A.F.R.
Judgment reserved on 30.7.2021
Judgment delivered on 31.8.2021

Case :- WRIT TAX No. - 309 of 2021
Petitioner :- M/S North End Food Marketing Pvt. Ltd.
Respondent :- State Of U P And 4 Others
Counsel for Petitioner :- Nishant Mishra,Tanmay Sadh
Counsel for Respondent :- C.S.C.
Hon'ble Mahesh Chandra Tripathi,J.

1. Heard Shri Navin Sinha, learned Senior Advocate assisted by Shri Nishant Mishra and Shri Rahul Agarwal for the petitioner company and Shri Bipin Kumar Pandey, learned Additional Chief Standing Counsel for the respondents.

2. This writ petition has been filed by M/s North End Food Marketing Pvt. Ltd. against the order dated 26.3.2021 passed by the respondent no.3/Commissioner, Commercial Tax, U.P. Lucknow by which he has accepted the proposal for revision submitted by the Additional Commissioner, Grade-1, Commercial Tax, Moradabad Zone, Moradabad and stayed the effect and operation of the order dated 10.3.2021 passed by the Additional Commissioner, Grade-II (Appeal)-1st, Commercial Tax, Moradabad, wherein, the appeal filed by the assessee/petitioner company was allowed and decision of the respondent no.5/Deputy Commissioner, Sector-1, State Tax, Chandausi, Sambhal (Assessing Officer), communicated to the petitioner vide e-mails dated 23.7.2020 & 06.8.2020 for blocking of credit, was set aside.

3. The petitioner is a company incorporated under the provisions of the erstwhile Companies Act, 1956 having its unit at Shaktinagar, Chandausi, District Sambhal, U.P.. It is a subsidiary company of M/s Sohanlal Commodity Management Pvt. Ltd[1] dealing in the business of procuring commodities on behalf of its customers on Pan India basis, storing such commodities in the warehouses owned and operated by SCMPL and thereafter supplying such commodities to different persons on the instructions of the customers. The SCMPL is primarily engaged in providing warehousing services for which it is registered

1. 'SCMPL'

under the provisions of the Warehouse (Development and Regulation) Act, 2007. On account of multiplicity of operations, the petitioner company maintains its books of account electronically in a centralized system prescribed under Rule 10 of the erstwhile Central Excise Rules, 2002 and Section 35 of the GST Act read with Rules 56 & 57 of the Central Goods and Services Tax Rules, 2017[2].

4. The petitioner is mainly dealing in "Mentha" oil in the State of Uttar Pradesh and is duly registered under the provisions of U.P. Value Added Tax Act, 2008[3]. The petitioner availed the credit of input tax paid on the purchases made from the dealers registered in the State of Uttar Pradesh in accordance with the provisions of UPVAT Act and after deducting the same from the output tax payable, discharged the net tax liability as per provisions contained in UPVAT Act. After enactment of Central Goods and Services Tax Act, 2017[4] and U.P. Goods and Services Tax Act, 2017[5] the petitioner was allotted GSTIN No.09AABCN9927F1Z6 on 23.6.2018.

5. Section 16 in Chapter-V of SGST Act provides for eligibility and condition for taking input tax credit. The expressions "input tax", "input tax credit" and "output tax" have been defined in clauses (62) & (63) of Section 2 of the SGST Act, which read as under:-

> "Sec. 2 (62) "Input Tax" in relation to a registered person, means the central tax, State tax, integrated tax or union territory tax charged on any supply of goods or services or both made to him and includes;-
>
> a) the integrated goods and service tax charged on import of goods;
>
> b) the tax payable under the provision of sub-section (3) & (4) of Section 9;
>
> c) the tax payable under the provision of sub-section (3) & (4) of Section 5 of Integrated Goods and Service Tax Act (13 of 2017); or
>
> (d) the tax payable under the provision of sub-sections (3) & (4) of Section 9 of Central Goods and Services Tax Act, 2017 but does not include tax paid under the composition levy;
>
> Sec. 2(63) "Input Tax Credit" mean the credit of input tax;
>
> Sec.2 (82) "output tax" in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse

2 'CGST Rules'

3. 'UPVAT Act'

4. 'CGST Act'

5. 'UPGST/SGST Act'

charge basis."

6. Section 16 (1) provides that every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him, which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person. Sub-section (2) provides that no registered person shall be entitled to take input tax credit unless he is in possession of a tax invoice, debit note or any other prescribed duty paying documents and he has received the goods or services or both. Section 17 of SGST Act provides for apportionment of credit and blocked credits. Sub-sections (1), (2), (3) & (4) provide for restricted credit, whereas sub-section (5) provides for circumstances in which credit is not admissible. Sub-section (6) confers powers on Government to prescribe the manner in which credits referred to in sub-section (1) and (2) may be attributed. Section 49 provides that every deposit made towards tax, interest, penalty, fee etc. shall be credited to the electronic cash ledger, whereas input tax credit as self-assessed in the return of registered person shall be credited to his electronic credit ledger. Section 49 also provides that the amount available in the electronic cash ledger may be used for making any payment towards output tax in such manner and subject to such conditions and within such time, as may be prescribed.

7. Section 164 confers power on the State Government to make rules for carrying out the provisions of the Act and in exercise of such powers, 'Uttar Pradesh Goods & Services Tax Rules, 2017[6] were notified by the State Government. Chapter-V of the UPGST Rules provides for 'Input Tax Credit'. Rule 36 (1) provides for the documents on the basis of which input tax credit shall be availed, whereas Rule 36 (3) provides that no input tax credit shall be availed in respect of any tax that has been paid in pursuance of any order where demand has been confirmed on account of any fraud, willful misstatement or suppression of facts. Rule 37 provides for reversal of

---

6. 'SGST Rules

input tax credit in case of non-payment of consideration by recipient to supplier. Rule 86 provides that electronic credit ledger shall be maintained in Form G.S.T.P.M.T.-02 for each registered person eligible for input tax credit on the common portal and every claim of input tax credit shall be credited to the said ledger. The SGST Act and SGST Rules contain a complete code regarding eligibility conditions to take credit of input tax, manner in which such credit can be taken and also the manner in which such credit can be utilised for making payment towards output tax.

8. The Mentha oil, in which the petitioner company is trading, is extracted from Mentha herbs, which is grown in different districts of Uttar Pradesh. When the crop is ripened the farmers take the herbs to the distillation plants where Mentha oil is extracted. Then such farmers sell this oil to different registered dealers, who in turn supply the same to the petitioner company after issuing the tax invoice and E-way bill. The Mentha oil is an agricultural produce as defined under the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 and hence, exit of specified agricultural produce from market area requires issuance of gate pass in Form V-A by the Market Committee under Rule 50A of U.P. Krishi Utpadan Mandi Niyamawali, 1965 as well as issuance of bill in Form IXR by the seller to the purchaser. Thus, the supply of Mentha oil is permissible only after issuance of gate pass by the Market Committee in Form V-A and bill in Form-9R by the supplier.

9. The petitioner company purchased Mentha oil from various suppliers on the strength of tax invoice issued by such suppliers. Since the petitioner is using warehousing services provided by SCMPL at different locations, hence e-way bills were also generated for movement of goods from the supplier's place to the warehouses operated by SCMPL. Such supply was also supported with gate pass in Form V-A issued by the Market Committee and bill in Form 9R by the supplier. Upon receipt of Mentha oil at warehouses of SCMPL, three samples are drawn for testing quality/properties of Mentha oil. After receipt of test reports, Mentha oil is warehoused, after making appropriate entry in stock register maintained at warehouses. The Mentha oil are not brought to the branches of petitioner situated

within the State of U.P. The petitioner company maintains books of accounts electronically online and details of goods purchased and sold by the petitioner are also available at the warehouses operated by SCMPL.

10. During the period of 2018-19 the petitioner purchased Mentha oil from different suppliers including M/s Jai Balaji Trading Company. The purchases made from M/s Jai Balaji Trading Company during the period 2018-19 were to the tune of Rs.20188.39 lacs (inclusive of SGST & CGST). The Mentha oil so purchased was later on sold by the petitioner to different purchasers. The petitioner disclosed the input tax credit of Rs.1211.30 lakhs each of CGST & SGST in its returns as self-assessed and the same was credited to the electronic credit ledger of the petitioner in accordance with provisions of Section 49 of SGST/CGST Act. M/s Jai Balaji Trading Company made a cash payment of Rs.5,83,15,039/- to the Government exchequer from September, 2017 to March, 2019. The petitioner also made a cash payment of Rs.11,86,94,500/- apart from the adjustment of input tax credit against his output tax liability.

11. On 13.09.2019 the warehouses of SCMPL situated at Chandausi and Barabanki were searched by the officers of State tax, wherein 133 drums of Mentha oil kept at Chandausi warehouses were seized. On the same day, 1397 drums of Mentha oil at Barabanki Warehouse of SCMPL belonging to six firms were also detained and prohibited for disposal after issuance of an order in Form GST INS-03. 161 drums of Mentha oil belonging to the petitioner were seized by the Deputy Commissioner (Special Investigation Branch), Unit-B, Ayodhya on 28.2.2020. It is pertinent to mention here that 1236 drums belonging to five firms had been released prior to the said seizure without realizing any tax or penalty. Various electronic devices alongwith 15 loose papers and various other documents were seized from the warehouse at Barabanki on 13.9.2019 and nothing adverse has been communicated to the petitioner from these seized materials. Hence, these documents should have been returned to the petitioner within 30 days as per provision of sub-section (3) of Section 67 of the SGST Act. Except a few electronic devices, which were returned in

July 2020, no other documents have been returned to the petitioner despite repeated requests. Out of the seized documents, a regular book in the Form of 9R (Exhibit No.2) was seized which reflected all the regular and daily inward supplies of the petitioner. Stock register of warehouse (Exhibit No.3) was seized, wherein details of stock was recorded. After investigation, no discrepancy was found by the concerned officer. All the entries were verified from the arrival stock register of Mandi Samiti and nothing adverse has been communicated to the petitioner. The department was informed on 05.9.2019 that 133 drums of Mentha oil of the petitioner were lying at the Chandausi warehouse and as such, the said stock was not suppressed and the same was seized on 13.9.2019 treating it as out of books or undisclosed.

12. The warehouse of SCMPL at Barabanki informed to the Commercial Tax Department at Ayodhya on 05.9.2019 that 161 drums of the petitioner were lying at the warehouse and despite this disclosure the same stock was seized on 28.2.2020. The petitioner through its authorized representative appeared on every occasion, whenever he was summoned either at Moradabad or at Ayodhya. The search was conducted on 13.9.2019 at all the places and the petitioner submitted its detailed explanation on 21.9.2019. On 04.12.2019 the entire details relating to outward supplies of Mentha oil made by the petitioner including the ledger account, e-way bills, 9R Forms, gate passes, invoices, bank transactions, were made available to the officers of State tax and after submission of these details, out of 1397 drums of Mentha oil detained from the Barabanki warehouse, 1236 drums relating to other parties, were released by the officers of State tax. The summons dated 09.12.2019 under Section 70 of the SGST Act were issued to the officers of the petitioner company requiring their attendance for the purposes of furnishing various documents mentioned in the summon. Adequate responses were furnished by the petitioner on 27.12.2019 and 05.2.2020. Even after furnishing the required details, neither the officers of the State tax were disclosing the 'reason to believe' nor released the seized goods.

