



2025:PHHC:151094-DB

CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

2025:PHHC:151094-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. **CWP-23675-2025 (O&M)**
Date of decision: 04.11.2025

M/S. SHYAM SUNDER STRIPS **Petitioner(s)**
Versus
UNION OF INDIA AND OTHERS **Respondent(s)**
2. **CWP-29809-2025 (O&M)**

M/S. SHIVAM TRADING CO. **Petitioner(s)**
Versus
UNION OF INDIA AND OTHERS **Respondent(s)**
3. **CWP-19005-2025 (O&M)**

KAMALDEEP METALICS PVT. LTD. **Petitioner(s)**
Versus
UNION OF INDIA AND OTHERS **Respondent(s)**

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by: Mr. Deepak Gupta, Advocate,
Ms. Ramneek K. Sandhu, Advocate and
Mr. Hrithik Chaudhary, Advocate
for petitioner(s) in CWP Nos. 23675 and 19005 of 2025.

Mr. Nitish Bansal, Advocate
for petitioner(s) in CWP No. 29809 of 2025.

Mr. Ajay Kalra, Advocate and
Ms. Isha Janjua, Advocate
for respondents-CBIC.



CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

LISA GILL, J.

1. All the above said three writ petitions are being taken up together for consideration and adjudication at request and with consent of learned counsel for parties as it is stated that relief claimed in all these three writ petitions primarily pertains to and is restricted to the action of respondents of blocking of Electronic Credit Ledger (for short ECL) of respective petitioners.

2. Issue raised in all the three writ petitions is whether Rule 86-A of Goods and Services Tax Rules, 2017 (for short Rules, 2017) permit the Commissioner or an officer authorized by him to block a tax payer's ECL by an amount exceeding the credit available at the time of issuance of said order. It is to be noted that relevant provisions in the State Legislations i.e. (Punjab Goods and Services Tax Act, 2017) and (Haryana Goods and Services Tax Act, 2017) are identical. Reference is being made to Central Legislation.

3. It is a matter of record and not denied that negative balance created in ECL of each of petitioners is as under:-

CWP Number	Title	Negative Input Tax Credit Amount	Entry Dated	Annexure
23675/2025	M/S. SHYAM SUNDER STRIPS V/S. UNION OF INDIA AND OTHERS	Rs.34,43,946/-	05.12.2024	P-7
29809/2025	M/S. SHIVAM TRADING CO. VS. UNION OF INDIA AND OTHERS	Rs.67,82,734/-	01.09.2025	P-4
19005/2025	KAMALDEEP METALICS PVT. LTD. VS. UNION OF INDIA AND OTHERS	Rs.16,49020/-	12.06.2025	P-2



CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

4. ECL of petitioners was blocked on the premise of it being availed fraudulently and petitioners not being eligible for the same with some suppliers not being in existence. This was refuted by petitioners to be presumptions at this stage. It is agreed by learned counsel for parties that further reference to details of facts in each of the writ petitions is not required in view of the question involved for consideration in these matters.

5. It was stated that all petitioners are duly registered under the Central Goods and Services Tax Act/Rules, 2017 (for short Act/Rules, 2017). Learned counsel for petitioners submitted that vide impugned orders passed under Section 86-A of Act/Rules, 2017 blocking the Input Tax Credit (for short ITC) in excess of credit available in their respective ECLs is absolutely illegal, arbitrary and in clear cut violation of statutory provisions itself. An artificial negative balance is created in their ECLs which disables petitioners from utilizing the ITC availed by them for payment of their dues, leading to a situation where it is only the remaining ITC after adjusting negative balance which would become available to the tax payer for discharging its dues. Power of competent officer in terms of Rule 86-A of Rules, 2017, it was submitted is confined to the ITC that is available at the relevant time in the tax payer's ECL. Reference has been made by learned counsel for petitioners to decision of Gujrat High Court in ***Samay Alloys India Pvt. Ltd. Vs. State of Gujrat, 2022(2) TMI 843*** and of Delhi High Court in ***Best Crop Science Pvt. Ltd. Vs. Principal Commissioner and another, 2024 (9) TMI 1543, Kings Security Guard Services Pvt. Ltd. Vs. Deputy Director, Directorate General of GST Intelligence, 2024(12) TMI 1513*** and ***Karuna Rajendra Ringshia Vs. Commissioner of Central Goods and Service Tax and others, 2024(11)***



CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

TMI 190. It is submitted that decisions of Delhi High Court in ***Kings Security*** and ***Karuna Rajender Ringshias***’ cases (supra), which are based on its earlier judgment in ***Best Crop Science P. Ltd.’s*** case (supra) have been upheld with SLP(c) Nos.014493/2025 and 017723/2025 challenging said decisions being dismissed by Hon’ble Supreme Court on 17.05.2025 and 09.07.2025, respectively. It was thus prayed that present writ petitions be allowed and respective entries in all the three writ petitions in the ECLs of petitioners whereby ‘negative blocking’ of petitioners’ ECLs has been carried out, be set aside.

6. Learned counsel for respondents per contra refuted arguments as raised on behalf of petitioners while submitting that action of blocking ECLs of petitioners in exercise of power under Section 86-A of Rules, 2017, is in accordance with law and calls for no interference by this Court. It was stated that there is no mandate to limit blocking of ECL only to the available balance or amount already present in the ECL. It was submitted that it cannot be the intention of the statute to protect a wrong doer or a person availing an incorrect or wrongful benefit which is impermissible, on the basis of a hyper-technicality. Rule 86-A of Rules, 2017 provides a salutary provision whereby Commissioner or an officer authorized by him in this behalf having reasons to believe that credit of input tax available in the ECL has been fraudulently availed or is ineligible, can block or freeze the amount in question for discharge of any liability under Section 49 of Rules, 2017 or for claim of any refund of an unutilized amount.

7. Learned counsel for respondent/s while referring to reply by way of affidavit dated 24.09.2025 on behalf of respondents (in CWP-23675-2025)



CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

vehemently argued that Rule 86-A of Rules, 2017 is not meant to negatively impact genuine tax payers but is a measure to temporarily safeguard misuse of ITC pending verification or investigation. Moreover, restriction under Rule 86-A of Rules, 2017 is subject to review and cannot exceed a period of one year which ensures that action remains proportionate and fair. Rule 86-A of Rules, 2017 thus functions as a necessary regulatory tool complementing overall objective of the Goods and Service Tax (GST) framework i.e. promoting compliance of the provisions while preventing loss of revenue and curbing tax evasion. He relies upon decision of the Calcutta High Court in ***Basanta Kumar Shaw Vs The Assistant Commissioner of Revenue, and State Tax, Tamruk Charge and others, 2022 SCC Online Cal 4544*** and of the Allahabad High Court in ***M/s. RM Dairy Products LLP Vs. State of U.P. and others, 2021 SCC Online All 1144*** as well as the High Court of Andhra Pradesh in ***Sugna Sponge and Power Pvt. Ltd. Vs. Superintendent of Central Tax and others, 2024 SCC Online AP 5756***, wherein it has been held that there is nothing to indicate in the applicable provisions that ECL cannot be blocked if there is nil/insufficient balance therein. Dismissal of writ petitions was sought.

8. We heard learned counsel for parties at length and have perused the file and scrutinized the decisions as mentioned in the foregoing paras.

9. At the outset it is to be noted that Goods and Service Tax is an indirect tax effectively borne by the ultimate consumer with the tax being levied and collected at multiple stages of the supply chain. Tax payer is entitled to credit for the tax paid by him on the supplies received subject to conditions as set out under the relevant provisions. Chapter 5 of Act, 2017



CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

2025:PHHC:151094-DB

contains provisions regarding ITC. Section 16 of Act, 2017 which provides eligibility and conditions for availing of ITC is reproduced as hereunder:-

“Section 16. Eligibility and conditions for taking input tax credit.-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in [section 49](#), be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be [prescribed](#);

1[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under [section 37](#);

(b) he has received the goods or services or both.

2[**Explanation.-** For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

3[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

(c) subject to the provisions of 4[[section 41](#)], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under [section 39](#):

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be [paid by him along with interest payable under Section 50], in such manner as may be [prescribed](#):

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him 10[to the supplier] of the amount towards the value of supply of goods or services or both along with tax payable thereon.



CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the 6[thirtieth day of November] following the end of financial year to which such invoice or 7 debit note pertains or furnishing of the relevant annual return, whichever is earlier.

