

TAX FLASH NEWS

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Remedial hearing would have to be granted to the person affected by blocking of electronic credit ledger – Bombay High Court

The Bombay High Court¹ has held that blocking of electronic credit ledger (ECL) under rule 86A of CGST Rules, 2017 is not akin seizure or attachment of property. It has further held that from the language used in rule 86A, two pre-requisites are to be fulfilled before blocking ECL. First, Competent Authority or the Commissioner is satisfied on the basis of material available that blocking of ECL is necessary. Second pre-requisite is of recording reasons in writing for such an exercise of the power.

Facts of the case

- 'Petitioner' is engaged in infrastructure development and has presence in various states of India.
- On 1 July 2021, it noticed that its electronic credit ledger (ECL) was not operational and was blocked by Deputy Commissioner. It sent representation and request to unblock ECL which was rejected by the Department. It further submits that it was at this time it learnt about the fact that blocking of ECL was done under rule 86A of CGST Rules, 2017.
- It filed a writ petition praying for quashing of action of blocking of ECL.

Petitioner's contentions

- Credit amount available in the ECL is the property of the Petitioner and the blocking of the ECL of the Petitioner amounts to illegal provisional attachment of the property under section 83 of the CGST Act.

- Power to attach ECL which is the result of the blocking of ECL cannot be exercised without quantifying the amount of wrong availment of credit in ECL as per the provisions of rule 86A.
- Without an order recording reasons in writing, blocking of the ECL cannot be done. Even if there was any order, blocking can be only to the extent of the amount determined to be fraudulently or wrongly availed and specifically stated therein.

Respondents' contentions

- Petitioner had fraudulently availed credit in its ECL as the Petitioner was not found to be in existence in Maharashtra and was not carrying on its business in the State of Maharashtra.
- Blocking of ECL is only for a temporary period of one year and this blocking is not equivalent to attachment of the property.
- Rule 86A does not require any hearing to be granted but it requires reaching of satisfaction by the authority to invoke the power under this rule.
- Petition is not maintainable as alternate remedy of appeal is available under section 107 of CGST Act.

High Court's decision

The Bombay High Court based on below reasoning quashed and set aside the impugned order of blocking credit and partly allowed the writ petition:

- Contention of the Respondents that petition is not maintainable due to availability of alternate remedy. Appeal under section 107 can be filed against a decision or order passed under GST Act by an

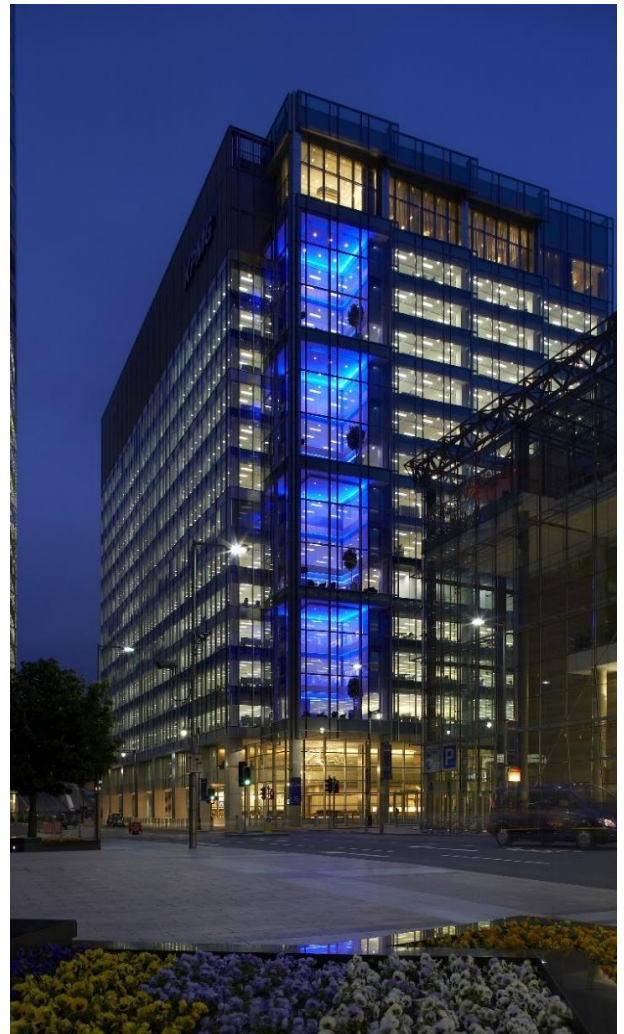
¹ Dee Vee Projects Ltd vs The Government of Maharashtra and 3 Ors [2022-VIL-113-BOM]

adjudicating authority. This provision does not include any decision or order passed under the rules framed under Central GST Act or any other rules.

- Power under rule 86A is quite distinct from the power under section 83 and therefore, any order passed under rule 86A cannot be treated as the order amounting to the provisional attachment of property.
- Order is illegal as it does not specify the amount to the extent to which ECL has been blocked. Rule 86A permit disallowance of debit of an amount to the ECL only to the extent of fraudulent or wrong availment of credit in the ECL and such disallowance can be done through blocking of the ECL to the extent of the amount fraudulently or wrongly shown as lying in credit in the ECL.
- Remedial hearing followed by confirmation or revocation of the order would be necessary.
- It is a mandatory duty of the competent authority to record reasons in writing.

Our comments

In view of principles of natural justice, this judgement read with the judgement of the Madras High Court² in a similar matter have stressed upon communicating the reasons in writing before invoking powers under rule 86A. In this regard, CBIC had issued guidelines³ for disallowing debit of ECL and procedure to be followed by Commissioner or the authorized officer to allow debit from ECL. However, there is no explicit mention of communicating the reasons in writing to the aggrieved person. Given the rising litigations on abuse of powers under rule 86A, one can expect further clarification from CBIC or an amendment in rule 86A to subserve the doctrine of fair play.



² HEC India LLP vs Commissioner of GST and Central Excise Audit-II and Another [2021-VIL-687-MAD]

³ CBEC-20/16/05/2021-GST/1552 dated 2 November 2021, CBIC, Ministry of Finance

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