13. Aggrieved with the said proceeding, SCMPL alongwith the

petitioner earlier approached this Court by preferring Writ Tax No.304 of 2020 (**M/s Sohan Lal Commodity Management Pvt. Ltd. and another vs. State of UP and ors**) for quashing the proceedings pursuant to the search and seizure operation carried out at the warehouses of M/s Sohan Lal Commodity Management Pvt. Ltd. at Chandausi on 13.09.2019 and on 13.9.2020 and 28.02.2020 at Barabanki. The writ jurisdiction was invoked on the ground that jurisdiction under Section 67 of SGST can be exercised only on the basis of 'reason to believe'. It had been pressed that neither there was evasion of tax or stock nor it was reflected in the books of accounts. Even though repeated requests were made to the officers of the State tax but neither 'reasons to believe' were disclosed nor released the seized good items. The aforesaid writ petition was disposed of by a Division Bench of this Court by an order dated 02.6.2020. Relevant portion of the order is extracted hereinafter:-

> “During course of arguments, learned counsel for the petitioners confined his prayer only with respect to prayer no. (b) in the writ petition.
>
> At the very outset, Shri Manish Goyal, learned Additional Advocate General appearing on behalf of the State has placed before us the judgment and order dated 22nd November, 2019 passed by the Hon'ble Apex Court in the Case of The State of Uttar Pradesh & Others Versus M/S Kay Pan Fragrance Pvt. Ltd in Civil Appeal No. 8941 of 2019 wherein the Apex Court has interalia observed as follows:-
>
> > "There is no reason why any other indulgence need be shown to the assessees, who happen to be the owners of the seized goods. They must take recourse to the mechanism already provided for in the Act and the Rules for release, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum (even upto the total value of goods involved), respectively, as may be prescribed or on payment of applicable taxes, interest and penalty payable, as the case may be, as predicated in Section 67 (6) of the Act. In the interim orders passed by the High Court which are subject matter of assail before this Court, the High Court has erroneously extricated the assessees concerned from paying the applicable tax amount in cash, which is contrary to the said provision.
> >
> > In our opinion, therefore, the orders passed by the High Court which are contrary to the stated provisions shall not be given effect to by the authorities. Instead, the authorities shall process the claims of the concerned assessee afresh as per the express stipulations in Section 67 of the Act read with the relevant rules in that regard. In terms of this order, the competent authority shall call upon every assessee to complete the formality strictly as per the requirements of the stated provisions disregarding the order passed by the High Court in his case, if the same deviates from the statutory compliances. That be done within four weeks without any exception.

> We reiterate that any order passed by the High Court which is contrary to the stated provisions need not be given effect to in respect of all the cases referred in the affidavit by the State Government before this Court and fresh cases which may have been filed or likely to be filed before the High Court in connection with the subject matter of these appeals, by all concerned and are deemed to have been set aside/modified in terms of this order.
>
> In view of this order, all the Writ Petitions pending before the High Court, list whereof has been furnished in the affidavit are deemed to have been disposed of accordingly. We have passed this common order to cover all cases of seizure during the relevant period, to obviate inconsistency in application of Law and also to do away with multiple appeals required to be filed by the State/ assessee to assail the unstatable orders/directions passed by the High Court in subject writ petition(s) referred to in the affidavit filed by the State before this Court.
>
> Accordingly, the appeals are disposed of in the afore stated terms. All pending applications are also disposed of."

Shri Manish Goyal, learned Addl. Advocate General has submitted that the Central Goods and Services Tax Act, 2017 provides a complete procedure for release of such goods, as contained in Section 67 of the Act read with Rule 141 of the relevant Rules. It has been further submitted by him that the petitioners should have approached the appropriate authority under Uttar Pradesh Goods and Services Tax Act, 2017 (in short "the Act") to ventilate their grievance.

Per contra, learned counsel for the petitioners has submitted that "Mentha Oil" has been seized in the matter which is perishable in nature but the concerned authority has not yet exercised its power under Section 67 of the Act (in short "the Act, 2017").

While rebutting the contention made by the learned counsel for the petitioners, learned Standing Counsel has stated that "Mentha Oil" is not perishable in nature and it has not been included in the schedule contained in the Notification dated 13th June, 2018 issued by Government of India.

Considering the facts and circumstances of the case, without expressing any opinion on the merits of the case, this writ petition is finally disposed of with a direction to the petitioners to make an appropriate application/representation before the concerned authority under the relevant provision of the Act, 2017 ventilating their grievances along with a certified copy of this order enclosing therewith a copy of the writ petition and its Annexures and, if any such application/representation is filed, the concerned authority shall make all endeavour to consider and decide the same by a reasoned and speaking order, after affording opportunity of personal hearing to the petitioners, in accordance with law expeditiously preferably within two weeks from the date of receipt of the said application.”

14. The petitioner company was contesting with the respondents in respect of the drums seized from the warehouses of SCMPL by email dated 23.7.2020 sent by Goods and Services Tax network. For the first time, it was transpired to the petitioner through e-mail communication dated 23.7.2020 that the input tax credit available in the electronic

credit ledger of the petitioner has been blocked and upon further enquiry, copy of the decision taken by the respondent no.5 was provided to the petitioner on 06.8.2020 informing that input tax credit of Rs.47,40,767/- under the CGST Act and Rs.47,40,767/- under the SGST Act (cumulative Rs.95,11,774/-) was blocked under Rule 86-A of the SGST Rules.

15. Aggrieved with the said decision/order dated 06.8.2020 the petitioner preferred statutory appeal before the Additional Commissioner, Grade-2 (Appeal)-I, State Tax, Moradabad/Appellate Authority and the same was registered as Appeal No.95/20 2019-20. Finally, the appeal was allowed by the Appellate Authority on 10.3.2021 with the following reasoning/findings:-

> "(i) For invoking Rule 86A, there must exist reasons to believe that credit available in the electronic credit ledger was fraudulently availed or is ineligible;
> (ii) The order dated 23.7.2020 does not disclose any reasons to believe, on the basis of which respondent no.5 has formed opinion that input tax credit was fraudulently availed or was ineligible;
> (iii) From the documents submitted by petitioner relating to inward and outward supply, it is factually established that the same contains tax invoice no., date, description of goods, quantity, value, charged SGST & CGST, e-way bill no., no. of 6R & 9R, gate pass no. and vehicle no.. Before treating petitioner as a bogus entity, it was required on the part of respondent no.5 to verify the correctness of such details and reasons to believe that credit was fraudulently availed or was ineligible, could exist only if such details were found to be incorrect;
> (iv) However, the decision dated 6.8.2020 does not disclose that the details furnished by petitioner were ever verified. The same was also pointed out to respondent no.5, but no explanation regarding the same was furnished.
> (v) On the basis of material on record, it is clear that there was no reason to believe available with respondent no.5 that M/s Jai Balaji Trading Company has not received consideration in respect of outward supply or that the input tax credit availed by petitioner on inward supply was ineligible. The petitioner had disclosed the details of payment worth Rs.226.98 crores made against the outward supplies by Jai Balaji Trading Co. worth Rs.225.89 Crores (including the amount of S.G.S.T. and C.G.S.T after the price settlement). This factual aspect was not rebutted by the respondents.
> (vi) On the basis of material available on record, it cannot be said that the inward supply of the petitioner was on the basis of fake invoices;
> (vii) Unless and until the details submitted by petitioner are examined and verified after giving opportunity of cross examination, the same cannot be rejected;
> (viii) Before blocking input tax credit, concerned authorities have not conducted any enquiry and the decision dated 6.8.2020 has been passed by respondent no.5 in a routine manner only on the basis of letter issued by Deputy Commissioner (SIB), Ayodhya, without verifying the same himself;
> (ix) Principle of natural justice also requires that a speaking and reasoned order is passed, but respondent no.5 has passed a non-speaking and non-reasoned order;
> (x) There is no requirement under the SGST Act that purchased goods

> must necessarily be first brought to the business premises and thereafter transported to the warehouse. Such practice is time saving, commercially expedient as warehouse has sophisticated infrastructure to store mentha oil, saves money and quality of mentha oil.
> (xi) Adverse inference cannot be drawn if the business premises is found closed during inspection and the registered person cannot be treated as bogus on the said ground."

16. The Appellate Authority, on the basis of aforesaid reasoning/findings, decided the appeal with the findings that before blocking the credit, there was no 'reason to believe' with respondent no.5 that the credit available in the ledger was fraudulently availed or was ineligible. The appeal was allowed and the directions were issued for unblocking of credit of Rs.47,71,007/- of SGST & CGST. However, the order was rectified under Section 161 on the same day i.e. 10.3.2021, wherein the amount of credit was corrected. Although the first appellate order dated 10.3.2021 is an appealable order and the appeal lies against the same before the Appellate Tribunal under Section 112 of the SGST Act but for the reason best known to the respondents, they have not preferred any appeal against the same. Inspite of repeated requests made by the petitioner-company the respondent no.5 had not complied with the directions of the Appellate Authority. Meanwhile, the respondent no.4/Additional Commissioner, Grade-I, Commercial Tax, Moradabad vide letter dated 16.3.2021 informed to the respondent no.3/Commissioner, Commercial Tax, U.P. Lucknow that the order dated 10.3.2021 passed by the Appellate Authority is legally and factually erroneous and as such, the same is required to be revised in the interest of the revenue. The respondent no.4 also requested the respondent no.3 to stay the effect and operation of the order dated 10.3.2021.

17. In this backdrop, Shri Navin Sinha, learned Senior Advocate appearing for the petitioner submitted that the respondent no.3, in most arbitrary manner and without application of mind, has passed the impugned order dated 26.3.2021 in complete violation of principles of natural justice. More so, the jurisdiction under Section 108 of the SGST Act can be exercised by the revisional authority on his own motion and upon information received by him or on request of Commissioner of Central Tax, if he considers that any decision or

order passed by any officer subordinate to him is erroneous insofar as it is prejudicial to the interest of revenue and illegal or improper or has not taken into account any material facts, he may stay the operation of such decision or order and after giving the person concerned an opportunity of being heard, pass such order, as he thinks just and proper including enhancing or modifying or annulling the decision or order. He submitted that sub-section (2) of Section 108 of SGST Act prohibits exercise of powers under sub-section (1) with an exception contained in the proviso. Sub-section (2) prohibits exercise of revisional powers, if (a) the order has been subjected to an appeal under Section 107 or Section 112 or Section 117 or Section 118; or (b) the period specified under sub-section (2) of Section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or (c) the order has already been taken for revision under this Section at an earlier stage; or (d) the order has been passed in exercise of the powers under sub-section (1). The proviso carves out an exception and provides that the revisional authority may pass an order on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of period of one year from the date of order in such appeal or before the expiry of period of three years, whichever is later.