8[**Provided** that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under [section 39](#) for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of [section 37](#) till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

[(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed up to the thirtieth day of November, 2021.

(6) Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,—

(i) filed up to thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

(ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration, whichever is later.]”

10. A tax payer under the provisions of the CGST Act is entitled to ITC to the extent provided thereunder and subject to conditions provided therein being satisfied. This statutory right is subject conditions as detailed in the said Act. Section 17 of CGST Act provides for apportionment of ITC in respect of services or goods or both. Section 18 is in respect to availability of credit in certain exceptional circumstances. Section 19 of CGST Act, 2017



CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

stipulates the conditions and manner for availing ITC in respect of inputs and capital goods sent for job work and Section 20 thereof contains provisions for distribution of credit by an Input Service Distributor. Section 21 of CGST Act, 2017 contains provisions regarding recovery of credit distributed in excess. Availment of ITC on self-assessment basis is provided in Section 41 of CGST Act, 2017. Chapter 10 of the CGST Act, 2017 has the provisions regarding payment of tax.

11. Section 49 of Act, 2017 which provides for payment of tax, interest, penalty and other amounts reads as under:

“Section 49. Payment of tax, interest, penalty and other amounts.-

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions [as may be prescribed](#), shall be credited to the electronic cash ledger of such person to be maintained in such manner [as may be prescribed](#).

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with [Section 41](#), to be maintained in such manner [as may be prescribed](#).

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time [as may be prescribed](#).

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions 3[and restrictions] within such time as may be prescribed.

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of-

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax

4[**Provided** that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;];



CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

5[**Provided** that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]

(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

(6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of [section 54](#).

(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner [as may be prescribed](#).

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:-

(a) self-assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to the return of the current tax period;

(c) any other amount payable under this Act or the rules made thereunder including the demand determined under [section 73](#) or [section 74](#) [or section 74A].

(9) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

7[(10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for,—

(a) integrated tax, central tax, State tax, Union territory tax or cess; or

(b) integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of [section 25](#), in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:

Provided that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.]

(11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in subsection (1).]

3[(12) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, subject to such conditions and restrictions, specify such maximum proportion of output tax liability under this Act or under the Integrated Goods and Services Tax Act, 2017 which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed]

Explanation.—For the purposes of this section,—

(a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;

(b) the expression,—



CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

(i) "tax dues" means the tax payable under this Act and does not include interest, fee and penalty; and

(ii) "other dues" means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder."

12. Rule 86-A of Rules, 2017 read as under:-

Rule 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; or

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."]

13. It is to be reiterated that right to avail and utilize ITC is clearly a statutory right subject to conditions as set out in the applicable statutory provisions. Gujrat High Court in its judgment in *Samay Alloys India Pvt.*



-1

2025:PHHC:151094-DB

CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

Ltd.'s case (supra), after discussing manner of ITC utilization and concept of ECL in GST, concluded that availability of credit in the ECL is a condition precedent for exercise of power under Rule 86-A of Rules, 2017. Relevant portion of decision of Gujrat High Court in *Samay Alloys India Pvt. Ltd.'s* case (supra) reads as under:-

“28. Rule 86A of the CGST Rules empowers the Commissioner or his subordinates to freeze the debit in the electronic credit ledger provided he has reasons to believe that the credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible. Thus, the condition precedent is that the input tax credit should be available in the electronic credit ledger before the power under Rule 86-A is invoked by the authority. In the case on hand, it is not in dispute that the amount of input tax credit available in the electronic credit ledger as on the date of blocking of ledger was Nil. If no input tax credit was available in the ledger, the blocking of electronic credit ledger under Rule 86-A of the Rules and insertion of negative balance in the ledger would be wholly without jurisdiction and illegal.

29. On a plain reading of the opening part of Rule 86A(1) of CGST Rules, 2017, it transpires that the power conferred under Rule 86A can be exercised by the Commissioner or an officer authorised by him (not below the rank of an Assistant Commissioner). Further the powers can be exercised if the following cumulative conditions are satisfied. i) Credit of input tax should be available in the electronic credit ledger, ii) The Commissioner or an officer authorised by him should have reason to believe that such credit has been fraudulently availed or is ineligible, iii) The reason to believe are be recorded in writing.

