



2025:AHC:190271-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 4654 of 2025

M/S Pilcon Infrastructure Pvt. Ltd.

.....Petitioner(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Petitioner(s)	:	Aloke Kumar, Puneet Arun
Counsel for Respondent(s)	:	C.S.C.

Court No. - 3

HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE INDRAJEET SHUKLA, J.

1. Heard Shri Aloke Kumar along with Shri Adarsh Singh as counsel for the petitioner and Shri Ankur Agarwal, learned counsel for the respondent.

2. Present petition has been filed for the following relief:

"Issue a suitable writ, order or direction in the nature of mandamus directing the Respondent no.2 to unblock the Input Tax Credit (ITC) amounting to Rs. 13,96,220/- available in the Electronic Credit Ledger (ECL) of the petitioner."

3. On the strength of e-mail communication dated 24.07.2025 issued by Goods and Services Tax Network (GSTN) to the petitioner, it has been stressed, 'reasons to believe' required to be 'recorded in writing' under Rule 86A of the U.P.G.S.T. Rules 2017 (hereinafter referred to as the 'Rules') have not been recorded. To the extent that jurisdictional requirement has not been fulfilled, the consequence of blocking of Input Tax Credit (ITC in short), visited on the petitioner, is also without jurisdiction and grossly illegal.

4. In such circumstances, we required learned Standing Counsel to obtain written instructions. A copy of the said written instruction received by learned Standing Counsel is marked as 'X' and retained on record.

5. Besides issuing the above noted e-mail communication dated 24.07.2025, by way of 'Reason', the following has been recorded - *"Supplier found non-functioning"*. Further, by way of attachment mentioned in the last column of

the Electronic Credit Ledger no. '20250709584828' has been mentioned. That attachment, according to learned Standing Counsel is "Alert Notice" dated 13.06.2025 received by Commissioner of State GST, from Directorate General of GST Intelligence (DGGI), Raipur Zonal Unit.

6. Copy of the said communication dated 13.06.2025 issued by DGGI, Raipur Zonal Unit has also been annexed to the written instructions. Relevant to the issue, paragraph nos. 2 and 3 thereof read as below:

"2. During the course of investigation, M/s Maa Kamakhya Trading, Surguja (GSTIN:22FRAPR2468R1Z5) was found to be non-operational at its registered premise.

3. Further, it was revealed that M/s Maa Kamakhya Trading, Surguja had passed on fraudulent Input Tax Credit (ITC) without supply of any goods on the basis of bogus invoices issued to different tax payers. The details of such the recipient firms (falling under Uttar Pradesh State GST) are enclosed as Annexure - 'A'."

7. According to learned counsel for the petitioner, neither any order or communication may have been issued under Rule 86A of the Rules nor its consequence may have been visited on the petitioner unless 'reasons to believe' had been first 'recorded in writing', by the officer empowered under the said Rules, namely, respondent no.2.

8. On the other hand, learned Standing Counsel states, no opportunity of hearing is required to be granted under Rule 86A of the Rules. However, it has been submitted, the petitioner has a right to object to blocking of ITC, by filing appropriate representation before the Commissioner under Rule 86A(2) of the Rules.

9. Having heard learned counsel for the parties and having perused the record, in face of record as produced by learned Standing Counsel, in absence of any prayer in that regard, no need exists for calling a counter affidavit at this stage.

10. Primarily, no 'reason to believe' has been 'recorded in writing' by respondent no.2, to block the ITC of the petitioner. Once the Rule requires 'reasons to believe' to be 'recorded in writing', the jurisdiction and authority to be exercised under Rule 86A of the Rules must subscribe to that mandatory condition. Though such reasons may be recorded *ex-parte* against

the assessee, at the same time, the requirement of the statute to record the reasons is a non-negotiable condition. It is wholly mandatory. As to what constitutes 'reason to believe' is not a matter of speculation, especially in this branch of law.

11. On that principle, in **The Commissioner of Sales Tax, U.P. Vs M/S. Bhagwan Industries (P) Ltd., Lucknow (1973) 3 SCC 265**, it was observed as under:

"11.Question in the circumstances arises as to what is the import of the words "reason to believe", as used in the section. In our opinion, these words convey that there must be some rational basis for the assessing authority to form the belief that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax for some year. If such a basis exists, the assessing authority can proceed in the manner laid down in the section. To put it differently, if there are, in fact, some reasonable grounds for the assessing authority to believe that the whole or any part of the turnover of a dealer has escaped assessment, it can take action under the section. Reasonable grounds necessarily postulate that they must be germane to the formation of the belief regarding escaped assessment. If the grounds are of an extraneous character, the same would not warrant initiation of proceedings under the above section. If, however, the grounds are relevant and have a nexus with the formation of belief regarding escaped assessment, the assessing authority would be clothed with jurisdiction to take action under the section. Whether the grounds are adequate or not is not a matter which would be gone into by the High Court or this Court; for the sufficiency of the grounds which induced the assessing authority to act is not a justiciable issue. What can be challenged is the existence of the belief but not the sufficiency of reasons for the belief. At the same time, it is necessary to observe that the belief must be held in good faith and should not be a mere pretence."