18. Shri Sinha would argue that once the word 'order' used in clause (a) refers to 'adjudication order' then such order can be passed by 'Adjudicating Authority'. Thus, the order passed in appeal by the Appellate Authority is not an 'Adjudication Order' and consequently, the same cannot be revised, in view of specific bar under clause (a) of sub-section (2) of Section 108 of SGST Act. It is submitted that under sub-sections (3) and (4) of Section 112 of SGST Act, the Commissioner may call for and examine the record of any appellate authority and may direct any officer subordinate to him to apply to the Appellate Tribunal for determination of such points as may be specified by the Commissioner. In terms of sub-section (4) if the authorised officer makes such application, then such application shall be treated as an appeal against the order passed by the Appellate Authority. Once there is a remedy of appeal provided under the statute

against the order under Section 107 then Section 108 cannot be interpreted in a manner so as to confer power of revision against the same order. In this regard, he has placed reliance on the judgment of Supreme Court in **Anwar Hasan Khan vs. Mohd. Shafi**[7]**,** wherein, it was held that statute should be read as a whole and one provision should be read with another provision to make the provision consistent with the object sought to be achieved. The revisional powers can be exercised in respect of orders passed by authorities lower to appellate authority, whereas the order passed in appeal under Section 107 of SGST Act can be challenged before the Appellate Tribunal under Section 112 of SGST Act.

19. Shri Sinha pointed out that the revisional authority has exercised powers under Section 108 (1) and sought to revise the order dated 10.3.2021 passed by the Appellate Authority without calling for and examining the record of Appeal No.GST-95/2020 Year 2019-20. The respondent no.3 had not called for and examined the record of the aforesaid appeal as well as order dated 10.3.2021. The jurisdiction under Section 108 can be exercised only if the twin conditions specified in sub-section (1) of Section 108 are satisfied. The words 'erroneous insofar as it is prejudicial to revenue' have been used in other statutes like Income Tax Act, 1961 and the same has been considered by the Supreme Court in **Malabar Industrial Co. Ltd. vs. CIT**[8], wherein it has been held that twin conditions are required to be satisfied i.e. (i) the order sought to be revised must be erroneous; & (ii) it is prejudicial to the interest of revenue. It is submitted that the impugned order does not record any finding to the effect that the order dated 10.3.2021 passed by the Appellate Authority is erroneous insofar as it is prejudicial to the interest of revenue. On the contrary, in the impugned order the respondent no.3 has only observed that prima facie, there is reason to believe that the order dated 10.3.2021 is improper and prejudiced to the interest of revenue. In absence of any finding to the effect, that the order dated 10.3.2021 is erroneous, the exercise of powers under Section 108 by the respondent no.3 is

---

7. (2001) 8 SCC 540
8. (2000) 2 SCC 718

wholly without jurisdiction. The defect in the said order while invoking revisional powers under Section 108 cannot be cured at a later stage, inasmuch as Section 108 can be invoked only if the circumstances specified in Section 108 exist and once it is invoked, the respondent no.3 is free to pass such order as he thinks just and proper and thus the impugned order suffers from inherent lack of jurisdiction.

20. Shri Sinha further pointed out that every loss of the revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of revenue. An order can be erroneous only when it is based on incorrect assumption of facts and incorrect assumption of law or without applying principles of natural justice or without applying mind. In the present case the Appellate Authority has concluded that there were no reasons to believe with respondent no.5 that credit was fraudulently availed or ineligible. This conclusion is based on findings recorded in the order dated 10.3.2021 to the effect that the reasons to believe must exist for exercise of power under Rule 86-A. Moreover, the order dated 23.7.2020 does not disclose any reasons to believe; before examining documents furnished by the petitioner company, credit was blocked in a routine manner without application of independent mind and statement of third person cannot be relied upon without granting opportunity of cross-examination. The order dated 10.3.2021 passed by the Appellate Authority is neither based on incorrect assumption of facts or law, inasmuch as the entire material facts and relevant law in relation to exercise of power under rule 86A by the respondent no.5 have been considered by the Appellate Authority and adequate opportunities were given to respondent no.5 alongwith senior officers including respondent no.4 to justify his action under Rule 86-A. The observation, that the order dated 10.3.2021 is prejudiced to revenue, is also irrelevant, inasmuch as the requirement of Statute is 'prejudicial to the interest of revenue' and not 'prejudiced to the interest of revenue'. He has placed reliance on the judgments in **Malabar**

Industrial Co. Ltd. vs. CIT[9] and **CIT v. Max India Ltd.**[10], in which it was held by the Apex Court that if the Appellate Authority has taken a view to which the respondent no.3 does not agree, the same does not make the order dated 10.3.2021 prejudicial to the interest of revenue unless the order dated 10.3.2021 is, otherwise, sustainable in law.

21. Shri Sinha would argue that in the present case, there is no finding as to show that the order dated 10.3.2021 is unsustainable in law and therefore, the observation of respondent no.3 regarding 'prejudiced to the interest of revenue' is wholly misplaced. The impugned order, being a quasi-judicial order, affects the rights of the petitioner, and it could not be passed on the prima facie opinion. After conducting due enquiry once the Appellate Authority has passed a detailed and reasoned order then the respondent no.3 cannot assume jurisdiction to revise such order simply on the ground that the revenue is not happy with the order and under the garb of revision, the respondent no.3 cannot be allowed to conduct a fishing and roving enquiry in the matter. In this regard, he has placed reliance on the judgments in **Paul Mathew & Sons v. CIT**[11]**, CIT v. Gabriel India Ltd**[12]; **CIT v. Arvind Jewellers**[13]; **Sun Beam Auto Limited**[14], **CIT v. Ratlam Coal Ash Co.**[15], **CIT v. Ganpat Ram Bishnoi 152 Taxman**[16], **CIT v. Mehrotra Brothers**[17] and **CIT v. Associated Food Products (P) Ltd.**[18].

22. He further submitted that the respondent no.3 has neither served any notice nor granted opportunity of hearing to the petitioner before passing the order impugned. Rule 86A could not have been invoked by the respondents during the investigation or inquiry. Rule 86A has prescribed a mandatory procedure to be followed for the purpose of invoking the same. The Rule provides for "reasons to be recorded in

---

9. (2000) 2 SCC 718
10. (2007) 15 SCC 401
11. 263 ITR 101 (Ker.)
12. 203 ITR (Bom.)
13. 259 ITR 502 (Guj.)
14. (2009) TOIL-552-HC-Del-IT
15. 171 ITR 141 (MP)
16. (2008) 296 ITR 0292
17. 270 ITR 157 (MP)
18 . 280 ITR 377 (MP)

writing" for blocking or not allowing the utilization of the ITC. It is argued that the procedure, as prescribed under Rule 86A of the rules, requires two conditions to be satisfied; namely, recording of the reasons in writing by the officer ordering blocking of the ITC and secondly, communication of such reasons to the affected person. It is argued that the bare minimal requirement of the principles of natural justice is recording of reasons and communicating such reasons to the affected party. The impugned action of the respondent no.3 clearly entails civil consequences inasmuch as input tax credit of the petitioner has been blocked. He has also placed reliance on the judgment in **Sahara India (Firm) (1) v. CIT**[19]. He has also placed reliance on the RTI reply dated 28.7.2021 issued by the Deputy Commissioner (Administration) and Public Information Officer, Commercial Tax, Moradabad, wherein, it has been informed that the records of the Appellate Authority were neither called for by the office of respondent no.3 nor the same were ever dispatched by the office of the Appellate Authority to the office of the respondent no.3.

23. In such circumstances, referred to above, Shri Sinha prays that there being merit in the writ petition, the same be allowed and the reliefs prayed for in the writ petition may be granted.

24. Per contra, Shri B.K. Pandey, learned Additional Chief Standing Counsel appearing for the respondents has vehemently opposed the writ petition. Shri Pandey submitted that on the basis of Red Flag Data Analysis, Local Information and Reiki of this, it was found that in the business done by the petitioner company the actual value of the goods being displayed 'exchange' is not taking place. There was strong reason to believe that actual supply of goods by the merchant by creating a network can be obtained in large quantities without actual supply of goods. The search of the petitioner company was made on 13.9.2019, wherein, it was found that the company was not found doing business anywhere nor trading books of account were found at the site. From the initial analysis itself, it came to light that certain other firms are selling in huge quantities to the petitioner company. Six firms were also investigated on 22.10.2019 and out of

---

19. (2008) 14 SCC 151

these firms, M/s Jai Balaji Trading Company, Barabanki was not found in existence at its declared business place, whereas, supply of Rs.248.85 crores has been made by the said firm to the petitioner firm. Upon making further investigation it was found that the owner of the said firm is residing in Delhi. On analysis of the information available online, it was found that the rules of SEBI and MCX have been violated and fraud has been done in the guise of online trading by the firm in question.

25. Shri Pandey argued that ITC has been used by showing the purchase of about Rs.250 crores from non-existent firm M/s Jai Balaji Trading Company, whereas, it is clear from the money trail of the bank statement that only Rs.5 crore has been paid against it. In this way, ITC has been obtained through bogus invoices. On analysis of bank account it was also found that the petitioner company paid a fixed amount of Rs.22,500/- per month to the proprietor of M/s Jai Balaji Trading Company, Barabanki. From the money trail of the petitioner's bank statement it was revealed that huge money has been transacted with some suspicious names/firms but on perusal of returns, no purchase/sale was declared from these dealers and most of these firms have been paid a fixed amount every month. The fixed monthly payment to the aforesaid persons makes it clear that these persons are employees of the firm and are on the payrolls, in whose names the trading is done indirectly through MCX online. Moreover, it was also found that Mentha oil was bought and sold by these employees and some other proxy firms indirectly through funding on MCX. The billing to a non-existent firm opened in the name of any of its own employees/persons generated a huge amount of ITC by showing purchases from the same firm in its own name without making actual payment and receiving fake/bogus invoices.

