
2021 (7) TMI 1057 - ALLAHABAD HIGH COURT**M/S. RM DAIRY PRODUCTS LLP VERSUS STATE OF UP AND 3 ORS.**

Writ Tax No. - 434 of 2021

Dated: - 15 July 2021**Judgment / Order****Hon'ble Naheed Ara Moonis And Hon'ble Saumitra Dayal Singh JJ.****For the Petitioner : Nishant Mishra, Yashonidhi Shukla****For the Respondents : C.S.C., A.S.G.I.****ORDER**

Heard Mr. Nishant Mishra along with Ms. Yashonidhi Shukla, learned counsel for the petitioner, Mr. Manu Ghildyal, learned counsel representing respondent nos. 1 to 3 and Mr. Ashok Singh, learned counsel for respondent no.4.

The present writ petition has been filed against the order dated 25.06.2021 passed by respondent no.3 under Rule 86A(1)(a)(i) of the State/Central Goods and Services Tax Rules, 2017 (hereinafter referred as the "Rules").

Four fold submissions have been advanced by learned counsel for the petitioner. First, relying on Rule 86A (1) of the Rules, it has been submitted that the respondents had no jurisdiction or authority to block any input tax credit over and above any amount that may have been actually available on the date of the order (in this case 25.6.2021).

Second, it has been submitted that Rule 86A of the Rules obliges the respondents to record a positive 'reason to believe' that credit of input tax had been fraudulently availed by the petitioner or the petitioner was wholly ineligible to avail the same. Inasmuch as the petitioner had not committed any fraud and it was otherwise eligible to avail the input tax credit, the action taken by the respondents is wholly without jurisdiction.

Third, it has been submitted that the input tax credit in dispute arose on account of the purchases made by the petitioner from M/s Darsh Dairy & Food Products, Agra with respect to which, adjudication proceedings are underway against the petitioner in accordance with Section 74 of the UP GST Act, 2017 (hereinafter referred to as the Act). Till those proceedings are concluded, no amount would become recoverable from the petitioner and, therefore, the impugned order passed by respondent no.3 under Rule 86A is wholly premature. In that context, it has also been submitted that Section 78 of the Act provides the manner and mode of recovery. An amount may be recovered only after lapse of three months time from the date of service of the adjudication order. Since the adjudication proceedings are still pending, it has been submitted, the impugned order is wholly premature and without basis.

Last, it has been submitted the Act clearly provides for the manner in which an amount may be determined to be due and recoverable from the petitioner. No other procedure may be adopted, as it would violate the settled principle of law, if the legislature requires an act to be done in a particular manner, it must be done in that manner or not at all.

The writ petition has been vehemently opposed by learned counsel for the revenue.

Having heard the learned counsel for the parties and having perused the record, plainly, there can be no dispute that the Act prescribes the manner for determination of any tax not paid or short paid. Section 74 of the Act provides for determination of input tax credit wrongly availed or utilized by reason of fraud etc through the process of adjudication. Section 78 of the Act further mandates that any amount that may be determined under Section 74 of the Act may not be recovered for a period of three months from the date of service of the adjudication order.

Here, it may be seen that the recovery provision are contained in Section 79 and the enabling Rules. The recovery Rules fall under Chapter XVIII of the State GST Rules 2017 being Rules 142 to 161. On the other hand, Rule 86-A falls under the Chapter heading IX of the Rules regarding payment of tax.

Besides the Chapter heading being different, we may record that it is not that difference that prevails in our mind. It is the ambit and purpose of the Rule 86A that appears to be inherently different and independent of the recovery provisions. For that reason we are not inclined to accept the contentions advanced by the learned counsel for the petitioner.

Rule 86-A of the Rules reads as below:

"86A. (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.*