso to section 142(2D) with effect from June 1, 2007. The proviso provides that the expenses of the auditor appointed in terms of the said

provision shall, henceforth, be paid by the Central Government. In view of the said amendment, it can be argued that the main plank of the judgment in Rajesh Kumars to the effect that direction under section 142(2A) entails civil consequences because the assessee has to pay substantial fee to the special auditor is knocked off. True it is that the payment of auditor's fee is a major civil consequence, but it cannot be said to be the sole civil or evil consequence flowing from directions under section 142(2A). We are convinced that special audit has an altogether different connotation and implications from the audit under section 44AB. Unlike the compulsory audit under section 44AB, it is not limited to mere production of the books and vouchers before an auditor and verification thereof. It would involve submission of explanation and clarification which may be required by the special auditor on various issues with relevant data, document, etc., which, in the normal course, an assessee is required to explain before the assessing officer. Therefore, special audit is more or less in the nature of an investigation and in some cases may even turn out to be stigmatic. We are, therefore, of the view that even after the obligation to pay auditor's fees and incidental expenses has been taken over by the Central Government, civil consequences would still ensue on the passing of an order for special audit."

8.6 *In the light of the afore stated principles, we are of the view that though rule 86A does not expressly/specifically provide for adherence to principles of natural justice, the same would necessarily have to be read into rule 86A and complied with while invoking the said provision. It would also be apposite to state that when the ECL of the appellants was sought to be blocked and such credit cannot be utilised for up to one year, the said blocking would entail and result in serious civil consequences for the appellants warranting compliance with the principles of natural justice and providing an opportunity of hearing to the appellants.*

8.7 *The learned single judges has come to the conclusion that a pre -decisional hearing of the appellants was not required and that a post- decisional hearing was sufficient to invoke rule 86A and passed the impugned order; in this context, it is relevant to state that in Sahara India (Firm)'s case52, the apex court held as under (pages 417-419 in 300 ITR):*

> *"22. We shall now deal with the submission of learned counsel appearing for the Revenue that the order of special audit is only a step towards assessment and being in the nature of an inquiry before assessment, is purely an administrative act giving rise to no civil consequence and, therefore,*

at that stage a pre-decisional hearing is not required. In Rajesh Kumar, it has been held that in view of section 136 of the Act, proceedings before an assessing officer are deemed to be judicial proceedings. Section 136 of the Act stipulates that any proceeding before an Income-tax authority shall be deemed to be judicial proceeding within the meaning of sections 193 and 228 of the Penal Code, 1860, and also for the purpose of section 196 of the Penal Code, 1860 and every Income-tax authority is a court for the purpose of section 195 of the Criminal Procedure Code, 1973. Though having regard to the language of the provision, we have some reservations on the said view expressed in Rajesh Kumar's case54, but having held that when civil consequences ensue, no distinction between quasi-judicial and administrative order survives, we deem it unnecessary to dilate on the scope of section 136 of the Act. It is the civil consequence which obliterates the distinction between quasi-judicial and administrative function. Moreover, with the growth of the administrative law, the old distinction between a judicial act and an administrative act has withered away. Therefore, it hardly needs reiteration that even a purely administrative order which entails civil consequences, must be consistent with the rules of natural justice.... As already noted above, the expression 'civil consequences' encompasses infraction of not

merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. Anything which affects a citizen in his civil life comes under its wide umbrella. Accordingly, we reject the argument and hold that since an order under section 142 (2A) does entail civil consequences, the rule audi alteram partem is required to be observed.

23. We are also unable to persuade ourselves to agree with the proposition canvassed by learned counsel for the Revenue that since a post-decisional hearing in terms of sub-section (3) of section 142 is contemplated, the requirement of natural justice is fully met. Apart from the fact that ordinarily a post-decisional hearing is no substitute for pre-decisional hearing, even from the language of the said provision it is plain that the opportunity of being heard is only in respect of the material gathered on the basis of the audit report submitted under sub-section (2A) and not on the validity of the original order directing the special audit. It is well-settled that the principle of audi alteram partem can be excluded only when a statute contemplates a post-decisional hearing amounting to a full review of the original order on merit, which, as explained above, is not the case here.

24. The upshot of the entire discussion is that the exercise of power under section 142(2A)

of the Act leads to serious civil consequences and, therefore, even in the absence of express provision for affording an opportunity of pre-decisional hearing to an assessee and in the absence of any express provision in section 142 (2A) barring the giving of reasonable opportunity to an assessee, the requirement of observance of the principles of natural justice is to be read into the said provision."

