

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

ON THE 24TH DAY OF JUNE, 2021

BEFORE:

HON'BLE SHRI JUSTICE MANOJ KUMAR TIWARI

WRIT PETITION (M/S) No. 1128 of 2021

BETWEEN:

M/s Vimal Petrothin
Private Limited.Petitioner
(By Mr. Rajat Mittal and Mr. Tarun Pande, Advocates)

AND:

Commissioner, CGST
and others. ...Respondents
(By Mr. Shobhit Saharia, Advocate)

JUDGMENT

Petitioner is a Private Limited Company, having its manufacturing unit at Haridwar. Petitioner's input tax credit available in its electronic trading ledger was provisionally blocked on the ground that petitioner had availed input tax credit, amounting to ₹1.5 crores, based on fake invoices issued by non-existing firms. The said blockage was made on 15.01.2020 under Rule 86(A)(1) of C.G.S.T. Rules, 2017. Thus, feeling aggrieved, petitioner has filed this writ petition, seeking the following relief:

"a) Issue a writ of mandamus or a writ/ direction in the nature of mandamus or any other order or direction directing the Respondent No. 1 to unblock the input tax credit of Rs. 71,61,296/- availed by the petitioner in its electronic credit ledger."

2. On 22.06.2021, learned counsel appearing for the respondents was asked to get instructions on certain aspects. The legal submission made on behalf of petitioner was also noted in the order dated 22.06.2021. For ready reference, order passed by this Court on 22.06.2021 is reproduced below:

"Petitioner is aggrieved by provisional blocking of input tax credit by the Commissioner, Goods and Services Tax vide order dated 15.01.2020.

By means of this writ petition, petitioner has sought a direction to respondent no. 1 to unblock the input tax credit of ₹71,61,296/- in its electronic trading ledger.

Learned counsel for the petitioner has relied upon Rule 86(A)(3) of Central Goods and Services Tax Rules, 2017 (*in short "CGST Rules"*), which reads as under: -

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

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as

a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-

i. issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained;

ii. without receipt of goods or services or both; or

b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

d) the registered person availing any credit of input tax is not in possession of a tax

invoice or debit note or any other document prescribed under rule 36, may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

(2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction."

Learned counsel for the petitioner submits that the charge against the petitioner is that he fraudulently availed input tax credit on the basis of fake invoices and proceedings under Rule 86(A)(1) of CGST Rules, 2017 were drawn against him. Learned counsel for the petitioner referred to Sub-Rule(2) of Rule 86(A) of CGST Rules, 2017 in support of his contention that the Commissioner or the Officer authorised by him under Sub-Rule (1), upon being satisfied that condition for disallowing of electronic credit ledger, no longer exist, allow such credit. He further submits that the outer limit for disallowing debit of electronic credit ledger is one year, as has been prescribed in Sub-Rule (3) of Rule 86(A) of the CGST Rules, which starts running from the date of imposing such restriction. He, therefore, submits that since the input tax credit ledger of the petitioner was blocked on 15.01.2020, therefore, in view of Sub-Rule 3 of Rule 86(A) of the Rules, the period of one year expired on 14.01.2021, consequently, continuance of blockage of petitioner's input tax credit ledger after 14.01.2021 is not supported by law.

Mr. Shobhit Saharia, learned counsel for the respondents was granted time to get instructions on 18.06.2021. According to him, he could not get the instructions despite letter issued to the authorities, therefore, he is granted one more opportunity to get instructions.

On next date, he will make a statement on the legal aspect, namely, as to whether blockage of input tax credit

ledger of the petitioner can continue after 14.01.2021, if yes, then the provision under which it can be continued beyond period of one year.

List this matter on 24.06.2021 immediately after fresh cases."

3. Learned counsel for the respondents, on instructions, concedes that petitioner's electronic credit ledger cannot be blocked for any period in excess of one year, in view of express provision contained in Sub-Rule (3) of Rule 86(A) of C.G.S.T. Rules. Thus, he submits that petitioner's contention to this extent is correct that continuance of blockage of his input credit ledger after 14.01.2021 is not supported by any law.

4. In view of the admission by the respondents, through their counsel, that continuance of blockage of petitioner's electronic credit ledger cannot continue beyond one year, the writ petition stands allowed. Respondent no. 1 is directed to forthwith unblock input tax credit availed by the petitioner in its electronic credit ledger. However, this order will not preclude the respondents from taking such action against the petitioner, as is permissible under law.

(MANOJ KUMAR TIWARI, J.)