

**Part-61-One Pager Snapshot to the Latest Cases**

**CA Arpit Haldia**

<b>S. N.</b>	<b>Section</b>	<b>Case Subject</b>	<b>Case</b>	<b>Held</b>
1.	<b>Section 129 and section 130</b>	State Tax Officer can be the proper officer to detain vehicle in Inter State Movement	<b>Bright Road Logistics v. State of Haryana [2023] 153 taxmann.com 353 (Punjab &amp; Haryana)</b>	<p>The question before the High Court was whether Asstt. Excise and Taxation Officer (Enf.) Gurugram was a 'Proper Officer' and was authorized to inspect and detain the vehicle which was carrying goods for inter-State transportation from Tamil Nadu to Delhi and was further authorized to pass an order under Section 129 and 130 of GST Act, 2017 read with provisions of IGST Act, 2017.</p> <p>It was held that Asstt. Excise and Taxation Officer of State Tax was competent and authorized to exercise the powers under Section 129 and 130 of the CGST Act, 2017 in view of the enabling provisions of Sections 20 and Section 4 of the IGST Act; as well as the order dated 07.12.2017 passed by the Excise &amp; Taxation Commissioner, Haryana, assigning the functions to the Proper Officer under the Haryana Goods &amp; Services Tax Act, 2017.</p>
2.	<b>Rule 86A</b>	Post-decisional or remedial hearing could be granted to the assessee affected by blocking of his electronic credit ledger	<b>K-9 Enterprises v. State of Karnataka [2023] 153 taxmann.com 351 (Karnataka)</b>	<p>a) <b>ITC is a concession</b>-The right conferred on the assessee is regulated by the provisions of the Act and it is a concession granted under the Statute and unless and until the assessee complies with all the conditions scrupulously, he would not be entitled to avail the ITC.</p> <p>b) <b>Blocking of ITC does not tantamount to recovery but only a lien in favour of revenue</b>-Rule 86A does not contemplate any recovery of tax from an assessee. It creates a lien without actual recovery being made or attempted and thus action taken by competent authority is on a provisional basis.</p> <p>c) <b>Power under Rule 86A has been conferred for a public benefit and requires justification of exercise</b>-The power under rule 86-A is of enabling kind and it is conferred upon the Commissioner for public benefit and, therefore, it is a public duty. It would then mean that justification for exercise of the power must be found by the authority by making a subjective satisfaction based on objective material and such satisfaction must be reflected in the reasons recorded in writing while exercising the power.</p> <p>d) <b>Basic requisites for Exercise of Power</b>-The first requisite which is required to be considered by the competent authority is with regard to the basis of material available before he taking any action for blocking of electronic credit ledger. The second pre-requisite is of recording the reasons in writing for invoking the powers under Rule 86A of the Rules of 2017. The powers can be invoked or exercised by the competent authority only in the event he has reason to believe that the credit of input tax available in electronic credit ledger have been fraudulently availed or the assessee is ineligible for the same. The powers vested with the competent authority are subject to the satisfaction recorded by the said authority on he forming an opinion to the effect that the electronic credit ledger has been fraudulently availed or that the assessee is ineligible to avail the benefits of the same in situations where the Rule provides for the competent authority to invoke the same.</p> <p>e) <b>Rule can be invoked only when balance is available in the Ledger</b>-Rule 86A can be invoked only if the amount is available in the electronic credit ledger and not otherwise. The heading of the provision of law or the marginal note can be always relied upon to clear any doubt or ambiguity in interpretation of the provision to discern the legislative intent.</p> <p>f) <b>Personal hearing to be given post decision of blocking of ITC</b>-Given the nature of power provided under Rule 86A though the statute does not provide for a personal hearing before passing any order under the said Rule, it has to be read into the provisions of the said Rule which is not expressly provided therein, so that a post-decisional or remedial hearing could be granted to the person/assessee affected by blocking of his electronic credit ledger.</p> <p><b>Cases Referred-</b> Basanta Kumar Shaw v. Assistant Commissioner of Revenue, Commercial Taxes and State Tax [2022] 141 taxmann.com 528, R.M.Dairy Products LLP v. State of U.P.[2021] 129 taxmann.com 37, Samay Alloys India (P.) Ltd. v. State of Gujarat [2022] 135 taxmann.com 234/91 GST 338/2022 (61) G.S.T.L. 421 (Guj.) , S.S. Industries v. Union of India AIR Online 2020 Guj. 2077, New Nalbandh Traders v. State of Gujarat [2022] 136 taxmann.com 284, Rajnandini Metal Ltd. v. Union of India [2022] 140 taxmann.com 325, Dee Vee Projects Ltd. v. Government of Maharashtra [2022] 135 taxmann.com 189/91 GST 159 (Bom.), C.B.Gautam VS Union Of India &amp; Others - (1993)1 SCC 78, Commissioner of Police, Bombay Vs. Gordhandas Bhanji : AIR (39) 1952 Supreme Court 16</p>