8.8 *As can be seen from the aforesaid judgment, ordinarily, a post- decisional hearing is not a substitute for pre-decisional hearing and that pre-decisional hearing is important especially when the respondents-Revenue passed the impugned orders which would entail and visit the appellants with serious civil consequences.*

8.9 *In K.I. Shephard's case 55, the apex court held as under (page 448 in SCC):*

"15. Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilisation and the content thereof is often considered as a proper measure of the level of civilisation and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community

the concept of fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. We do not think in the facts of the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame. On the other hand we are of the view that the time limited by statute provides scope for an opportunity to be extended to the intended excluded employees before the scheme is finalised so that a hearing commensurate to the situation is afforded before a section of the employees is thrown out of employment.

16. We may now point out that the learned single judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand the normal rule should apply..."

8.10 *In H.L. Trehan's case 56, the apex court followed the above dictum and held as under (pages 770 and 771 in SCC):*

"12. It is, however, contended on behalf of CORIL that after the impugned circular was

issued, an opportunity of hearing was given to the employees with regard to the alterations made in the conditions of their service by the impugned circular. In our opinion, the post-decisional opportunity of hearing does not sub serve the rules of natural justice. The authority who embarks upon a post- decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. In this

connection, we may refer to a recent decision of this court in K.I. Shephard v. Union of India 57. What happened in that case was that the Hindustan Commercial Bank, The Bank of Cochin Ltd. and Lakshmi Commercial Bank, which were private Banks, were amalgamated with Punjab National Bank, Canara Bank and State Bank of India respectively in terms of separate schemes drawn under section 45 of the Banking Regulation Act, 1949. Pursuant to the schemes, certain employees of the first mentioned three Banks were excluded from employment and their services were not taken over by the respective transferee Banks. Such exclusion was made without giving the employees, whose services were terminated, an opportunity of being heard. Ranganath Misra, J. speaking for the court observed as follows (SCC pp.448-449, para 16):

'We may now point out that the learned single judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand, the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could now represent and their case could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then given them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.'

13. The view that has been taken by this court in the above observation is that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. Thus, even if any hearing was given to the employees of CORIL after the

issuance of the impugned circular, that would not be any compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by article 14 of the Constitution. The High Court, in our opinion, was perfectly justified in quashing the impugned circular."

8.11 *As stated supra, principles of natural justice necessarily had to be observed and adhered to by the respondents-Revenue before passing the impugned orders blocking the ECL of the appellants which would entail and visit them with serious civil consequences; so also, in the absence of extraordinary reasons or exceptional circumstances obtaining from the material available with them which would obviate or dispense with the requirement of pre-decisional hearing, it was also incumbent upon the respondents-Revenue to provide/grant a pre- decisional hearing to the appellants before invoking rule 86A and blocking the ECL of the appellants by passing the impugned orders which are vitiated and failure to appreciate this by the learned single judges has resulted in erroneous conclusion.*

8.12 *It is also significant to note that in the event the respondents- Revenue had not provided/granted a pre-decisional hearing to the appellants before blocking its ECL by invoking rule 86A, the only consequence flowing from the same would be that there would be a*

possibility of the appellants taking steps to utilizing/availing the ITC available in the ECL; the said process of the appellants utilizing/availing the ITC is not instantaneous/immediate unlike bank accounts, from which monies can be withdrawn, if the same are not attached and the said process culminating in the ITC being converted to actual benefit in favour of the appellants would consume time as explained by the Gujarat High Court in Samay Alloys' cases; in other words, it was not physically possible for the appellants to immediately/forthwith encash/withdraw the ITC available in its ECL so as to warrant emergent/urgent blocking of the ECL without providing a pre-decisional hearing to the appellants; at any rate, upon the respondents-Revenue issuing appropriate notices to the appellants providing pre-decisional hearing proposing to invoke rule 86A, the respondents-Revenue would be entitled to supervise/monitor the proceedings including the ECL of the appellants and if circumstances so warrant, respondents-Revenue would be entitled to block the ECL even before completion of pre- decisional hearing was completed; viewed from this angle also, the impugned orders passed by the respondents-Revenue blocking the ECL of the appellants without providing/granting pre-decisional hearing and confirmed by the learned single judges deserve to be set aside.