12. As to the material that may give rise to a "reason to believe" that any part of the turnover of an assessee escaped assessment to tax, the Supreme Court in the case of **State of Uttar Pradesh And Others Vs. Aryaverth Chawal Udyog & Others (2015) 17 SCC 324** has observed in paragraph nos.28 and 30, thus:

"28. This Court has consistently held that such material on which the assessing authority bases its opinion must not be arbitrary, irrational, vague, distant or irrelevant. It must bring home the appropriate rationale of action taken by the assessing authority in pursuance of such belief. In case of absence of such material, this Court in clear terms has

held the action taken by the assessing authority on such "reason to believe" as arbitrary and bad in law. In case of the same material being present before the assessing authority during both, the assessment proceedings and the issuance of notice for reassessment proceedings, it cannot be said by the assessing authority that "reason to believe" for initiating reassessment is an error discovered in the earlier view taken by it during original assessment proceedings. (See Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan [Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan, (1980) 4 SCC 71 : 1980 SCC (Tax) 348] .

30. In case of there being a change of opinion, there must necessarily be a nexus that requires to be established between the "change of opinion" and the material present before the assessing authority. Discovery of an inadvertent mistake or non-application of mind during assessment would not be a justified ground to reinstate proceedings under Section 21(1) of the Act on the basis of change in subjective opinion (CIT v. Dinesh Chandra H. Shah [CIT v. Dinesh Chandra H. Shah, (1972) 3 SCC 231] ; CIT v. Nawab Mir Barkat Ali Khan Bahadur [CIT v. Nawab Mir Barkat Ali Khan Bahadur, (1975) 4 SCC 360 : 1975 SCC (Tax) 316])."

13. Reliance placed by learned Standing Counsel on the 'Reason' as mentioned in the Electronic Credit Ledger, namely, "*Supplier found non-functioning*", does not fulfill the requirement of Rule 86A(1) of the Rules. To the extent it does not reflect any application of mind to reach that conclusion, though it may be true that the respondent no.2 had received intimation dated 13.06.2025 from the DGGI, Raipur Zonal Unit, perusal of that communication (as extracted above) only reflects a generic/non-specific conclusion drawn by that authority. Thus, the said communication reflects a conclusion that a supplier - M/s Maa Kamakhaya Trading, Sarguja has passed on fraudulent ITC without supplying any goods, on the basis of bogus invoices, etc. That transaction of goods claimed to have been supplied to the petitioner by the said supplier M/s Maa Kamakhaya Trading, Sarguja was a bogus transaction, may not be readily inferred, merely on the generic allegation made by DGGI, Raipur Zonal Unit that that dealer had made some non-generic transactions.

14. Clearly, the investigation by DGGI, Raipur Zonal Unit, would be *ex-parte* against the petitioner. In any case, no order appears to have been passed in the case of M/s Maa Kamakhaya Trading, Sarguja, or the present

petitioner as may support the inference drawn by respondent no.2, that the said supplier had reflected bogus transactions in favour of the petitioner.

15. When the Rules require recording of 'reasons to believe', 'in writing', there must not only exist material that may give rise to the belief necessary to be recorded by respondent.2 but that the reasons must spring from material on record/leading to the belief. It necessarily involves application of mind by the competent authority, here respondent no.2, to the facts brought before it.

16. Even though exercise of power under Rule 86A(1) of the Rules remained *ex-parte* to the assessee, yet, more especially for that reason, the requirement of the statute to first record 'reasons to believe', 'in writing' must be strictly enforced on the revenue authorities.

17. It may not forgotten, granting ITC and maintaining its chain is the soul of a successful GST regime. Therefore, any doubt or suspicion alone may not lead an action by the authorities to block the ITC of the assessee and disrupt the entire value addition chain and consequentially tax payments without fulfilling statutory tax requirements, without fulfilling the mandatory requirement of law - to record 'reasons to believe', 'in writing'.

18. For the foregoing reasons, the action taken by the respondent no.2, to block the petitioner's ITC vide e-mail communication dated 24.07.2025, is set aside. If the respondent no.2 wishes to take any action required under Rule 86A(1) of the Rules, we leave it open to the said authority to act strictly in accordance with law. ITC that has been blocked (through technical measures), may be unblocked, forthwith.

19. In view of the above, present petition stands **allowed**. No order as to costs.

(Indrajeet Shukla,J.) (Saumitra Dayal Singh,J.)

October 29, 2025

Prakhar