26. It has been submitted that as per SEBI guidelines, only 40 metric tonnes of Mentha were allowed to be bought and sold to any individual in a month and 400 tonnes to a member of MCX. Due to this compulsion the stock positioning was done by the petitioner company by raising a group of persons on the platform of MCX at different time intervals and maximum stock of the future market,

which led to a huge jump in the rates of Mentha oil. After initiation of the investigation against the trader in question, the rate of Mentha oil has not reached more than Rs.1300 per kg. The physical delivery of the purchase and sale of online platforms by C Group firms has been shown to Mrs. Abhishek Agarwal, Neetu Gupta and Yash Gupta. In the GST tax regime, these firms are neither registered to act as agents nor are they registered to deal with Mentha oil. On the aforesaid basis, out of the amount available in the credit ledger of the petitioner company, SGST amounting to Rs.4740767.00 and CGST amounting to Rs.4771007.00 i.e. total ITC of Rs.9511774.00 was blocked. As per arrangements made in the Circular dated 03.7.2020, the information regarding blocking of credit was duly sent to the petitioner company by e-mail, wherein the reasons for blocking the credit were mentioned. The said order was assailed by the petitioner company before the First Appellate Officer by preferring Appeal No.GST-95/20/Year 2019-Appeal and the same was allowed by the First Appellate Officer. Against the aforesaid order, the Additional Commissioner Grade-1, Moradabad vide his letter dated 16.3.2021 moved an application for restoration. In compliance thereof, the Commissioner, Commercial Tax vide its order dated 26.3.2021 stayed the effect and operation of the order having found factual wrong and prejudicial to the interest of revenue.

27. Shri Pandey further argued that Section 49 (4) of CGST Act empowers the State Government to determine the conditions for the use of funds available in the credit ledger for payment of any output tax. Section 49 (4) provides that 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. Section 16 of the Act determines the eligibility and conditions for claiming input credit and empowers the Government to impose conditions and restrictions through rules. Section 16 (2) of the Act prescribes the entitlement of input credit. It is clear from Section 16 (2) (b) of the Act that there is no entitlement of input credit without receipt of goods or services. In view of the

increasing cases of loss to the exchequer through bogus ITC claims on the basis of bogus forms, it was recommended by the GST Council to bring Rule 86A of GST Rules. There is no provision in Rule 86-A to provide an opportunity of being heard before blocking the credit. The restrictions prescribed by Rule-86A are for a limited period and are not in any way contrary to Section 73/74 or any other provisions of the Act. In fact, the ban was imposed for a limited period under Rule 86A. With regard to credit, proceedings are done naturally in due course and there is a legal arrangement to provide proper opportunity of being heard to the registered person concerned at the time of proceeding under Section 73/74. In the investigation, it was found that only paper invoice has been received by the petitioner without receiving the goods. Rule 86A (1) empowers the Commissioner, Commercial Tax, U.P. to authorize the officer subordinate to him to take action under Rule 86A. The Commissioner, Commercial Tax, Uttar Pradesh as the revisional authority vide Circular dated 24.12.2019 has the right to review the decision or order passed under the Act on the grounds mentioned in Section 108 (1). In support of his submission, he has placed reliance on the judgment of Supreme Court in **Osram Surya Pvt. Ltd vs. Commissioner of Central Excise, Indore**[20], wherein it was held that a rule fixing time limit for exercise of a right does not take away any vested right. He has also placed reliance on the judgment in **ALD Automative (P) Ltd. vs. CTO**[21]; in which it was held that input credit is in the nature of benefit/concession extended to the dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the Statute. The same view has been reiterated by the Supreme Court in **Jayam & Co. v. Commr.**[22].

28. Shri Pandey argued that the newly inserted Rule 86A (w.e.f. 26.12.2019) confers power upon the authority concerned to block the ITC, if it is prima facie found that the transactions are fraudulent. He submitted that over a period of time the Government has unearthed many cases of fake input tax credit due to issuance of fake invoices,

20. (2002) 9 SCC 20
21. (2019) 13 SCC 225
22. (2016) 15 SCC 125

issuance of invoices without supply and other fraudulent activities which has led to decline in the revenue’s exchequer. According to Shri Pandey, to meet with such situations, the Central Government introduced the concept of blocking of input tax credit by way of Rule 86A of the CGST Rules, 2017. In other words, according to Shri Pandey, the object behind the introduction of Rule 86A of the Rules is to curb such fraudulent activities. The supplier of the petitioner company has neither done business from any of his declared place of business nor books of account have been kept at any declared place of business. Therefore, there is sufficient ground to believe that no goods have actually been received by the petitioner company from its supplier M/s Jai Balaji Trading Company Barabanki and only invoices have been received. As per provisions contained in Section 16 (2) (b) the petitioner is not eligible to claim input credit on the basis of the invoices received by the petitioner company. The action in respect of bogus invoices received before implementation of Rule 86A is completely in accordance with the law. The notice has been issued to the petitioner company on 07.5.2021 to appear in the office of Commissioner, Commercial Tax, U.P. on 02.6.2021 for hearing. The order passed by the Appellate Authority under Section 108 of UPGST Act is in consonance with the order of the revisional authority passed by the Appellate Tribunal under Section 113 and the order passed by the High court under Section 117 as well as the order of Hon'ble Apex Court under Section 118. The stay order has been passed by the revisional authority under Section 108 (1) of UPGST.

29. In such circumstances, referred to above, Shri Pandey prays that the present writ petition does not merit any consideration and the same be dismissed.

30. Having heard the learned counsel appearing for the parties and having gone through the materials available on record, the question that falls for consideration is whether pending inquiry or investigation into the allegations of fraudulent transactions with respect to fake/bogus invoices for the purpose of availing the ITC, the respondents could have blocked/debited the input tax credit in the electronic credit ledger of the petitioner company by virtue of the

power under Rule 86A of the SGST Rules, which came into force vide Notification dated 05.2.2020 and further the revisional authority has rightly invoked/exercised power under Section 108 and sought to revise order passed by the Appellate Authority without adhering the procedure and especially without calling for and examining the record of the Appeal No.GST-95/2020 Year 2019.

31. Before adverting to the rival submissions made on either side, the Court may first look into the provisions of Rule 86A of the Rules. Rule 86A reads thus;

> "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 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.".

32. Having referred to Rule 86A above, the Court may now look into Sections 16 and 108 (1) and (2) of the CGST Act. The same read thus;

> "Section 16 - **Eligibility and conditions for taking input tax credit**

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,--

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.--For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.;

(c) subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under

the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub- section (1) of said section for the month of March, 2019.

Section 108 - **Powers of Revisional Authority** -

(1) Subject to the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the Commissioner of central tax, call for and examine the record of any proceedings, and if he considers that any decision or order passed under this Act or under the central Goods and Services Tax Act, 2017 by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

(2) The Revisional Authority shall not exercise any power under sub-section (1), if (a) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or (b) the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or (c) the order has already been taken for revision under this section at an earlier stage; or (d) the order has been passed in exercise of the powers under sub-section (1):

Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later."

33. Rule 86A undoubtedly could be said to have conferred drastic powers upon the proper officers if they have reason to believe that the activities or invoices are suspicious. The Rule 86A is based on "reason to believe". "Reason to believe" must have a rational connection with or relevant bearing on the formation of the belief. It is a subjective term and can be interpreted differently by different individuals. The Constitutional validity of Rule 86A of the Rules is not under challenge in the present case and the Court does not intend to test its validity in the absence of any specific challenge to the same. In such circumstances, the Court would confine its adjudication in the present litigation only to the question, whether the respondents could be said to be justified in invoking Rule 86A of the Rules for the

purpose of blocking the input tax credit of the petitioner company pending the inquiry as regards the fraudulent transactions.

34. The Rule 86A is in respect of the power and procedure for blocking the input tax credit (ITC) in the electronic credit ledger of a registered person. A bare reading of Section 86A indicates that 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, 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. The invocation of Rule 86A of the Rules for the purpose of blocking the input tax credit may be justified, if the concerned authority or any other authority, empowered in law, is of the prima facie opinion based on some cogent materials that the ITC is sought to be availed based on fraudulent transactions like fake/bogus invoices etc. However, the subjective satisfaction should be based on some credible materials or information and also should be supported by supervening factor. It is not any and every material, howsoever vague and indefinite or distant remote or far-fetching, which would warrant the formation of the belief. The power conferred upon the authority under Rule 86A of the Rules for blocking the ITC could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on subjective weighty grounds and reasons. The power under Rule 86A of the Rules should neither be used as a tool to harass the assessee nor should it be used in a manner, which may have an irreversible detrimental effect on the business of the assessee. The aspect of availing the credit and utilization of credit are two different stages. The utilization of credit is a vested right. No vested right accrues before taking credit. There needs to be some guidelines or procedure for the purpose of invoking Rule 86A of the Rules. In the absence of the same, Rule 86A could be misused and may have an irreversible and detrimental effect on the business of the person concerned.

35. The jurisdiction under Section 108 of the SGST Act can be exercised by the revisional authority on his own motion and upon information received by him or on request of Commissioner of Central Tax, if he considers that any decision or order passed by any officer subordinate to him is erroneous insofar as it is prejudicial to the interest of revenue and illegal or improper or has not taken into account any material facts, he may stay the operation of such decision or order and after giving the person concerned an opportunity of being heard, pass such order, as he thinks just and proper including enhancing or modifying or annulling the decision or order. In the present matter, admittedly the respondent no.3 has neither served any notice nor granted opportunity of hearing to the petitioner before passing the impugned order.

36. The pre-conditions to the exercise of this powers were two folds, namely, error in the order passed by an officer subordinate to the revisional authority and prejudicial to the interest of revenue. Once these two conditions stood fulfilled, the revisional authority was authorized to give an opportunity to the assessee of being heard and after making such inquiry as he thought fit he could pass appropriate orders as the circumstances of the case would justify. This power was essentially a supervisory power. However, in order to ascertain whether the officer subordinate to him had passed an erroneous order, which was also prejudicial to revenue, the Commissioner was required to call for and examine the record of such proceedings. Therefore, the revisional authority had to call for the records, he had to examine such records, he had to be satisfied regarding fulfilment of the above two conditions and thereafter give opportunity to the assessee of being heard and on making appropriate inquiry the revisional authority is empowered to pass appropriate orders.

37. In **Eicher Motors Ltd. vs. Union of India**[23], the validity and application of the scheme as modified by introduction to Rule 57F (read as 57F (4-A) of the Central Excise Rules, 1944 under which the credit which was lying unutilised on 16th March, 1995 with the

---

23. 1999 (106) ELT 3 (SC)

manufacturers, stood lapsed in the manner set out therein, was questioned. Paras 4 and 5 of the judgment are quoted hereinafter:-

> "4.....As pointed out by us that when on the strength of the rules available certain acts have been done by the parties concerned, incidents following thereto must take place in accordance with the scheme under which the duty had been paid on the manufactured products and if such a situation is sought to be altered, necessarily it follows that right, which had accrued to a party such as availability of a scheme, is affected and, in particular, it loses sight of the fact that provision for facility of credit is as good as tax paid till tax is adjusted on future goods on the basis of the several commitments which would have been made by the assessees concerned. Therefore, the scheme sought to be introduced cannot be made applicable to the goods which had already come into existence in respect of which the earlier scheme was applied under which the assessees had availed of the credit facility for payment of taxes. It is on the earlier scheme necessarily the taxes have to be adjusted and payment made complete. Any manner or mode of application of the said rule would result in affecting the rights of the assessees.
>
> 5. We may look at the matter from another angle. If on the inputs the assessee had already paid the taxes on the basis that when the goods are utilised in the manufacture of further products as inputs thereto then the tax on these goods gets adjusted which are finished subsequently. Thus, a right accrued to the assessee on the date when they paid the tax on the raw materials or the inputs and that right would continue until the facility available thereto gets worked out or until those goods existed. Therefore, it becomes clear that Section 37 of the Act does not enable the authorities concerned to make a rule which is impugned herein and, therefore, we may have no hesitation to hold that the rule cannot be applied to the goods manufactured prior to 16.3.1995 on which duty had been paid and credit facility thereto has been availed of for the purpose of manufacture of further goods."