8.13 *In view of the aforesaid discussion, we are of the considered opinion that the learned Single Judge clearly fell in error in coming to the conclusion that a pre-decisional hearing was not required to have been provided/granted to the appellants by the respondents-revenue prior to passing the impugned orders blocking the ECL of the appellants and consequently, the said findings recorded by the learned Single Judge deserve to be set aside.*

9. *The next point that arises for consideration is as to whether the respondents-revenue were justified in passing the impugned orders blocking the Electronic Credit Ledgers of the appellants by invoking Rule 86A of the CGST Rules which mandates that the respondents-revenue should have 'reasons to believe' that the ITC available in the ECL was fraudulently availed or was ineligible as contemplated in the said provision; in this regard, the learned Single Judge noticed that 2 pre-requisites/conditions had to be satisfied/fulfilled before invocation of Rule 86A and blocking the ECL of the appellants and held as under:*

> *18. The first requisite of the Rule which is required to be considered by the competent authority is with regard to the basis of material available before he taking any action for blocking of electronic credit ledger. The second pre-requisite is of recording the reasons in writing for invoking the powers under Rule 86A of the Rules of 2017. Unless the aforesaid two pre-requisites are fulfilled, the*

competent authority cannot invoke the powers under Rule 86A of the Rules of 2017 for the purpose of disallowing the debit of the determined amount to the electronic credit ledger or to block the electronic credit ledger even to the extent of amount fraudulently or wrongly availed by the petitioners/assessee.

9.1 However, the learned Single Judge came to the erroneous conclusion that the respondents-revenue had fulfilled/satisfied the aforesaid twin/dual pre-requisites/requirements viz., respondents had 'reasons to believe' which were based on cogent material available with them to invoke Rule 86A of the CGST Rules; in this context, the learned Single Judge failed to appreciate that the only 'reason to believe' was alleged satisfaction of certain officers who conducted a field visit in Goa and noticed that the said suppliers were not in business. It is well settled that the expression 'reason to believe' would necessarily mean that the respondents must arrive at a satisfaction based on their own independent inquiry and not upon borrowed inquiry as has been done in the instant case.

9.2 The learned Single Judge also failed to appreciate that Rule 86A was drastic and draconian in nature warranting existence of "reasons to believe" before exercising the said power by strictly complying with all the conditions / requirements of the said provision; further, an order blocking the ECL by invoking Rule 86A cannot be passed merely based on investigation reports and without any application of mind

and that the onus was on the respondents – revenue to show that the appellants had deliberately availed fraudulent or ineligible ITC; in the instant case, the ECL of the appellants had been blocked by the respondents without verifying the genuineness of the transaction and a bonafide purchaser cannot be denied ITC on account of a supplier's default and the recipient cannot be made to suffer denial of ITC for the wrong doings of the supplier; so also, blocking of ECL would defeat the principles and purpose of value added tax and would lead to a cascading effect thereby resulting in irreparable injury and hardship to the appellants especially when ITC was a valuable right which cannot be confiscated in a manner opposed to law.

9.3 The learned Single Judge also failed to appreciate that the procedure prescribing the requirements for blocking ECL has been explained by the respondents themselves in the CBEC Circular dated 02.11.2021, the relevant portions are as under:

> *3.1.2 Perusal of the rule makes it clear that the Commissioner, or an officer authorised by him, not below the rank of Assistant Commissioner, must have "reasons to believe" that credit of input tax available in the electronic credit ledger is either ineligible or has been fraudulently availed by the registered person, before disallowing the debit of amount from electronic credit ledger of the said registered person under rule 86A. The reasons for*

such belief must be based only on one or more of the following grounds:

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.

3.1.3 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, as discussed in para 3.1.2 above; 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.

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 86A.

3.3.1 The amount of fraudulently availed or ineligible input tax credit availed by the registered person, as per the grounds mentioned in sub-rule (1) of rule 86A, shall be prima facie ascertained based on material evidence available or gathered on record. It

is advised that the powers under rule 86A to disallow debit of the amount from electronic credit ledger of the registered person may be exercised by the Commissioner or the officer authorized by him, as per the monetary limits detailed in Para 3.2.1 above. The officer should apply his mind as to whether there are reasons to believe that the input tax credit availed by the registered person has either been fraudulently availed or is ineligible, as per conditions/ grounds mentioned in sub-rule (1) of rule 86A and whether disallowing such debit of electronic credit ledger of the said person is necessary for restricting him from utilizing/ passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue. Such "Reasons to believe" shall be duly recorded by the concerned officer in writing on file, before he proceeds to disallow debit of amount from electronic credit ledger of the said person.

