

# Sh. Raghav Agarwal & Connected Matters v. Commissioner of Central Tax and GST Delhi North & Ors.

*Whether Rule 86A of the CGST Rules, 2017 permits blocking of Input Tax Credit (ITC) in the Electronic Credit Ledger (ECL) in excess of the credit actually available therein, thereby creating a negative balance.*

**Date of Order:** September 24, 2024  
**Case Law No:** GIB-DHC-2024-13  
**Source:** GST INDIA Biz (www.gstindia.biz)

## CASE DESCRIPTION / SUMMARY

### Background

Multiple taxpayers registered under CGST Act/DGST Act filed writ petitions challenging orders passed by the Commissioner/authorized officers under Rule 86A of the CGST Rules, 2017. The grievance was that the authorities had blocked ITC in their respective ECLs in excess of the credit actually available at the time of passing such orders, resulting in an artificial negative balance. Due to this negative balance, petitioners were unable to utilize any subsequently accrued ITC until the negative balance was first neutralized, effectively paralyzing their tax payment mechanism and working capital. The petitioners confined their challenge solely to this specific issue of "negative blocking."

### Facts Relevant to Understanding the Judgment

The Revenue passed orders under Rule 86A blocking ITC on the ground that the credit had been fraudulently availed or was ineligible. However, in each case, the amount blocked exceeded the ITC actually lying in the ECL on the date of the order, creating a negative balance. For instance, in W.P.(C) 10980/2024, the total amount blocked was ₹27,28,93,028 whereas the ECL showed a negative balance of ₹25,85,14,327. The petitioners contended that Rule 86A only permits blocking of credit "available" in the ECL, and no power exists to create a negative balance. Revenue argued that the power under Rule 86A extends to the entire quantum of fraudulently availed or ineligible ITC, regardless of whether such credit still exists in the ECL at the time of the order.

### Court Observations (Verbatim)

#### On nature of ITC:

"The right to avail and utilize the ITC is thus a statutory right, which accrues by virtue of the provisions of the CGST Act and is subject to the conditions as set out therein. This right to avail and utilize the ITC is a valuable right. It is, undeniably, an asset, which vests with a taxpayer if the taxpayer satisfies all the stipulated conditions for such entitlement." (Para 30)

**On Rule 86A being a drastic power:**

"Undisputedly, the exercise of power under Rule 86A of the Rules effectively denies a taxpayer its ability to discharge its dues by utilizing the ITC or seeking a refund which it is entitled to do under the CGST Act and the Rules. The ITC, undoubtedly, is a valuable resource available to a taxpayer for payment of taxes and other dues. Thus, the denial of access of this resource in fact denies a taxpayer, albeit temporarily, access to its assets. An order under Rule 86A of the Rules in effect reduces the working capital available to a taxpayer." (Para 40)

**On threshold conditions of Rule 86A:**

"On a plain reading of the opening sentence of Rule 86A(1) of the Rules, the necessary conditions to be satisfied at the threshold are: (a) that there is a credit of input tax available in the Electronic Credit Ledger; and, (b) that the Commissioner or an officer authorized on his behalf has reasons to believe that the credit of input tax available has been fraudulently availed or is ineligible on account of the reasons as set out in Clauses (a) to (d) of Rule 86A(1) of the Rules." (Para 56)

"In view of the aforesaid, it follows that if there is no credit of input tax available in the ECL, one of the necessary conditions for passing an order under Rule 86A(1) of the Rules would not be satisfied." (Para 57)

**On meaning of "amount equivalent to such credit":**

"Plainly, the expression 'amount equivalent to such credit' refers to the credit of input tax available in the taxpayer's ECL, which the Commissioner or the officer authorized by him has reasons to believe has been fraudulently availed or is ineligible. It does not refer to the ITC used in the past for payment of dues or which has been refunded." (Para 59)

**On literal construction:**

"There is no ambiguity in the plain language of Rule 86A of the Rules. The literal construction of the said Rule also does not lead to any absurdity. The words 'not allow debit of an amount equivalent to such credit in the electric credit ledger' clearly refers to such amount as is credited to the ECL to the extent that the Commissioner or an officer authorized by him has reason to believe has been fraudulently availed or is ineligible." (Para 70)

**On negative blocking being impermissible:**

"Rule 86A(1) of the Rules does not contemplate an order, the effect of which is to require a taxpayer to replenish his ECL with valid availment of ITC, to the extent of ITC used in the past, which the Commissioner or an officer authorized by him has reasons to believe, was fraudulently availed or was ineligible. Such an interpretation would in effect amount to construe an order under Rule 86A(1) of the Rules as an order for recovery of tax." (Para 82)

### **On CBIC Circular supporting petitioners:**

"We find that the aforesaid paragraphs of the Circular dated 02.11.2021 relied upon by the learned counsel for the Revenue do not support the contentions advanced by them. On the contrary, the same support the literal construct of Rule 86A of the Rules and also clarify that the amount of debit to be disallowed from the ECL should not be more than the amount of the ITC, which is believed to have been fraudulently availed or is ineligible." (Para 73)

### **Final Verdict**

All writ petitions were allowed. The impugned orders were set aside to the extent they disallowed debit from the respective ECLs in excess of the ITC actually available in the ECL at the time of passing the orders. The "negative blocking" of ECL was held to be without jurisdiction and illegal under Rule 86A of the CGST Rules, 2017.

#### **ADDITIONAL FOOTNOTES**

##### **Cases Referred**

<b>Case</b>	<b>Citation</b>
Samay Alloys India Pvt. Ltd. v. State of Gujarat	2022:GUJHC:6969-DB
Laxmi Fine Chem v. Assistant Commissioner	W.P. No. 5256/2024 (Telangana HC, 18.03.2024)
Brand Equity Treaties Ltd. v. Union of India	2020:DHC:1868-DB
Dee Vee Projects Ltd. v. Government of Maharashtra	W.P.(C) 2693/2021 (Bombay HC, 11.02.2022)
Basanta Kumar Shaw v. Assistant Commissioner of Revenue	2022 SCC OnLine Cal 4544
R.M. Dairy Products LLP v. State of U.P. & Ors.	2021 SCC OnLine All 1144
Britannia Industries Ltd. v. CIT	(2006) 1 SCC 646
Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company	(2018) 9 SCC 1

<b>Case</b>	<b>Citation</b>
ALD Automotive Pvt. Ltd. v. Commercial Tax Officer	(2019) 13 SCC 225
Commissioner of His Majesty's Revenue and Customs v. NHS Lothian Health Board	2022 UKSC 28
Jayam & Company v. Assistant Commissioner	(2016) 15 SCC 125
M/s S.S. Industries v. Union of India	2020:GUJHC:40484-DB
Eicher Motors Ltd. v. Union of India	(1999) 2 SCC 361
Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd.	(1999) 7 SCC 448
Commissioner of Central Excise, Madras v. Home Ashok Leyland Ltd.	(2007) 4 SCC 51
CST v. Modi Sugar Mills Ltd.	1960 SCC OnLine SC 118
Baidyanath Ayurved Bhawan (P) Ltd. v. Excise Commr.	(1971) 1 SCC 4
District Mining Officer v. Tata Iron and Steel Co.	(2001) 7 SCC 358
R.K. Garg v. Union of India	(1981) 4 SCC 675
Kunnathat Thateunni Moopil Nair v. State of Kerala	1960 SCC OnLine SC 7

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