38. As significant reliance has been placed on Eicher Motors Ltd. (supra), the Court may also look into the decision of the Supreme Court in the case of **C.C.E vs. Dai Ichi Karkaria Ltd.**[24]. In the said case, the manufacturers purchased raw material and used the same in the manufacture of an intermediate product and, in turn, used the intermediate product in the manufacture of the final product. The raw material and the intermediate product were liable to excise duty and they were specified goods for the purposes of the Modvat Scheme. The assessable value of the intermediate product for the purposes of excise duty in the instant case was admittedly to be determined on the basis of its cost which necessitated the taking into account of the cost of the raw material. The Revenue contended that the excise duty paid by the seller on the raw material was also to be included in the cost of the excisable goods (the intermediate product) in this case. On the

---

24. 1999 (112) ELT 353 (SC)

other hand, the manufacturers contended otherwise. The Supreme Court rejected the contentions of the Revenue and held in Paras-18 and 19 as under;

> "18. It is clear from these rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgment thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provisions in the rules which provides for a reversal of the credit by the Excise Authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been vaildly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no correlation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available.
>
> 19. It is, therefore, that in the case of Eicher Motors Ltd. v. Union of India, this Court said that a credit under the Modvat Scheme was "as good as tax paid."

39. With the above principles, it is the claim of the petitioner company that Rule 86A of the Rules extinguishes a vested right which the petitioner had for claiming credit of duty paid on inputs.

40. In the case in hand, Shri Pandey, appearing for the respondents submitted that there is no such requirement that a specific order should be passed assigning, prima facie, reasons to block the input tax credit and communicate the same to the person concerned. Shri Pandey would submit that ordinarily, the reasons are found in the form of notings in the original file, on the basis of which, the Court may be in a position to ascertain the genuineness of the belief formed by the authority. The formation of the opinion by the authority undoubtedly should reflect intense application of mind with reference to the materials available on record that it had become necessary to order blocking of the input tax credit pending the inquiry. (See **Bhikhubhai Vithlabhai Patel & Ors. vs. State of Gujarat**[25]).

41. On 12.5.2021, learned counsel appearing for the respondents was asked to get instructions on certain aspects. For ready reference,

---

25. AIR 2008 SCC 1771

order passed by this Court on 12.5.2021 is reproduced below:

> "Mr. Nimai Das, learned Additional Chief Standing Counsel is granted a week's time to seek instruction in the matter.
>
> It is argued by Mr. Navin Sinha, learned Senior Advocate assisted by Mr. Nishant Mishra, learned counsel for the petitioner that operation of the appellate order, by which the Adjudicating Authority's order locking the Input Tax Credit had been reversed, has now been stayed. The submission is that the Revisional Authority has passed the order impugned without application of mind, merely paraphrasing the words of the statute with no reference to the facts of the case, or other material on record to reach his conclusion in favour of passing an interim order of stay.
>
> The State shall clarify in its instruction the aforesaid fallacy urged on behalf of the petitioner.
>
> Lay this matter as fresh again on 20.05.2021 before the appropriate Bench."

42. Thereafter, the matter was taken up on 20.5.2021 and on the said date, the Court had proceeded to pass following order:-

> "In response to the aforesaid order, Shri Nimai Das, learned Addl. Chief Standing Counsel assisted by Shri Devesh Vikram, learned Standing Counsel, on the basis of instructions, has informed the Court that 2.6.2021 is the next date fixed in the revision in question for final disposal of the matter.
>
> Put up this matter as fresh."

43. Again the matter was taken up on 16.7.2021 and learned Additional Chief Standing Counsel was directed to produce the entire original records. In compliance thereof, the original record was produced by Shri Jagidsh Mishra, learned Standing Counsel before this Court on 26.7.2021 and the same was taken on record.

44. Perusal of original record reflects that the Joint Commissioner (GST), Commercial Tax Headquarters, U.P. Lucknow forwarded the matter to Additional Commissioner (G.S.T.) with specific noting dated 24.3.2021, **wherein in paragraph-5, he has also suggested two options namely (i) either to prefer a writ petition before this Court for stay or (ii) exercise powers under Section 108 of UPSGST Act and stay the execution of the Appellate Order till the revision is decided.** The noting is reproduced herein below:-

> "एडीशनल कमिश्नर (जी.एस.टी)
>
> महोदय,
>
> कृपया पत्रावली पर संलग्न एडीशनल कमिश्नर ग्रेड–1, वाणिज्य कर, मुरादाबाद जोन–मुरादाबाद के पत्र संख्या–3937 दिनांक 16.03.2021 का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा सूचित किया गया है कि एडीशनल कमिश्नर ग्रेड–2 (अपील), प्रथम, वाणिज्य कर, मुरादाबाद के द्वारा सर्वश्री नॉर्थ एण्ड फूड मार्केटिंग प्रा0 लि0 547 शक्ति नगर, चन्दौली की अपील संख्या जी.एस.टी.–95/20/वर्ष 2019–20 उत्तर प्रदेश वस्तु एवं सेवा कर नियमावली के नियम

86ए के अन्तर्गत व्यापारी द्वारा योजित वाद का दिनांक 10.03.2021 को निस्तारण करते हुए रू0 4771007.00 की एस.जी.एस.टी व रू0 4771007.00 की सी0जी.एस.टी कुल रू0 9511774.00 की आई.टी.सी. जो कर निर्धारण अधिकारी द्वारा ब्लॉक की गयी थी, उसको अनब्लॉक करने के आदेश दिये गए हैं, जो विधिक एवं तथ्यात्मक रूप से त्रुटिपूर्ण है, जिसके सम्बन्ध में राजस्व हित में उक्त न्यायिक आदेश का पुनरीक्षण/ रिट याचिका दायर किया जाना समीचीन है। उक्त संदर्भित पत्र के द्वारा एडीशनल कमिश्नर ग्रेड–1, वाणिज्य कर, मुरादाबाद ने पत्र में अंकित तथ्यां के दृष्टिगत प्रथम अपीलीय आदेश दिनांक 1.03.2021 के विरूद्ध पुनरीक्षण/ रिट याचिका दायर करने की संस्तुति के साथ ही प्रथम अपील आदेश दिनांक 10.03.2021 के क्रियान्वयन को स्थगित कराने की संस्तुति भी की गयी है।

2. नॉर्थ एण्ड फूड एवं सोहन लाल नेटवर्क से सम्बंधित प्रकरण में अब तक कृत कार्यवाही का संक्षिप्त विवरण निम्नवत् है–

- नेटवर्क से सम्बंधित डाटा विश्लेषण एवं फील्ड इनपुट्स के आधार पर नेटवर्क की जॉच।
- नेटवर्क का विस्तार– मुरादाबाद, सम्भल, चन्दौसी, बदायूँ, बाराबंकी
- नेटवर्क की कार्य प्रणाली– बिना माल के केवल इनवॉइसेज का आदान–प्रदान, बोगस इनवॉइसेज के माध्यम से बोगस आई0टी0सी0 का लाभ।
- अधिकांश घोषित व्यापार स्थल पर कोई व्यापारिक गतिविधि नही।
- जॉच के दौरान रू0 6.88 करोड का माल अभिग्रहीत।
- विभागीय अधिकारियों की टीम द्वारा मुम्बई भ्रमण कर SEBI एवं MCX से सूचनाओं का संकलन।
- अब तक की जॉच में लगभग य0 200 करोड की फर्जी इनवाईसिंग प्रकाश में।
- व्यापारी द्वारा जारी इनवाईसेज के लाभार्थी व्यापारियों की य0 10 करोड की आई0टी0सी0 ब्लॉक।
- माल के अभिग्रहण के विरूद्ध मा0 उच्च न्यायालय में दायर व्यापारी रिट याचिका पर विभाग की सबल पैरवी के कारण व्यापारी को राहत नही।
- अभिग्रहीत माल की जब्ती की कार्यवाही के दौरान रू0 4.4 करोड का इन्डेबिटी बॉण्ड एवं टैक्स, पेनाल्टी एवं फाइन के मद में 2.47 करोड की बैंक गारन्टी जमा।

(तत्समय तैयार किया गया एक प्रस्तुतीकरण पताका –क– पर संलग्न है)

सर्वश्री नॉर्थ एण्ड फूड मार्केटिंग के नेटवर्क की कार्य प्रणाली की जॉच MCX द्वारा की गयी है। MCX द्वारा पारित आदेश दिनांक 27 जनवरी, 2020 (प्रति संलग्न पृष्ठ सं0 12 प्रस्तर सं0 g & k) के निम्न अंश उल्लेखनीय हैं–

(g) Subsequent to the personal hearing in the matter, you vide email dated July 19,2019 had submitted six invoices (with GST) of transactions carried out between M/S Jai Balaji Trading Company (C & F agent of ISRPL as informed) and NEFM amounting to Rs. 13.82 crores. However, the corresponding funds received from/ commission paid to C& F Agent, M/S Jai Balaji Trading Company, could not be traced to the Bank account of ISRPL. Also, no relevant documentary evidences like agreement between ISRPL and M/S Jai Balaji Trading Company, terms of appointment, terms of payment/ commission, etc. were provided by you in support of the above.

(k) There are no justifiable reasons/relevant documentary evidences provided by you for the following:

- Funds received from NEFM by ISRPL, whereas delivery of Mentha Oil taken by ISRPL on the exchange were transferred off-market to retain related entities without any corresponding settlement of funds with these entities.
- Invoices of purchase by NEFM from ISRPL were without GST.
- No documentary evidence including agreement between ISRPL and M/S Jai Balaji Trading Company i.e. (C&F agent), terms of appointment, terms of payment/ commission, actual payment/ commission to M/S Jai Balaji Trading Company, etc.