9.4 It is clear from the aforesaid CBIC Circular that the respondents-revenue 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 Rule 86A(1). As stated earlier, Rule 86A, which in effect is

the power to block ECL is drastic in nature which creates a disability for the taxpayer to avail of the credit in ECL for discharge of his tax liability which he is otherwise entitled to avail and therefore, all the requirements of Rule 86A would have to be fully complied with before the power there under is exercised; when this Rule requires arriving at a subjective satisfaction which is evident from the use of words, "must have reasons to believe", the satisfaction must be reached on the basis of some objective material available before the authority and cannot be made on the flights of ones fancies or whims or caprices.

9.5 In the instant case, the electronic credit ledgers have been blocked solely on the basis of communication from another officer [Field visit report by the Asst. State Tax Officer, Vasco-D-Gama, (Goa)]. There was no tangible material to form any belief that the ITC lying in the appellants' ECL was on account of any fake invoice; it had proceeded to take action solely on the basis of a direction issued by another authority. Before the drastic measure to block a taxpayer's ECL is taken, it was necessary for the concerned officer to have some material to form a belief that the conditions under Rule 86A are satisfied by making an independent analysis before such action is taken and even this aspect has not been considered or appreciated by the

learned Single Judge while passing the impugned order, which deserves to be set aside on this ground also.

9.6 The learned Single Judge also did not appreciate 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 in Rule 86A.

9.7 A perusal of the impugned orders will indicate that the same have been passed based on the communication received from other officers, without any independent application of mind. This shows that exercise of power under Rule 86A was not because he was independently satisfied about the need for blocking the ECL but, was due to the fact that he felt compelled

to obey the command of another officer. This is not the manner in which the law expects the power under rule 86A to be exercised. When a thing is directed to be done in a particular manner, it must be done in that manner or not at all is the well-established principle of administrative law. On a perusal of the impugned orders, it is crystal clear that the order to block the ECL provisionally was out of the borrowed satisfaction of the respondent authorities rather than based on any independent analysis.

9.8 As stated supra, the impugned order discloses that the same has been passed mechanically and is based on borrowed satisfaction and does not meet the test of formation of an opinion of the Assessing Officer who seems to have been influenced by the findings of the Investigation Wing [i.e, Field visit report by the Asst. State Tax Officer, Vasco-D-Gama, (Goa)] and have not independently formed an opinion on the likely additions to be made during assessment proceedings. In the light of existence of a legal mandatory pre-requirement and precondition of recording of formation of opinion which is in pari-materia with "reasons to believe", it was incumbent upon the officer to arrive at his own satisfaction and not borrowed satisfaction by proper application of mind; the respondents have proceeded solely on the basis that the supplier has been found to be non-existent or not to

be conducting any business from the place which it has obtained registration, has blocked the input tax which is impermissible in law without checking the genuineness or otherwise of the transaction and consequently, the impugned orders are bald, vague, cryptic, laconic, unreasoned and non-speaking and deserve to be set aside.

9.9 While dealing with the provisions of the CGST Act, this Court in ***Xiaomi's case supra,*** *wherein one of us speaking for the Court held as under:*

> *10. A perusal of the impugned order will indicate that except for stating that there is likely addition of the amount mentioned in the order, no reasons, much less valid or cogent reasons are assigned by the 1st respondent as to how and why he has formed an opinion that it was necessary to provisionally attach the fixed deposits of the petitioner for the purpose of protecting the interest of the revenue. The requirements and parameters preceding passing of a provisional attachment order came up for consideration before the Apex Court in the case of Radha Krishan Industries' case (supra), wherein it was held as under:-*
>
> *48. On the other hand, when the proper officer is of the opinion that the amount which has been paid under sub-section (5) falls short of the amount which is actually payable, a notice under sub-section (1) is to issue for the amount which falls short of what is actually payable. Sub-section (8) contains a stipulation that where a person who is chargeable with tax under sub-section (1) pays the tax together with interest and a penalty of twenty-five per cent of the tax within thirty days of the issuance of the notice, all proceedings in respect of the notice shall be deemed to be concluded. Under sub-section (9), the proper officer after considering the representation of the person chargeable to tax is*

authorised to determine the amount of tax, interest and penalty due and to issue an order. A period of five years is stipulated by sub-section (10) for the issuance of an order in sub-section (9). Sub-section (11) stipulates that upon service of an order under subsection (9), all proceedings in respect of the notice shall be deemed to be concluded upon the person paying the tax with interest under Section 50 and a penalty equivalent to 50 per cent of the tax within thirty days of the communication of an order. These provisions indicate how sub-sections (5), (8) and (11) operate at different stages of the process.