30. In case the above referred conditions are satisfied, a proper officer can invoke Rule 86A. Upon invocation of Rule 86A, a proper officer can - a) Disallow debit from the electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount. b) Such restriction should be for an amount equivalent to the amount claimed to have been fraudulently availed or is ineligible

31. Rule 86A (1) of CGST Rules, 2017 is broadly divided into two parts. The opening part of the rule deals with the conditions required to be fulfilled



CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

in order to invoke the powers under the rule. The second part of the rule provides for the consequences in case Rule 86A is invoked.

32. In other words, in case the conditions prescribed for the invocation of Rule 86A are not fulfilled, the officer cannot invoke the rule, and in such scenario, the consequences provided in the rule becomes ex-facie inapplicable.

33. One of the primary conditions in order to invoke Rule 86A is that the Credit of input tax should be available in the electronic credit ledger. Further, such credit should be claimed to have been (supported by reason to believe recorded in writing) fraudulently availed.

34. Accordingly, in case where (i) Credit of input tax is not available in the electronic credit ledger or (ii) such credit has already been utilised, the powers conferred under Rule 86A cannot be invoked.

35. Further, Rule 86A is not the rule which entitled the proper officer to make debit entries in the electronic credit ledger of the registered person. The rule merely allows the proper officer to disallow the registered person debit from the electronic credit ledger for the limited period of time and on a provisional basis. In case debit entries are made by the proper officer, the same will tantamount to permanent recovery of the input tax credit and certainly permanent recovery is governed by the statutory provisions (Section 73 of 74 of CGST Act) and it certainly travels beyond the plain language and underlined intent Rule 86A.

XX

41. In the aforesaid regard, first the language of an amount equivalent appears in the later portion of the rule which provides for the consequences in case the conditions for invocation of the rule are satisfied. As already discussed, the rule itself can be invoked only in case where the credit of input tax is available in the electronic credit ledger and accordingly, the consequence of the invocation cannot determine the applicability of the rule. Secondly, once the input tax credit is claimed in electronic credit ledger, the credit becomes part of one fungible pool and the credit cannot be separately identified. Having regard to the same, the rule provides for restriction on an equivalent amount and not the credit itself. However, the rule presupposes existence of such credit in the electronic credit ledger.

42. A doubt may also arise that a registered person may persistently and continuously avail and utilise the fraudulent credit and in such scenario the



CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

strict interpretation of Rule 86A will defeat the underlying purpose of enacting such a preventive provision. In this regard, Rule 86A is not the only measure available with the Government. The Government can certainly initiate proceedings under the provisions of section 73 or section 74, as the case may be, for recovery of credit wrongly claimed. Further, the Government in an appropriate case may initiate proceeding for Cancellation of registration (either of the supplier of the recipient or both) under Section 29 of CGST Act. Furthermore, the Government can also provisionally attach any property, including bank account, belonging to the taxable person under Section 83 of CGST Act

43. Accordingly, the fact or possibility of registered person availing and utilising the fraudulent credit persistently and continuously cannot be the basis to invoke Rule 86A.

44. The power to restrict debit from the electronic credit ledger is extremely harsh in nature. The rule outreaches the detailed procedure provided in the legislature for determination of input tax credit wrongly availed or utilised provided in Section 73 and 74 of CGST Act and empowers the officer to unilaterally impose certain restrictions in compelling circumstances. In other words, Rule 86A is invoked at a stage which is anterior to the finalization of an assessment or the raising of a demand. Accordingly, it should be governed strictly by specific statutory language which conditions the exercise of the power.

XX

“49. Thus, the principle of law discernible from the aforesaid two decisions of the Supreme Court is that there can be no action based on any supposed intendment of the provision. Since the plain language of Rule 86A does not permit its exercise without there being availability of credit, the same could not have been invoked in the present case.”

14. Delhi High Court while adjudicating upon the identical question in the case of **Best Crop Science P. Ltd.’s** case (supra) arrived at the same conclusion. It was held that Rule 86-A of Rules, 2017 is not a provision for recovery of Tax or other dues but merely enables the concerned authority to take temporary measures for protection of interest of the revenue. Denial of



CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

access to this resource, it was held, denied a tax payer even though temporarily, access to its assets, therefore, same has to be interpreted strictly. The Bombay High Court recently in the case of **Rawman Metal and Alloys Vs. The Deputy Commissioner of State Tax, Thane, 2025(10) TMI 489** has also taken the view as expressed in **Samay Alloys India Pvt. Ltd.'s** and **Best Crop Science P. Ltd.'s** cases (supra).