इस नेटवर्क की जॉच SEBI द्वारा की गयी है । SEBI द्वारा पारित आदेश दिनांक 06.12.2019 (प्रति संलग्न पृष्ठ सं0 11 प्रस्तर सं0 11) के निम्न अंश उल्लेखनीय हैं–

11- In addition to the above, it is observed from the submission advanced by the notices, that except for NEFM none of the other Notices

was registered with any mandi for Mentha Oil and majority of them have appointed Jai Balaji Trading Company as their C&F Agent for off-market/physical market transactions in the Mentha Oil. Incidentally, the proprietor of this C&F agent is the father of Yash Guptaa, A Group 'A' entity in the interim order. The above facts submitted by the Notices raises further suspicion that the trades executed by these entities through the said C&F agent appears to have been executed at the behest of or under instructions from NEFM. While perusing the submissions of NEFM and of other Notices, I notice certain glaring inconsistencies in the stands taken by them which need to be highlighted here. AS an illustration, I note that NEFM has initially in its reply had admitted that it had procured stock of Mentha Oil from 5 entities viz. Invictus, Gaurav Gupta, Saurabh Kumar Vaish, Vimuk and Yash Gupta. However, in its written submission filed before me after the personal hearing, is has stated that Mentha Oil was procured by it from Invictus, Gaurav Gupta and Yash Gupta and thereby has preferred to remain silent about its transactions with Saurabh Kumr Vaish and Vimuk. Further, NEFM has claimed that is was not aware about the trading activities of entities of Group 'A' and Group 'B' especially with respect to their holding of Mentha Oil stock and trading in Mentha Oil futures, which have been highlighted in detail in interim order. However, on the contrary to such a claim, NEFM has not rebutted the fact that apart from giving funds to various entities directly ad indirectly for procurement of Mentha Oil, it had also given funds for bearing the rental charges for storage of Mentha Oil stock in the MCX approved warehouses NEFM has also not disputed to the facts that it was paying fixed monthly payments to certain entities during the relevant period who were holding on to the stock of Mentha Oil. NEFM's claim that it was not aware about the clubbing of position limits by MCX with respect to the positions in Mentha Oil futures held by various entities of Group 'A' and Group'B' remains highly questionable, since these entities were trading in Mentha Oil apparently with the funds provided by it to them and the same funds support from the fact that the warehouse rent for storing Mentha Oil by Group' A' entities as well as monthly payment to certain entities was being paid by none other than NEFM. Moreover, as discussed in the *interim* order, MCX had reported that as soon as the positions of certain entities were clubbed, fresh positions in Mentha Oil futures were being taken by a new set of entities who were also found to be funded directly or indirectly through proxy entities by NEFM. Another instance of inconsistency is noticed in the submission of Group 'A' entities who have claimed-that they were only providing handling and transportation services to NEFM whereas in reality, the stock of Mentha Oil in exchange approved warehouses were held in their names as owners, hence the claim made by them about providing only handling and transportation services does not conform to their actual transactions.

3. प्रश्नगत नेटवर्क में beneficiary के रूप में शामिल 26 पंजीकृत व्यापारियों द्वारा Fraudulently क्लेम की 37.80 करोड आई.टी.सी. ब्लॉक किया जाना अपेक्षित था। किन्तु सम्बंधित व्यापारियों के केडिट लेजर में कुल मिलाकर केवल रू0 9.48 करोड आई.टी.सी. उपलब्ध थी, जो ब्लॉक की गयी।

4. इसी नेटवर्क में beneficiary के रूप में शामिल एक इकाई सर्वश्री हर्बोकेम इण्डस्ट्रीज द्वारा मा0 उच्च न्यायालय के समक्ष रिट याचिका सं0 553/ 2020 दाखिल की गयी है, जिसमें नियम– 86ए तथा Credit Blocking के सम्बंध में मुख्यालय द्वारा जारी परिपत्र (SOP) को चुनौती दी गयी है। नियम 86ए की वैधता को मा0 उच्च न्यायालय, इलाहाबाद के समक्ष कुछ अन्य रिट याचिकाओं के माध्यम से भी चुनौती दी गयी है, जो मा0 उच्च न्यायालय के समक्ष विचाराधीन है।

4.1 जी.एस.टी.एन. की रिपोर्ट के अनुसार उत्तर प्रदेश राज्य में केन्द्र एवं राज्य द्वारा कुल 3739 मामलों में रू0 2859735606891.00 आई.टी.सी. ब्लॉक की गयी है।

प्रस्तर सं0 3, 4 एवं 4.1 में अंकित तथ्यों/ ऑकडों से यह स्पष्ट है कि, यह प्रकरण राजस्व की दृष्टि से अत्यन्त महत्वपूर्ण है।

In accordance with the provisions of Section 108(1), the Revisional Authority may
(i) on his own motion, or
(ii) upon information received by him, or
(iii) on request from the Commissioner of Central/ State Tax, or
(iv) in consequence of an observation by the Comptroller and Auditor General of India

call for and examine the record of any proceedings and if he considers that any decision or order passed by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is
(i) illegal or
(ii) improper or
(iii) has not taken into account certain material facts, whether available at the time of issuance of the said order or not

he may, if necessary, stay the operation of such decision or order for such period as he deems fir and pass and order
(i) enhancing or
(ii) modifying or
(iii) annulling

the said decision or order.

2. However, the power of the Revisional Authority as above is subject to the restrictions imposed in terms of sub-section (1) and (2) of Section 108 which is summarized in the following table:

Power of a Revisional Authority upon conjoint reading of Section 107(12), 107 (16), 108(1) & 108(2)-

Sl. No.	Order passed by	Action on order	Whether Revision is permissible
1	A Proper Officer Or An Appellate Authority	• Order appealed against	No
2.		• Six months from the date of communication of the order has not expired.	
3		• three years after the date of passing of order sought to be revised has expired.	NO
4		• Order already taken for revision at an earlier stage or revision order has been passed.	NO
		• Order is non-appealable u/s 121	No
5	A Proper Officer or An Appellate Authority	• <u>Following four conditions are required to be satisfied</u> <u>(i)</u> Order is not appealed against (ii) Three years after the date of passing of order sought to be	YES

		revised has not expired but six months from the date of communication of the order has expired. (iii) Order not taken for revision at an earlier stage or revision order has not been passed (iv) Order is not non-appealable u/s 121	

उक्त के आधार पर प्रथम दृष्टया यह प्रतीत होता है कि, "Revisional Authority के स्तर से Appellate Authority under Section 107 द्वारा पारित आदेश के संदर्भ में धारा–108 के तहत प्रदत्त शक्तियों का प्रयोग किया जा सकता है।

5. विभाग के समक्ष विकल्प हैं–

(i) मा0उच्च न्यायालय, इलाहाबाद के समक्ष रिट याचिका योजित करते हुए स्थगित हेतु अनुरोध करना।

(ii) पुनरीक्षण प्राधिकारी के उत्तर प्रदेश एस.जी.एस.टी अधिनियम की धारा 108 में प्रदत्त शक्तियों का प्रयोग करते हुए अपीलीय निर्णय को पुनरीक्षित किया जाना तथा पुनरीक्षण की प्रकिया पूरी होन तक अपीलीय आदेश का कियान्वयन स्थगित किया जाना।

6. समसंदर्भ में यह तथ्य भी संज्ञान में लाना है कि, अधिनियम की धारा 109 के अन्तर्गत जी.एस.टी. अपीलेट ट्रिब्यूनल का गठन अभी नही हुआ है। जी.एस.टी अपीलेट ट्रिब्यूनल का गठन होने की तिथि के 6 माह के अन्दर जी.एस.टी. अपीलेट ट्रिब्यूनल के समक्ष अपील दायर करने का विकल्प भी विभाग के पास है।

7. **अभी तक मुख्यालय स्तर से Revisional Powers" का प्रयोग नही किया गया है।**

उक्त वर्णित परिस्थितियों में प्रस्तर–5 (ii) के सम्बन्ध में निर्णय की स्थिति में नोटिस/ आदेशों का प्रारूप निर्धारित किये जाने की आवश्यकता भी होगी।

कृपया उक्त तथ्यों के आलोक में प्रस्तर सं0 5 के सम्बंध में निर्णय लेना चाहें।

ह0
(अनिल कुमार कनौजिया)
डिप्टी कमिश्नर (जी.एस.टी)
वाणिज्य कर मुख्यालय, लखनऊ

ह0
(संजय कुमार पाठक)
ज्वाइन्ट कमिश्नर (जी.एस.टी)
वाणिज्य कर मुख्यालय,उ0प्र0 लखनऊ

एडी0कमि0 (जी.एस.टी)

वरिष्ठ विभागीय अधिकारियों से विचार विमर्श के उपरान्त प्रस्तर सं0 5 (ii) पर अंकित विकल्प औचित्यपूर्ण प्रतीत होता है।

कृपया सहमत होना चाहें तथा स्थगन आदेश का प्रारूप प्रस्तुत किये जाने की अनुमति प्रदान करना चाहें।

कमिश्नर महोदय

ह0
(बृजेश कुमार त्रिपाठी)
एडीशनल कमिश्नर (जी.एस.टी)
वाणिज्य कर मुख्यालय,लखनऊ

Stay करना राज्य हित में बहुत महत्वपूर्ण है।

कृ0 Put up

Sd/
24-3-2021
(Ministhy S)
Commissioner Commercial Tax, U.P."

(emphasis supplied)

45. The Court has also occasion to peruse the impugned order dated 26.3.2021, wherein the Commissioner, Commercial Tax, U.P. Lucknow has accepted the proposal for revision and stayed the effect and operation of the order dated 10.3.2021. The operative portion of the order is reproduced herein below:-

<u>आदेश</u>

1. एडीशनल कमिश्नर ग्रेड–1, वाणिज्य कर, मुरादाबाद जोन के पत्र संख्या 3937/एडी0कमि0 ग्रेड–1/वा0क0मुद0 दिनांक 16.03.2021 से प्रेषित पुनरीक्षण प्रस्ताव स्वीकार किया जाता है।

2. एडीशनल कमिश्नर ग्रेड–2 (अपील) प्रथम वाणिज्य कर, मुरादाबाद द्वारा अपील संख्या जी.एस.टी.–95/20/वर्ष 2019–20 दिनांक 10.03.2021 में पारित अपीलीय आदेश संख्या 194 दिनांक 10.03.2021 तथा अधिनियम की धारा 161 के अन्तर्गत पारित आदेश संख्या 203/ 10.03. 2021 का कियान्वयन तत्काल प्रभाव से पुनरीक्षण प्रक्रिया पूर्ण होने तक स्थगित किया जाता है।

3. सम्बंधित पक्षों को सुनवाई हेतु नोटिस जारी की जाए।

संशोधिति आदेश आलेख की स्वच्छ प्रतियॉ पताका–क–पर संलग्न हैं। कृपया स्व–स्तर से उक्त का परीक्षण करते हुए स्थगत आदेश निर्गत करने हेतु पत्रावली कमिश्नर महोदया के समक्ष प्रस्तुत करना चाहें।

ह0
26.03.2021
(संजय कुमार पाठक)
ज्वाइन्ट कमिश्नर (जी.एस.टी.)
वाणिज्य कर मुख्यालय उ0प्र0 लखनऊ।

परीक्षणोपरान्त संशाधित स्थगन आदेश आलेख पताका–क– पर संलग्न है।
कृपया सहमति की दशा में हस्ताक्षर करना चाहें।

ह0
(बृजेश कुमार त्रिपाठी)
एडीशनल कमिश्नर (जी.एस.टी.)
वाणिज्य कर मुख्यालय, लखनऊ।

कमिश्नर महोदया

Sec.108: Power of Revisional Authority के तहत यह stay order राज्यहित में जरूरी है।

ह0
26.03.2021
(मिनिस्ती एस0)
कमिश्नर
वाणिज्य कर, उ0प्र0।

कृपया संबधित से आदेश की प्रतियॉ उक्तानुसार प्रेषित करायें

ह0
26.03.2021

(संजय कुमार पाठक)
ज्वाइन्ट कमिश्नर (जी.एस.टी.)
वाणिज्य कर मुख्यालय उ0प्र0 लखनऊ।"

46. Before dealing with the rival submissions to determine whether the principles of natural justice demand that an opportunity of hearing should be afforded to an assessee before an order under Section 108 of the SGST Act is made, the Court may appreciate the concept of "natural justice" and the principles governing its application.

47. Rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly, i.e. fair play in action. As observed by this Court in **A.K. Kraipak & Ors. Vs. Union of India & Ors**.[26], the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. (Also see: **Income Tax Officer & Ors. Vs. M/s Madnani Engineering Works Ltd., Calcutta**[27]).

48. In **Swadeshi Cotton Mills Vs. Union of India**[28], R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to several decisions, his Lordship observed as under:-

> "Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle as distinguished from an absolute rule of uniform application seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a

26. AIR 1970 SC. 150
27. (1979) 2 SCC 455
28. AIR 1981 SC 818

> statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

49. Initially, it was the general view that the rules of natural justice would apply only to judicial or quasi-judicial proceedings and not to an administrative action. However, in **State of Orissa Vs. Binapani Dei & Ors.**[29], the distinction between quasi-judicial and administrative decisions was perceptively mitigated and it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. Since then the concept of natural justice has made great strides and is invariably read into administrative actions involving civil consequences, unless the statute, conferring power, excludes its application by express language.

50. In **Canara Bank Vs. V.K. Awasthy**[30], the concept, scope, history of development and significance of principles of natural justice have been discussed in extenso, with reference to earlier cases on the subject. The principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi- judicial and administrative authority while making an order affecting those rights. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which

---

29. AIR 1967 SC 1269
30. AIR 2005 SC 2090

the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order, which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil 'liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

51. In **Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.**[31], the Apex Court held that 'Civil Consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.

52. The question in regard to the requirement of opportunity of being heard in a particular case, even in the absence of provision for such hearing, has been considered by this Court on a number of occasions. In **Olga Tellis & Ors. Vs. Bombay Municipal Corporation & Ors.**[32] while dealing with the provisions of Section 314 of the Bombay Municipal Corporation Act, 1888, which confers discretion on the Commissioner to get any encroachment removed with or without notice, a Constitution Bench of Apex Court observed as follows:

> "It must further be presumed that, while vesting in the Commissioner the power to act without notice, the Legislature intended that the power should be exercised sparingly and in cases of urgency which brook no delay. In all other cases, no departure from the audi alteram partem rule ('Hear the other side') could be presumed to have been intended. Section 314 is so designed as to exclude the principles of natural justice by way of exemption and not as a general rule. There are situations which demand the exclusion of the rules of natural justice by reason of diverse factors like time, place the apprehended danger and so on. The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence."

---

31. (1978) 1 SCC 405
32. [1985] 2 Supp SCR 51

53. In **C.B. Gautam Vs. Union of India & Ors**.[33] a question arose whether in the absence of a provision for giving the concerned parties an opportunity of being heard before an order is passed under the provisions of Section 269 UD of the Act, for purchase by the Central Government of an immovable property agreed to be sold on an agreement to sell, an opportunity of being heard before such an order could be passed should be given or not. Relying on the decision of this Court in **Union of India Vs. Col. J.N. Sinha[34] and Olga Tellis** (supra) it was held that:

> "Although Chapter XX-C does not contain any express provision for the affected parties being given an opportunity to be heard before an order for purchase is made under Section 269-UD, not to read the requirement of such an opportunity would be to give too literal and strict an interpretation to the provisions of Chapter XX-C and in the words of Judge Learned Hand of the United States of America "to make a fortress out of the dictionary." Again, there is no express provision in Chapter XX-C barring the giving of a show cause notice or reasonable opportunity to show cause nor is there anything in the language of Chapter XX-C which could lead to such an implication. The observance of principles of natural justice is the pragmatic requirement of fair play in action. In our view, therefore, the requirement of an opportunity to show cause being given before an order for purchase by the Central Government is made by an appropriate authority under Section 269-UD must be read into the provisions of Chapter XX-C. There is nothing in the language of Section 269- UD or any other provision in the said Chapter which would negate such an opportunity being given. Moreover, if such a requirement were not read into the provisions of the said Chapter, they would be seriously open to challenge on the ground of violations of the provisions of Article 14 on the ground of non-compliance with principles of natural justice. The provision that when an order for purchase is made under Section 269- UD-reasons must be recorded in writing is no substitute for a provision requiring a reasonable opportunity of being heard before such an order is made."

54. In **Sahara India (Firm) (1) v. CIT**[35] the Apex Court held that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.

---

33. (1993) 1 SCC 78
34. [1971] 1 SCR 791
35.(2008) 14 SCC 151

55. In **Siemens Engg. & Mfg. Co. of India Ltd vs. Union of India**[36] it was held by the Apex Court as under:-

> "6. Before we part with this appeal, we must express our regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the learned counsel appearing on behalf of the respondents. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function it must record its reasons in support of the order it makes. **Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N. M. Desai v. The Testeels Ltd. & Anr. (') But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him con firming the demand for differential duty. This was in plain disregard of the requirement of law.** The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants has been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. **The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.** The Government of India also failed to give any reasons in support or its order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and trust that in future the Customs authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the Customs authorities and the validity of the adjudication made by the Customs authorities can also be satisfactorily tested in a superior tribunal or court."

56. Hon'ble Apex Court in **N. Ranga Rao & sons vs. State of**

---

36. (1976) 2 SCC 981

Karnataka and others[37] considered the question of exercising revisional power under Section 15 of Karnataka Tax on Entry of Goods Act, 1979 (Act 1979) for determining limitation and held that the initiation of proceedings would take place, when the revisional authority suo motu calls for the records and examines the same, as per Section 15 (4) of Act 1979, which prescribes limitation for initiation of revisional proceedings, whereas Section 15B prescribes limitation for completion thereof. Hence, where the revisional authority called for the records of the case from the first appellate authority within limitation period, the revisional jurisdiction stood exercised within limitation irrespective of the fact that notice to the assessee to show cause against the proposed setting aside of the order of the first appellate authority was issued on a later date. Relevant portion of the judgment is quoted hereinafter:-

> "5. To complete the chronology of events, it may be noted that the order of the First Appellate Authority was dated 28.3.1992, the order calling for the records by the Additional Commissioner was around 16.3.1996, the decision, on the question of error in the order of the First Appellate Authority and the loss to the revenue consequent thereto, was dated 16.3.1996, the show cause notice was dated 20.5.1996 and the same was received by the assessee on 24.5.1996. The order ultimately passed by the Additional Commissioner under Section 15(1) was of 14/15.10.1996. Therefore, according to the assessee, mere calling for the records for examination around 16.3.1996 did not amount to exercise of power within the meaning of Section 15(4) of the said 1979 Act and if that be the case then, according to the assessee, issuance of the show cause notice on 20.5.1996 was beyond the prescribed period of 4 years from the date of the order passed by the First Appellate Authority on 28.3.1992. According to the assessee, in the present case, the Additional Commissioner had initiated proceedings by way of show cause notice on 20.5.1996. According to the assessee, proceedings under Section 15(1) could only be initiated by issuance of a show cause notice. According to the assessee, a mere consideration by the Additional Commissioner in his Chamber on 16.3.1996 regarding error in the order of the First Appellate Authority and the loss to the revenue cannot constitute initiation of proceedings under Section 15(1) and nor did it constitute exercise of power within the meaning of Section 15(4) of the said 1979 Act. Consequently, according to the assessee, the revisional proceedings (suo motu) were time barred.
>
> 6. The Karnataka Tax on Entry of Goods Act, 1979 was enacted to provide for the levy of tax on the entry of goods into local areas for consumption, use or sale therein. Section 3 is the charging section. Under Section 3 a tax was levied and collected on entry of goods mentioned in he First Schedule into a local area for consumption, use or sale therein at the rates prescribed. Section 3-A dealt with collection of tax by registered dealer. Chapter III dealt with filing of return, making of assessment, payment of taxes, recovery and collection of taxes. Under Section 5, every registered dealer was required annually to submit a return to the AO within the period prescribed. Section 5(4) and 5(5) provided for passing of

37 (2007) 9 SCC 691

assessment orders. Section 8 dealt with payment and recovery of tax. Chapter V dealt with appeals and revision. Section 15 formed part of Chapter V. We quote hereinbelow Section 15 and Section 15-B.

> "15. Revisional Powers of Commissioner, Additional Commissioner, Joint Commissioner and Deputy Commissioner: (1) The Commissioner may on his own motion call for and examine the record of any proceeding under this Act and if he considers that any order passed therein by any officer subordinate to him is erroneous in so far as it is prejudicial to the interests of the revenue, he may, if necessary, stay the operation of such order for such period as he deems fit and after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary pass such orders thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment or directing a fresh assessment.
>
> (2) The Additional Commissioner may on his own motion call for and examine the record of any proceedings under the Act, and if he considers that any order passed therein by a Joint Commissioner, or an appellate authority of the rank of a Deputy Commissioner is erroneous in so far as it is prejudicial to the interests of revenue, he may, if necessary, stay the operation of such order for such period as he deems fit and after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling the assessment or directing a fresh assessment.
>
> (3) The Joint Commissioner may on his own motion call for and examine the record of proceeding under this Act, and if he considers that any order passed therein by any officer who is not above the rank of Deputy Commissioner is erroneous in so far as it is prejudicial to the interests of revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment or directing a fresh assessment.
>
> (4) The power under sub-sections (1) to (3) shall be exercisable only within a period of four years from the date of the order sought to be revised was passed.
>
> Explanation: In computing the period of limitation for the purpose of sub- section (4) any period during which any proceeding under this section is stayed by an order or injunction of any Court shall be excluded.
>
> xxx 15-B. Limitation in regard to passing orders in respect of certain proceedings: (1) Notwithstanding anything contained in Sections 6 and 15, where any proceeding is initiated under Section 6 or any records have been called for under Section 15, the authority referred to in the said sections shall pass orders within a period of three years from the date of initiation of such proceedings or calling for the records, as the case may be:
>
> Provided that in respect of the proceedings initiated or records called for before the date of commencement of the Karnataka Taxation Laws (Amendment) Act, 1977, orders shall be passed within a period of

four years from such commencement.