49. Now in this backdrop, it becomes necessary to emphasise that before the Commissioner can levy a provisional attachment, there must be a formation of "the opinion" and that it is necessary "so to do" for the purpose of protecting the interest of the government revenue. The power to levy a provisional attachment is draconian in nature. By the exercise of the power, a property belonging to the taxable person may be attached, including a bank account. The attachment is provisional and the statute has contemplated an attachment during the pendency of the proceedings under the stipulated statutory provisions noticed earlier. An attachment which is contemplated in Section 83 is, in other words, at a stage which is anterior to the finalisation of an assessment or the raising of a demand. Conscious as the legislature was of the draconian nature of the power and the serious consequences which emanate from the attachment of any property including a bank account of the taxable person, it conditioned the exercise of the power by employing specific statutory language which conditions the exercise of the power. The language of the statute indicates first, the necessity of the formation of opinion by the Commissioner; second, the formation of opinion before ordering a provisional attachment; third the existence of opinion that it is necessary so to do for the purpose of protecting the interest of the government revenue; fourth, the issuance of an order in writing for the attachment of any property of the taxable person; and fifth, the observance by the Commissioner of

the provisions contained in the rules in regard to the manner of attachment.Each of these components of the statute are integral to a valid exercise of power. In other words, when the exercise of the power is challenged, the validity of its exercise will depend on a strict and punctilious observance of the statutory preconditions by the Commissioner. While conditioning the exercise of the power on the formation of an opinion by the Commissioner that "for the purpose of protecting the interest of the government revenue, it is necessary so to do", it is evident that the statute has not left the formation of opinion to an unguided subjective discretion of the Commissioner. The formation of the opinion must bear a proximate and live nexus to the purpose of protecting the interest of the government revenue.

50. By utilising the expression "it is necessary so to do" the legislature has evinced an intent that an attachment is authorised not merely because it is expedient to do so (or profitable or practicable for the Revenue to do so) but because it is necessary to do so in order to protect interest of the government revenue. Necessity postulates that the interest of the Revenue can be protected only by a provisional attachment without which the interest of the Revenue would stand defeated. Necessity in other words postulates a more stringent requirement than a mere expediency. A provisional attachment under Section 83 is contemplated during the pendency of certain proceedings, meaning thereby that a final demand or liability is yet to be crystallised. An anticipatory attachment of this nature must strictly conform to the requirements, both substantive and procedural, embodied in the statute and the rules.The exercise of unguided discretion cannot be permissible because it will leave citizens and their legitimate business activities to the peril of arbitrary power. Each of these ingredients must be strictly applied before a provisional attachment on the property of an assessee can be levied. The Commissioner must be alive to the fact that such provisions are not intended to authorise Commissioners to make pre-emptive strikes on the property of the assessee, merely because property

is available for being attached. There must be a valid formation of the opinion that a provisional attachment is necessary for the purpose of protecting the interest of the government revenue.

51. These expressions in regard to both the purpose and necessity of provisional attachment implicate the doctrine of proportionality. Proportionality mandates the existence of a proximate or live link between the need for the attachment and the purpose which it is intended to secure. It also postulates the maintenance of a proportion between the nature and extent of the attachment and the purpose which is sought to be served by ordering it. Moreover, the words embodied in sub-section (1) of Section 83, as interpreted above, would leave no manner of doubt that while ordering a provisional attachment the Commissioner must in the formation of the opinion act on the basis of tangible material on the basis of which the formation of opinion is based in regard to the existence of the statutory requirement. While dealing with a similar provision contained in Section 45 [Section 45 (1) provides as follows:

