

GST Authority needs to communicate reasons for blocking ITC of the taxpayer

The Hon'ble Madras High Court in the case of *M/s. HEC India LLP v. Commissioner of GST and Central Excise and Anr. [Writ Appeal No. 2341 of 2021 decided on September 16, 2021]* has held that the GST Authority necessarily needs to communicate reasons to the taxpayer if the taxpayer's Input Tax Credit ("ITC") is blocked.

In the present case, the Commissioner of GST and Central Excise had blocked any attempts of deduction from the electronic credit ledger of M/s HEC India LLP ("the Appellant") on unstated reasons by exercising its powers under Rule 86-A of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules"). As a result, without receiving any written reasons from the Commissioner of GST and Central Excise, the Appellant was prevented from receiving and utilizing its ITC. Thus, the Appellant preferred a writ petition before the Hon'ble Madras High Court and prayed for a relief that it may be allowed to deduct a certain sum from its electronic credit ledger.

The Hon'ble Madras High Court observed that Rule 86-A of the CGST Rules confers powers on the Commissioner or an officer authorized by him not below the rank of Assistant Commissioner may, for reasons to be recorded in writing, not allow debit of an amount equivalent to the credit suspected to be obtained fraudulently in electronic credit ledger for discharge of any liability under Section 49 of the Central Goods and Services Tax Act, 2017 or for claim of any refund of any unutilized amount. It was observed that the requirement of recording reasons in writing for exercising the said power and communicating the same to the Appellant was not fulfilled as no order invoking the power under Rule 86-A of the CGST Rules was communicated to the Appellant.

Hence, the Hon'ble Madras High Court held that power under Rule 86-A of the CGST Rules cannot be exercised without recording the reasons for invoking the power in writing and communicating the same to the taxpayer. Hence, if the ITC of a taxpayer is blocked by the GST Authority by invoking power under Rule 86-A of the CGST Rules, the reasons for doing so shall need to be recorded and communicated to the taxpayer.

Relevant Provisions:

Section 49 of the Central Goods and Services Tax Act, 2017-

"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 and 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;

(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;

(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.

(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.

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, —

(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.”

Rule 86-A of the CGST Rules-

“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 unutilized 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.”*

(Author can be reached at info@a2ztaxcorp.com)

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose and for the reader's personal non-commercial use. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon. Further, no portion of our article or newsletter should be used for any purpose(s) unless authorized in writing and we reserve a legal right for any infringement on usage of our article or newsletter without prior permission.