15. Decision of Calcutta High Court in **Basanta Kumar Shaw's** case (supra) was duly considered in the case of **Best Crop Science P. Ltd.'s** case (supra). Relevant discussion in this regard is reproduced as hereunder:-

“61. The aforesaid contentions are fashioned on the reasoning of the Hon'ble Calcutta High Court in **Basanta Kumar Shaw v. Assistant Commissioner of Revenue, Commercial Taxes and State Tax, Tamruk Charge & Ors.** which is in consonance with the decision of the Hon'ble Allahabad High Court in **R.M. Dairy Products LLP v. State of U.P. & Others.** The relevant extract of the decision of the Basanta Kumar Shaw's case is reproduced below:

“10.....In our respectful view, we are not able to persuade ourselves to the interpretation given in Samay Alloys rather we are persuaded by the interpretation of the rule given in R.M. Dairy Products LLP. The word “available” occurring in rule 86(1) cannot be read in isolation and it has to be read along with the remaining words which is “in the electronic credit ledger has been fraudulently availed or is ineligible”, “has been fraudulently availed” would undoubtedly denote a situation which has occurred in the past. This becomes clear if we peruse the allegations contained in the show cause notice. It has been stated therein that as per the data base record, there is a mismatch between the input-tax credit from GSTR-2A and GSTR-3B for the periods mentioned above which in the prima facie view of the first respondent is inadmissible as per the provisions of the WBGST/CGST Act, 2017. In this regard, the first respondent has referred to section 42(1)(a) of the WBGST/CGST Act, 2017.



CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

19. Bearing in mind the above decisions, if we examine Rule 86A(1) of the Rules, we find the key words are “available in” and “has been”. Oxford Dictionary defines "available" as "able to be used" or “obtained”; “at someone's disposal”. The word “available” is to be read in conjunction with the words “has been”, if done so, it clearly manifests that what was “available” in the electronic credit ledger at the relevant time has been fraudulently availed or is ineligible. This interpretation alone would be in consonance with the object of the Act and Rules. One of the objectives of the CGST Act is to incentivize tax compliance by tax payers. An interpretation of rule 86A which would render the object of the enactment is to be avoided.”

[Emphasis added]

62. We are, respectfully, unable to concur with the aforesaid interpretation for the reason that it is not in conformity with the opening line of Rule 86A(1) of the Rules. The words “credit of input tax available in the electronic credit ledger” plainly refers to the credit, which is at the given point of time available in the taxpayer’s ECL. If the same had already been utilized in payment of tax, penalties or other dues, or has been refunded, the same would not be available in the ECL.

63. It is relevant to understand the meaning of the words, “availed”, “available in the electronic credit ledger”, “used” and “utilized” as used in the CGST Act and the Rules. 64. Section 41 of the CGST Act contains provisions regarding availment of ITC. It is relevant to refer to said Section at this stage and the same is set out below:

“41. Availment of input tax credit.—(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under subsection (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:



CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.”

64. Section 41 of the CGST Act contains provisions regarding availment of ITC. It is relevant to refer to said Section at this stage and the same is set out below:

"41. Availment of input tax credit.-(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed."

65. In terms of Section 41(1) of the CGST Act, every registered person, subject to the conditions and restrictions as may be prescribed, is entitled to avail credit of eligible ITC. Such credit is to be availed by filing a return on self-assessment basis. Such an amount is then required to be credited in the taxpayer's ECL. Sub-section (2) of Section 41 of the CGST Act provides that if ITC has been availed by a registered person in respect of supplies of goods or services or both and the tax payable on such supplies has not been paid by the supplier then such input tax is required to be reversed along with applicable interest.

66. There is no cavil that ITC is availed by a registered person when he files a return and the same is credited in his ECL. The credit of input tax as available in the ECL is then available to the taxpayer for discharging his dues under the CGST Act or in given cases, for seeking its refund.”



CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

16. After reference to Section 49(4), 49A and 49B of Act, 2017, it was further held that

“68. Clearly, if ITC has been wrongly availed or utilized, the taxpayer is required to pay the said amount along with interest under Section 50(3) of the CGST Act as well as penalty leviable under the provisions of the CGST Act.

69. In view of the above, when Rule 86A(1) of the Rules refers to the ITC available in the ECL of a taxpayer (which the Commissioner or the officer authorized by him has reason to believe has been fraudulently availed or is ineligible), it clearly refers to the amount that is lying to the credit of the taxpayer in his ECL. It is difficult for us to accept that the expression “available in the electronic credit ledger” should be read as the ITC that was available in the ECL sometime earlier, prior to the same being used. ”

17. It is specifically held in the abovesaid decision that there is no ambiguity in the plain language of Rule 86-A of Rules, 2017 and neither does literal construction of this Rule lead to any absurdity. It was further held that not allowing debit of ITC is a temporary measure which is to be imposed only if condition set out in Rule 86-A of Rules, 2017 are satisfied, thus enabling the Commissioner to withhold the available ITC in the ECL when there is reason to believe that it has been fraudulently availed or is ineligible, does not require a prior show cause notice to the tax payer. It was held that by its very nature this emergent provision to block usage of ITC credit in ECL would be rendered negatory in case of requirement of a show cause notice. It was reiterated that Rule 86A of Rules, 2017 is not a provision or machinery for recovery of tax or dues under Act, 2017. Whether there has been incorrect



CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

availment or utilization of ITC would be determined by competent authority under Sections 73 and 74 of CGST Act, 2017.

18. Decision of Gujrat High Court in ***Samay Alloys India Pvt. Ltd.'s*** case (supra) found favour with Telangana High Court as reflected in its decision titled ***M/s Laxmi Fine Chem Vs. Assistant Commissioner (2024) SCC OnLine TS 2328***. Delhi High Court in its subsequent decisions in ***Kings Security's*** case (supra) followed the decision in ***Best Crop Science P. Ltd.'s*** case (supra). Decision in ***Kings Security's*** case (supra) was upheld by Hon'ble the Supreme Court and SLP(c) No.014493/2025 was dismissed on 17.05.2025 clearly recording that no case for interference is made out in exercise of jurisdiction under Article 136 of the Constitution of India. Similarly, SLP(c) No.017723/2025 filed by the Department challenging the decision in ***Karuna Rajender Ringshia's*** case (supra) was also dismissed on 09.07.2025. Remedies of the Department for recovery in accordance with law were kept open.

19. In the given facts and circumstances, we are in respectful agreement with the view of Gujrat High Court and High Courts of Delhi and Telangana as expressed in the decisions referred to in foregoing paras. We are respectfully unable to agree with the view and interpretation expressed by the High Courts of Calcutta, Allahabad and Andhra Pradesh in matters of ***Basanta Kumar Shaw, M/s. RM Dairy Products LLP*** and ***Sugna Sponge and Power Pvt. Ltd.'s*** cases (supra), respectively. Moreover, it is to be noted that the view of Delhi High Court in ***King Security*** and ***Karuna Rajender Ringshia's*** cases (supra) has been duly upheld by Hon'ble the Supreme Court.



-1

2025:PHHC:151094-DB

CWP-23675-2025 (O&M)
CWP-29809-2025 (O&M)
CWP-19005-2025 (O&M)

20. We do not find any merit in the argument raised by learned counsel for respondent that as decisions dated 17.05.2025 and 09.07.2025 of Hon'ble the Supreme Court, challenging judgment passed in ***King Security*** and ***Karuna Rajender Ringshia's*** cases (supra), have been passed in *limine*, therefore, present writ petitions should be dismissed in consonance with the view taken by High Courts of Calcutta, Allahabad and Andhra Pradesh. This argument has been noticed only to be rejected in the given factual matrix.

21. In the given facts and circumstances, we find impugned orders/entries to be unsustainable which are, thus, set aside to the extent that they disallow debit from respective ECLs of petitioner(s) in excess of ITC available therein at the time of passing of/taking of said decision(s).

22. All the three writ petitions are accordingly allowed in the said terms. Needless to say respondents are at liberty to undertake and resort to remedies available for recovery, in accordance with law.

23. Pending miscellaneous application(s), if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

04.11.2025
Sunil

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No