***"45. Provisional attachment.-(1)** Where during the tendency of any proceedings of assessment or reassessment of turnover escaping assessment, the Commissioner is of the opinion that for the purpose of protecting the interest of the government revenue, it is necessary so to do, he may by order in writing attach provisionally any property belonging to the dealer in such manner as may be prescribed."] of the Gujarat Value Added Tax Act, 2003, one of us (Hon'ble M.R. Shah, J.) speaking for a Division Bench of the Gujarat High Court in **Vishwanath Realtor v. State of Gujarat [Vishwanath Realtor v. State of Gujarat, 2015 SCC OnLine Guj 6564]** observed : (Vishwanath Realtor case [**Vishwanath Realtor v. State of Gujarat, 2015 SCC OnLine Guj 6564] , SCC OnLine Guj para 26**)*

"26. Section 45 of the VAT Act confers powers upon the Commissioner to pass the order of

provisional attachment of any property belonging to the dealer during the pendency of any proceedings of assessment or reassessment of turnover escaping assessment. However, the order of provisional attachment can be passed by the Commissioner when the Commissioner is of the opinion that for the purpose of protecting the interest of the Government Revenue, it is necessary so to do. Therefore, before passing the order of provisional attachment, there must be an opinion formed by the Commissioner that for the purpose of protecting the interest of the Government Revenue during the pendency of any proceedings of assessment or reassessment, it is necessary to attach provisionally any property belonging to the dealer. However, such satisfaction must be on some tangible material on objective facts with the Commissioner. In a given case, on the basis of the past conduct of the dealer and on the basis of some reliable information that the dealer is likely to defeat the claim of the Revenue in case any order is passed against the dealer under the VAT Act and/or the dealer is likely to sale his properties and/or sale and/or dispose of the properties and in case after the conclusion of the assessment/reassessment proceedings, if there is any tax liability, the Revenue may not be in a position to recover the amount thereafter, in such a case only, however, on formation of subjective satisfaction/opinion, the Commissioner may exercise the powers under Section 45 of the VAT Act."

72. It is evident from the facts noted above that the order of provisional attachment was passed before the proceedings against the appellant were initiated under Section 74 of the Hpgst Act. Section 83 of the Act requires that there must be pendency of proceedings under the relevant provisions mentioned above against the taxable person whose property is sought to be attached. We are unable to accept the contention of the respondent that merely because proceedings were pending/concluded against another taxable entity, that is, GM Powertech, the powers of Section 83 could also be attracted against the appellant. This interpretation

would be an expansion of a draconian power such as that contained in Section 83, which must necessarily be interpreted restrictively. Given that there were no pending proceedings against the appellant, the mere fact that proceedings under Section 74 had concluded against GM Powertech, would not satisfy the requirements of Section 83. Thus, the order of provisional attachment was ultra vires Section 83 of the Act.

73. On 1-3-2021, the appellant has filed an appeal under Section 107 together with a deposit of Rs 32,15,488 representing ten per cent of the tax due. Section 107(6) contains the following stipulation:

"107. (6) No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed."

Sub-section (7) stipulates that:

"107. (7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed."

74. Clause (a) of sub-section (6) provides that no appeal shall be filed without the payment in full, of such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order as is admitted. In addition, under clause (b), ten per cent of the remaining amount of tax in dispute arising from the order has to be paid in relation to which the appeal has been filed. Upon the payment of the amount under sub-section (6) the recovery proceedings for the balance are deemed to be stayed. Thus, in any event, the order of provisional

attachment must cease to subsist. The appellant, having filed an appeal under Section 107, is required to comply with the provisions of sub-section (6) of Section 107 while the recovery of the balance is deemed to be stayed under the provisions of sub-section (7). As observed hereinabove and under Section 83, the order of provisional attachment may be passed during the pendency of any proceedings under Section 62 or Section 63 or Section 64 or Section 67 or Section 73 or Section 74. Therefore, once the final order of assessment is passed under Section 74 the order of provisional attachment must cease to subsist. Therefore, after the final order under Section 74 of the Hpgst Act was passed on 18-2-2021, the order of provisional attachment must come to an end.