(2) In computing the period specified in sub-section(1), the period during which a proceeding, has been deferred on account of any stay granted by any Court or any other authority shall be excluded."

7. A bare reading of section 15(1) indicates that the Commissioner, Additional Commissioner, Joint Commissioner and Deputy Commissioner could suo motu call for and examine the records of any proceedings under this Act if he considered that any order passed therein by any officer subordinate to him was erroneous so as to be prejudicial to the interest of the revenue, he was empowered to stay the operation of such order for such period as he deemed fit and after giving the assessee an opportunity of being heard and after making such inquiry, as he thought fit, could pass such orders as the circumstances of the case would justify, including the order enhancing or modifying the assessment or even cancelling the assessment or even direct a fresh assessment.

8. **The pre-conditions to the exercise of this suo motu powers were two fold, namely, error in the order passed by an officer subordinate to the revisional authority and prejudice to the interest of revenue. Once these two conditions stood fulfilled, the revisional authority was authorized to give an opportunity to the assessee of being heard and after making such inquiry as he thought fit he could pass appropriate orders as the circumstances of the case would justify. This power was essentially a supervisory power. However, in order to ascertain whether the officer subordinate to him had passed an erroneous order, which was also prejudicial to revenue, the Commissioner including the Additional Commissioner etc. was required to call for and examine the record of such proceedings. Therefore, the revisional authority had to call for the records, he had to examine such records, he had to be satisfied regarding fulfilment of the above two conditions and thereafter give opportunity to the assessee of being heard and on making appropriate inquiry the revisional authority was empowered to pass appropriate orders.**

9. It is important to note that under Section 15(1) there was no provision for giving a show cause notice as in the case of some other similar enactments. However, the power under sub-sections (1), (2) and (3) of Section 15 was exercisable only within four years from the date of the order sought to be revised. Under Section 15(4), therefore, a period of limitation was prescribed. The revisional authority had to exercise its powers only within four years from the date when the order sought to be revised was passed. Therefore, under Section 15(1) read with Section 15(4), there was no provision for issuance of a show cause notice. The reason is obvious. Section 15(4) required the revisional authority to exercise its powers within four years from the date of passing of the order sought to be revised. The concept of exercising the power is important, particularly in the absence of any provision for issuance of a show cause notice. When the revisional authority suo motu calls for the records for examination and when he examines that records, the exercise of power under Section 15(4) of the Act takes place. This can be equated to initiation of proceedings.

10. There is one more aspect which needs to be considered. Conceptually, there is a distinction between initiation of proceedings and completion of proceedings within the stipulated period. The limitation prescribed in Section 15(4) was the limitation for initiation of proceedings whereas limitation prescribed in Section 15-B was in respect of completion of proceedings within the prescribed period. In our view, a bare reading of

Section 15-B with the proviso indicates that Section 15-B was retrospective. Firstly, the Head Note indicates limitation in regard to passing of orders inter alia under Section 15. It stated clearly that, notwithstanding anything contained in Section 15, where any proceeding is initiated under Section 6 or where any records have been called for under Section 15, the authority shall pass orders within a period of three years from the date of calling for the records. The proviso clarified that in respect of proceedings in which records have been called for before the date of commencement of the Karnataka Taxation Laws (Amendment) Act, 1997 (with effect from 1.4.1997) the revisional authority shall dispose of the proceedings within a period of four years from such commencement. This proviso indicates that proceedings in which records have been called for even in cases falling before 1.4.1997 had to be disposed of within four years from the date of commencement of the (Amendment) Act, 1997.

11. In our view, Section 15-B indicated the dichotomy between initiation of proceedings and completion of proceedings. The legislative intent was clear. It demarcated two aspects, namely, commencement of proceedings and completion of proceedings (outer limit). Section 15(4) prescribed limitation for commencement of proceedings whereas Section 15-B prescribed limitation for completion of the proceedings. We are required to keep in mind that the Legislature intended maximum leeway in cases where an error resulted in loss to revenue. In the circumstances, we are of the view that under the scheme of the 1979 Act, the initiation proceedings took place when the revisional authority called for the records of the case from the First Appellate Authority and, therefore, the jurisdiction stood exercised within the period of limitation.

12. Lastly, we may state that on 1.4.1997 in the present case the tax appeal against the order of the Revisional Authority was pending decision vide Tax Appeal No. E.T. 22/96. Moreover, the law of limitation is generally procedural, hence, in our view, Section 15-B was retrospective. For the above reasons, we find no infirmity in the impugned judgment of the High Court.

13. Before concluding, we may state that, as discussed above, the Karnataka Tax on Entry of Goods Act, 1979 prescribed limitation for initiation of proceedings, it also prescribed limitation for completion of proceedings unlike some other Acts under which the limitation prescribed was only in respect of completion of proceedings. We do not wish to comment about those provisions/enactments. Our present judgment is confined strictly to the 1979 Act herein.

14. For the aforestated reasons, we find no infirmity in the impugned judgment of the Karnataka High Court and accordingly the civil appeal filed by the assessee stands dismissed with no order as to costs. As regards the merits of the case, we express no opinion as the same have not been argued before us."

(emphasis supplied)

57. Considering the aforementioned dictum, the Court has occasion to peruse the supplementary affidavit, which shows that after the impugned order dated 26.3.2021 was passed by the respondent no.3, a notice dated 07.5.2021 was issued, whereby the petitioner was directed to appear on 02.6.2021 alongwith record of purchases effected from M/s Jai Balaji Trading Company GSTIN

09AANPG0918J1ZK. This much is apparent from the notice dated 07.5.2021 that it contained narration of facts leading to blocking of credit under Rule 86A by respondent no.5, which was set aside by the appellate authority. Rule 109 of the SGST Rules, 2017 provides for service of notice in Form GST RVN-01 before an order under Section 108 is passed and exhaustive procedure is given therein, which requires documents to be enclosed specifying the grounds on the basis of which the revisional jurisdiction is sought to be exercised. Contrarily, the notice dated 7.5.2021 was in fact issued without any ground on the basis of which it could be said that there was no material or record available before the respondent no.3 for exercising jurisdiction under Section 108. In the RTI reply dated 28.7.2021 issued by the Deputy Commissioner (Administration) and Public Information Officer, Commercial Tax, Moradabad, which is appended as Annexure SA-1 to the affidavit, it has been informed that the records of the Appellate Authority in Appeal No.95/2020 (2018-19) were neither called for by the office of respondent no.3 nor the same were ever dispatched by the office of the Appellate Authority to the office of the respondent no.3. As such, the respondent no.3 has assumed the jurisdiction under Section 108 without calling for and examining the record of the aforesaid Appeal filed by the petitioner company. The respondent no.3 has assumed the jurisdiction under Section 108 merely on the basis of letter sent by the respondent no.4. The powers, as conferred under Rule 86A, could not have been exercised merely on the ground that an inquiry has been initiated as there is a suspicion that the transactions were sham.

58. While forwarding the noting dated 24.3.2021, the Joint Commissioner (GST), Commercial Tax Headquarters, U.P. had submitted in para-5 that the department has two options either to prefer the writ petition before Hon'ble High Court and press for stay of the order passed by the Appellate Authority or under the revisional authority under Section 108 the appellate order is to be reviewed and till the finalization of proceeding of revision, the appellate order may be stayed. In para-7 of the said communication, it has also been averred that till date at the headquarter level the revisional power has

not been exercised. After deliberation with the superior officials, the Additional Commissioner, Commercial Tax, U.P., has submitted categorical comment in para-5 (ii) of the endorsement dated 24.3.2021 to the Commissioner, Commercial Tax, U.P. that the second option is reasonable and in case the same is approved, accordingly leave may be accorded so that the proposal of stay order may be placed. Consequently, after an endorsement by the Commissioner, Commercial Tax, U.P. dated 24.3.2021, the stay order was passed on 26.3.2021. The entire relevant noting, as averred above, clearly reflects to the Court that even though the revisional authority has exercised under-mentioned provision but there was no independent application of mind.

59. The preconditions for the exercise of powers are basically two folds, namely, error in the order passed by an officer subordinate to the revisional authority and prejudice to the interest of revenue. Once these two conditions stood fulfilled, it was incumbent upon the revisional authority to give an opportunity to the assessee of being heard and after making such enquiry as he thought fit he could pass appropriate orders as circumstances of the case would justify. This power is basically a supervisory power. However, in order to ascertain whether the officer subordinate to him has passed an erroneous order, which may be prejudicial to the revenue, the Commissioner is required to call for and examine the record of such proceedings.

60. In the present matter, admittedly without summoning the record the notice was prepared by the subordinate officers in which two options were indicated to the revisional authority with an observation that in case second option is approved, accordingly stay order may be prepared. This may not be intention of the legislature while incorporating the said feature. Once the supervisory power is being exercised in absence of relevant record merely on the basis of certain noting, which is forwarded to the revisional authority for exercising the powers it is sheer misuse of the power. The said practice cannot be accepted by this Court.

61. After considering the record, the Court is of the considered opinion that while exercising the revisional power the authority has

given go-bye to the procedure, that too without application of independent mind. The intent of the legislature to accord such power under the revision with a rider is to ensure that there may not be errors in the order passed by the officer subordinate to the revisional authority and the order may not be prejudicial to the interest of revenue. On the above parameters there is hardly any scope for taking another view. Admittedly, the order impugned has been passed in absence of record and the revenue authority has proceeded to endorse on the dotted line, which has been submitted by the subordinate officer. Even though, the appellate order was appealable, which clearly reflects that said action is contrary to the procedures contained therein. The order must be supported by reasons but unfortunately the revisional authority/Commissioner did not choose to give reasons in support of order passed by him. This was in plain disregard to the requirement of law. The said order does not satisfy the requirement of law. Therefore, the said action cannot be accepted.

62. For the reasons above, the impugned order dated 26.3.2021 cannot sustain and accordingly, the same is set aside.

63. Consequently, the writ petition stands **allowed**.

64. Let original record be returned to Shri B.K. Pandey, learned Additional Chief Standing Counsel appearing for the State respondents.

65. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad, self attested by the petitioner alongwith a self attested identity proof of the said person (preferably Aadhar Card) mentioning the mobile number to which the said Aadhar Card is linked.

66. The concerned Authority/Official shall verify the authenticity of such computerised copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :-31.8.2021
RKP