

Provisional Attachment of Credit Ledger on account of Non-existence of Supplier at their Registered Address

2021 (7) TMI 1057 - Allahabad High Court in M/S. RM Dairy Products Llp Versus State Of Up And 3 Ors.

Facts

Petitioner has availed the credit of the input tax on the Invoices issued by M/s Darsh Dairy and Food Products

Allegation of the Department for Blocking Credit Ledger

M/s Darsh Dairy & Food Products, Agra products was found to be non-existent at the disclosed place of business

Petitioner View on Reasons to Believe

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

Order of the Court-

At present, the 'reason to believe' is based on material with the competent authority indicating non-existence of the selling dealer. It is thus alleged the petitioner was not eligible to avail input tax credit as the seller M/s Darsh Dairy & Food Products, Agra was a non-existent dealer.

Petitioner View that Blocking of Credit Ledger is a Recovery Measure to be adopted after the completion of 3 months from the date of passing of order:

Order of the Court-

The legislature has chosen the words 'not allow debit'. To not allow debit and to appropriate the same are two different things in the context of the Statute. They lead to different consequences

The provision of Rule 86-A is not a recovery provision but only a provision to secure the interest of revenue and not a recovery provision, to be exercised upon the fulfillment of the conditions

Adjustment or appropriation may arise only upon an adjudication order attaining finality or after lapse of three months from the date of it being passed if there is no stay granted in appeal etc. that too as a consequence of the recovery provisions but not under Rule 86-A of the Rules

Petitioner View that Credit Ledger can be Blocked up to the Positive Credit available:

The submission of Shri Mishra that the words 'such credit' refers only to any existing amount of positive credit in the electronic credit ledger or that it must be credit arising from the same seller, cannot be accepted as that intent is clearly non-existing in the Rule.

Order of the Court-

If there is no positive credit standing in the electronic credit ledger on the date of the order, passed under Rule 86-A, that order would be read to create a lien upto limit specified in the order passed as per Rule 86-A of the Rules. As and when the credit entries arise, the lien would attach to those credit entries upto the limit set by the order passed under Rule 86- A of the Rules. The debit entry recorded in the electronic credit ledger would be read accordingly.

Our Comments

1. In case of provisional attachment, difference between the fraudulent dealer and genuine dealer has not been considered. **Hon'ble Gujarat High Court in case of Valerius Industries vs Union of India**
2. Provisional Attachment of Bank Account is similar to Provisional Attachment of Credit Ledger. Underlying principles as laid down by **Hon'ble Supreme Court in M/s Radha Krishan Industries Versus State Of Himachal Pradesh & Ors** should have been considered.
3. There was no apprehension raised that the Petitioner shall be at default if the order is passed against the petitioner.
4. Power should be exercised only to protect interest of revenue and not to ruin business of any taxable person