11. The said judgment which was passed while dealing with identical provisions under the CGST Act, 2017 and Rules made there under was followed by this Court in the context of Section 281B of the I.T. Act by this Court in ***Indian Minerals Case (supra),*** *wherein it was held as under:-*

"8. As held by the Apex Court in the aforesaid decision, mere apprehension on the part of the respondents that huge tax demands are likely to be raised on completion of assessment is not sufficient for the purpose of passing a provisional order of attachment. It has also been held that apart from the fact that a writ petition under Article 226 of the Constitution of India challenging the provisional attachment order was maintainable, having regard to the fact that the provisional attachment order of a property of a taxable person including the bank account of such person is draconian in nature and the conditions which are prescribed by the statute for the valid exercise of power must be strictly fulfilled, the exercise of power for order of provisional attachment must necessarily be preceded by formation of an opinion by the authorities that it is necessary to do so for the purpose of protecting the interest of Government revenue. Before the order of provisional attachment, the Commissioner must form an opinion on the

basis of the tangible material available for attachment that the assessee is not likely to fulfil the demand payment of tax and it is therefore necessary to do so for the purpose of protecting the interest of the Government revenue. In addition to the aforesaid mandatory requirements, before passing the provisional attachment order, it is also incumbent upon the authorities to come to a conclusion based on the tangible material that without attaching the provisional attachment, it is not possible in the facts of the given case to protect the revenue and that the provisional attachment order is completely warranted for the purpose of protecting the Government revenue.

9. Applying the principles laid down in Radha Krishan's case (supra) to the facts of the instant case, a perusal of the impugned provisional attachment order will clearly indicate that except for merely stating that since there is a likelihood of huge tax payments to be raised on completion of assessment and that for the purpose of protecting the revenue, it is necessary to provisionally attach the fixed deposit of the petitioners, the other mandatory requirements and pre-condition as laid down by the Apex Court have neither been complied with nor fulfilled or followed prior to passing the impugned order. It is apparent that the impugned provisional attachment orders at Annexures-D, D1, D2 and D3 do not satisfy the legal requirements as laid down in Radha Krishan's case (supra) and consequently, in view of the fact that the impugned provisional orders are cryptic, unreasoned, non-speaking and laconic, the same deserve to be quashed.

10. Insofar as the apprehension of the respondents that in the event huge tax payments are to be raised as against the petitioners – assessee, the assessee may not make payment of the same causing loss to the revenue is concerned, in the light of the undisputed fact that the proceedings under Section 153A of the said Act of 1961 have already been initiated coupled with the fact that Section 281 of the said Act of 1961,

contemplates that any alienation of any property belonging to the petitioners would be null and void, in addition to the specific assertion made by the petitioner that they own and possess immovable property to the tune of more than Rs.300 crores, the said apprehension of the respondents is clearly unfounded and without any basis and consequently, the said apprehension of the respondents cannot be accepted".

12. In the instant case, a perusal of the impugned order will clearly indicate that the same is arbitrary and reflects premeditated conclusion without recording either an opinion or necessary to attach the property; the doctrine of proportionality which is implicated in the purpose and necessity of provisional attachment mandates the existence of a proximate or a live link between the need for the attachment and the purpose which it is intended to secure.

13. Further, mere apprehension that huge tax demands are likely to be raised on completion of assessment is not sufficient for the purpose of passing a provisional attachment order and the exercise of the same must necessarily be preceded by the formation of an opinion that it was necessary to do so for the purpose of protecting the interest of Government revenue, that too on the basis of tangible material that the petitioner was not likely to fulfil the demand and on the other hand, was likely to defeat the demand, which is conspicuously missing and absent in the impugned order.

14. The impugned order also discloses that the same has been passed mechanically and is based on borrowed satisfaction and does not meet the test of formation of an opinion of the Assessing Officer who seems to have been influenced by the findings of the Investigation Wing and TPO and have not independently formed an opinion on the likely additions to be made during assessment proceedings.

15. As stated supra, in the light of existence of a legal mandatory pre-requirement and precondition of recording of formation of opinion which is in pari materia with "reasons to believe" in Section 281B of the I.T.Act, it was incumbent upon the 1st respondent to arrive at his own satisfaction and not borrowed satisfaction by proper application of mind and consequently, the impugned order which is bald, vague, cryptic, laconic, unreasoned and non-speaking order deserves to be set aside, particularly having regard the undisputed fact that except for stating that he was of the opinion that it was necessary to attach the fixed deposits for the purpose of protecting the interest of the revenue, no other reasons have been assigned by the 1st respondent in the impugned order.

