

Electronic credit ledger cannot be blocked without providing an opportunity of personal hearing

The Hon'ble Jharkhand High Court in *M/s Vinayak Metal and Chemicals & Ors. v. the State of Jharkhand & Ors. [W.P.(T) No. 3022 of 2020 dated November 14, 2022]* quashed and set aside the orders blocking Electronic Credit Ledger ("ECL") of the assessee without providing an opportunity of personal hearing. Permitted the assessee to file a revised **Form GST TRAN-1**, and further directed the Revenue Department that, in case the assessee fails to file a revised Form GST TRAN-1, it can initiate fresh proceeding after issuance of a proper Show Cause Notice ("SCN") in accordance with law.

Facts:

M/s Vinayak Metal and Chemicals ("**the Petitioner**") is engaged in trading of Iron & Steel, Coal and Salt and was registered dealers under the Value Added Tax ("**VAT**"). The Petitioner furnished its Returns for the period from April, 2017 to June, 2017 and declared an amount of INR 84,16,555.73/- as excess Input Tax Credit ("**ITC**") to be carried forward to the Goods and Services Tax ("**GST**") regime. Subsequently, the Petitioner submitted its **Form GST TRAN-1** for claiming the ITC to be carry forward to GST regime. However, the Petitioner made a mistake and claimed transactional ITC for an amount of INR 69,16,555.73/-, in addition, the Petitioner claimed an amount of INR 15,41,522/- as input towards goods held in stock.

Consequently, the Petitioner requested to revise its **Form GST TRAN-1**, but the same was not allowed and a Summary SCN was issued ("**the Impugned Summary SCN**") in terms of **Form GST DRC-01** read with Rule 142 (1) of the Central Goods and Services Tax Rules, 2017 ("**the CGST Rules**") informing the Petitioner about initiation of proceedings for utilization of excess ITC. However, without providing any information to the Petitioner, an amount of INR 16,36,000/- was blocked from the ECL on May 4, 2018 and a Summary Order under GST DRC-

07 (“**the Impugned Order**”), exercising power under Rule 142 (5) of the CGST Rules was issued without making available the copy of the Impugned Order to the Petitioner.

The Petitioner raised an objection for the same on March 16, 2020 concerning less ITC claimed and blocking of ITC, on which, the Revenue Department (“**the Respondent**”) stated that the ITC was blocked in terms of Rule 86A of the CGST Rules and the alternative remedy of appeal is available under Section 107(1) of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”).

Being aggrieved, this petition has been filed by the Petitioner in relation to non-compliance of the statutory provision relating to service of SCN in terms of **Form GST DRC-01** before blocking /debiting of the ECL of the Petitioner.

Issue:

Whether the blocking of ECL of the Petitioner is violating the principles of natural justice?

Held:

The Hon’ble Jharkhand High Court in ***W.P.(T) No. 3022 of 2020*** held as under:

- Noted that, no SCN was issued to the Petitioner except the Impugned Summary SCN which is not in accordance with the provision of the CGST Act. Further, the Petitioner was not granted personal hearing and therefore, have been denied principle of natural justice.
- Relied on the judgment of the Hon’ble Supreme Court in ***Union of India & Anr. v. FILCO Trade Centre Pvt. Ltd. & Anr. [Special Leave to Appeal (C) No(s). 32709-32710/2018, dated July 22, 2022 & September 02, 2022]***, wherein the Revenue Department was directed to open common portal for two months which was extended till November 30, 2022 to allow the assessee to file revise forms with respect to the Transitional credit.

- Stated that, liberty has been granted to all taxpayers irrespective of the fact whether the taxpayer has filed the writ application before the High Court or its case was decided by the Information Technology Grievance Redressal Committee.
- Quashed and set aside the Impugned Summary SCN, the Impugned Order and all consequential orders.
- Directed that, the Petitioner shall revise its **Form GST TRAN-1** for claiming the short claimed ITC till November 30, 2022.
- Held that, the Petitioner is entitled to revise its **Form GST TRAN-1** for claiming the short claimed ITC or where any excess ITC was claimed by the Petitioner as per the Respondent.
- Observed that, the guidelines has been issued vide ***Circular No.182/14/2022-GST dated November 10, 2022*** for verifying the Transitional Credit.
- Further held that, the Respondent is required to abide by it and proceed in accordance with law after proper scrutiny of the revised **Form GST TRAN-1** filed by the Petitioner.
- Permitted the Respondent to initiate fresh proceeding after issuance of a proper SCN in accordance with law, in case the revised **Form GST TRAN-1** is not filed by the Petitioner.

Relevant Provisions:

Rule 86A of the CGST Rules:

“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.”

Rule 142 of the CGST Rules:

“Notice and order for demand of amounts payable under the Act

(1) The proper officer shall serve, along with the—

(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01;

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02, specifying therein the details of the amount payable.

(1A) The proper officer may], before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of section 73 or sub-section (1) of section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act , whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A), he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC-04.

(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in Part B of FORM GST DRC-01A.

(3) Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within seven days of the notice issued under sub-section (3) of Section 129 but before the issuance of order under the said sub-section (3), he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any notice issued under any section whose summary has been uploaded electronically in FORM GST DRC-01 under sub-rule (1) shall be furnished in FORM GST DRC-06.

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty, as the case may be, payable by the person concerned.

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

(7) Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a

summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in FORM GST DRC-08.”

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