16. A perusal of the impugned order will also indicate that there is no finding recorded as to why a provisional order of attachment had to be passed against the petitioner; it is significant to note that there is no finding recorded by the 1st respondent that the petitioner was a 'fly by night operator' from whom it was not possible to recover the likely demand. The impugned order also does not state that the petitioner was either a habitual defaulter nor that he was not doing any business at all or that the petitioner did not have sufficient funds to satisfy the demand. In other words, in the absence of any reasons as to why and how the demand would be defeated by the petitioner, mere apprehension that huge tax demands are likely to be raised on completion of assessment was not sufficient to constitute formation of opinion and existence of proximate and live link for the purpose and necessity of provisional attachment which implicate the doctrine of proportionality. Under these circumstances also, I am of the considered opinion that the impugned order deserves to be quashed.

9.10 On perusal of the entire material on record, we are satisfied that the said independent arrival of

opinion that there was a reason to believe is not found forthcoming from the order issued blocking the said credit and it is entirely based on the satisfaction of another officer; it is quite possible that the transaction, when entered into in 2017 or 2018 could be genuine and when the officer visits in 2020 or 2021, the business could have been closed and therefore the mere closure of business in 2020 or 2021 cannot be a basis for denying credit availed earlier. All these factors required that the respondents-revenue ought to have carefully considered and verified all aspects before taking such a drastic action of blocking credit under Rule 86A which is yet another circumstance that would vitiate the impugned order.

9.11 The aforesaid facts and circumstances are sufficient to come to the unmistakable conclusion that in the absence of valid nor sufficient material which constituted 'reasons to believe' which was available with respondents, the mandatory requirements/pre-requisites/ingredients/parameters contained in Rule 86A had not been fulfilled/satisfied by the respondents-revenue who were clearly not entitled to place reliance upon borrowed satisfaction of another officer and pass the impugned orders illegally and arbitrarily blocking the ECL of the appellant by invoking Rule 86A which is not only contrary to law but also the material on record and

consequently, the impugned orders deserve to be quashed.

Point No.2 *is also accordingly answered in favour of the appellants by holding that the respondents-revenue committed a grave and serious error/illegality/infirmity in passing the impugned orders blocking the Electronic Credit Ledgers of the Appellants by invoking Rule 86A of the CGST Rules."*

6. In view of the aforesaid dictum of the Division Bench of this Court, I am of the considered opinion that in the instant case since no pre-decisional hearing are provided/granted by the respondents before passing the impugned order, coupled with the fact that the impugned order invoking Section 86A blocking of the Electronic credit ledger of the petition does not contain independent or cogent reasons to believe/accept by placing reliance upon reports of enforcement authority which is impermissible in law, since the same is on borrowed satisfaction as held by Division Bench, the impugned order deserves to be quashed. It is also pertinent to note that the impugned order except stating that the registered person/ supplier *"found to be a bill trader and involved in issuance/availment in fake invoices and the business premises is not existing",* no other reasons are forthcoming in the impugned

order. On this ground also, the impugned order dated 13.01.2025 deserves to the quashed.

7. In the result, pass the following:

ORDER

(i) The petition is hereby ***allowed***.

(ii) Impugned order dated 13.01.2025 at Annexure - A is hereby quashed.

(iii) The concerned respondents are directed to unblock the Electronic credit ledger of the petitioner immediately upon the receipt of copy of this order, so as to enable the petitioner to file returns forthwith.

(iv) Liberty is reserved in favour of the respondents to proceed against the petitioner in accordance with law and in terms of the judgment of Division Bench in ***K-9-Enterprises Vs. State of Karnataka*** reported in ***W.A.No.100425/2023 and connected matters***.

(v) The petitioner is directed to appear before respondent No.1 on 21.04.2025 without awaiting further notice from respondent No.1.

** Retyped and replaced vide Chamber order dated 03.05.2025*

(vi) Liberty is reserved in favour of respondent No.1 to issue fresh notice to the petitioner by hand in person and to proceed further in accordance with law.

(vii) In the event, respondent No.1 issues a fresh notice to the petitioner on 21.04.2025 or subsequently liberty is reserved in favour of petitioner to submit requisite documents etc., to the said notice and contest the same in accordance with the law.

(viii) It is further made clear that in the event petitioner does not appear before respondent No.1 on 21.04.2025, the present order shall stand automatically recalled/cancelled and the present petition shall stand revived/ restored without further orders and without reference to the Bench.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

SS

** Retyped and replaced vide Chamber order dated 03.05.2025*