

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 17900/2025

[Arising out of impugned final judgment and order dated 04-12-2024 in WPC No. 16725/2024 passed by the High Court of Delhi at New Delhi]

DEPUTY DIRECTOR, DIRECTORATE GENERAL OF GST
INTELLIGENCE, DZU & ORS.

Petitioner(s)

VERSUS

KINGS SECURITY GUARD SERVICES PRIVATE LIMITED
THROUGH ITS DIRECTOR

Respondent(s)

(FOR ADMISSION and I.R.
IA No. 121487/2025 - CONDONATION OF DELAY IN FILING)

Date : 16-05-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) :

Ms. Nisha Bagchi, Sr. Adv.
Mr. Gurmeet Singh Makker, AOR
Ms. Satya Jha, Adv.
Ms. Priyanka Das, Adv.
Ms. Shaurya Rai, Adv.
Mr. Rajeev Ranjan, Adv.

For Respondent(s) :

Mr. Vivek Sarin, Adv.
Mr. Ajay Kumar Dubey, Adv.
Mr. Aakarshan Aditya, Adv.
Mr. Dhruv Dev Gupta, Adv.
Mr. Satish C. Kaushik, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard the learned senior counsel appearing for the
petitioners.

Delay condoned.

No case for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India. The Special Leave Petition is accordingly dismissed.

However, other remedies of the petitioners for recovery in accordance with law are kept open.

Pending application, if any, also stands disposed of.

(ANITA MALHOTRA)
AR-CUM-PS

(AVGV RAMU)
COURT MASTER



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 16725/2024, CM APPL. 70725/2024 (Direction) &
CM APPL. 70727/2024 (32 Days Delay in Refiling)
KINGS SECURITY GUARD SERVICES PRIVATE
LIMITED THROUGH ITS DIRECTORPetitioner

Through: Mr. Vivek Sarin, Mr. Dhruv
Devgupta, Ms. Divyanshi Singh
and Mr. Satish C. Kaushik,
Advs.

versus

DEPUTY DIRECTOR, DIRECTORATE GENERAL OF GST
INTELLIGENCE, DZU AND ORS.Respondents

Through: Mr. Anurag Ojha, SSC with
Mr. Dipak Raj and Mr.
Shubham Kumar, Advs. for
Revenue.

Mr. V.K. Attri, Adv. for Mr.
Atul Tripathi, SSC (CBIC) for
R-7.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

% **ORDER**
04.12.2024

CM APPL. 70726/2024 (Ex.)

Allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 16725/2024, CM APPL. 70725/2024 (Direction) & CM
APPL. 70727/2024 (32 Days Delay in Refiling)

1. Mr. Sarin learned counsel appearing for the writ petitioner,
despite the broad reliefs which are claimed in the writ petition,



restricts his submission to the issue of negative blocking of the Electronic Credit Ledger [‘ECL’].

2. The fact that the blocking operates on a negative balance is evident from a perusal of the documents which stand placed from page 49 onwards of the Court’s digital record.

3. It is in the aforesaid context that learned counsel places reliance upon the judgment rendered in **Best Crop Science Pvt. Ltd. through Authorized Representative vs. Principal Commissioner, CGST Commissionerate, Meerut and Ors**¹. Dealing with an identical question, the Court in *Best Crop* had held as follows: -

“78. It is necessary to bear in mind that not allowing debit of an ITC is a temporary measure, which is imposed only if the conditions set out in Rule 86A of the Rules are satisfied. It is not necessary for any proceedings to be initiated against the taxpayer prior to passing an Order under Rule 86A(1) of the Rules. The said order can be passed at any stage if the Commissioner or an officer authorized by him has reasons to believe that the credit available in the ECL of a taxpayer has been fraudulently availed or is ineligible. This is clearly an emergent provision, which enables the Commissioner to withhold the available ITC in the ECL, which he has reason to believe has been fraudulently availed or is ineligible. An Order under Rule 86A(1) of the Rules does not require a prior show cause notice to be issued to a taxpayer as it is by its very nature an emergent provision to immediately block the usage of the ITC credited in the ECL, which the Commissioner or an officer authorized by him has reasons to believe has been fraudulently availed or is ineligible. The concerned authorities are required to proceed to determine whether a taxpayer has wrongly availed or utilized the ITC, under Sections 73 or 74 of the CGST Act and if it is found that the taxpayer has wrongly availed of the ITC the proper officer is required to pass an order to determine the amount of tax, interest or penalty payable. The demand as raised are required to be determined under Sections.

79. If at any stage the Commissioner or an officer authorized by him is satisfied that the conditions for disallowing debit no longer exists, Sub-rule (2) of Rule 86A of the Rules requires such officer to permit debit from the taxpayer's ECL. In any event, by virtue of Sub-rule (3) of Rule 86A of the Rules, the order passed under Rule 86A(1) of

¹ 2024 SCC OnLine Del 6714.



the Rules is operative only for a maximum period of one year from the date of passing the said order.

80. Rule 86A of the Rules is not a machinery provision for recovery of tax or dues under the CGST Act. It is not a part of the scheme of the machinery provisions for assessment and determination of the tax and dues as payable under the CGST Act. It is an emergent measure for protection of revenue by temporarily not allowing debit of available ITC in the ECL, which the Commissioner or an officer authorized by him has reasons to believe has been wrongfully availed.

81. As noted above, the revenue authorities are required to proceed under Sections 73 and 74 of the CGST Act for determination of the amount due. After the proceedings under Chapters XII, XIV and XV of the CGST Act have commenced and the Commissioner is of the opinion that for the purpose of protection of government revenue, it is necessary to do so, he may pass an order under Section 83(1) of the CGST Act, provisionally attaching any property including the bank account of a taxpayer. This is also one of the measures that may be resorted to pending conclusion of the proceedings.

82. Rule 86A(1) of the Rules does not contemplate an order, the effect of which is to require a taxpayer to replenish his ECL with valid availment of ITC, to the extent of ITC used in the past, which the Commissioner or an officer authorized by him has reasons to believe, was fraudulently availed or was ineligible. Such an interpretation would in effect amount to construe an Order under Rule 86A(1) of the Rules as an order for recovery of tax. This is obvious because the taxpayer would now have to incur a larger cash outflow for payment of taxes as he would be denied utilization of validly availed ITC, which he would require to accumulate to compensate for the ITC availed and utilized which the Commissioner or an officer authorized by him, has reasons to believe was fraudulently availed or was ineligible.

83. In view of the above, the petitions are allowed and the orders impugned in the present petitions, as tabulated below, are set aside to the extent the impugned orders disallow debit from the respective ECL of the petitioners, in excess of the ITC available in the ECL at the time of passing of the impugned orders (referred to as Negative blocking by the counsel during the course of their submissions)."

4. In view of the aforesaid enunciation of the legal position, we find ourselves unable to sustain the negative blocking.



5. The writ petition, consequently, stands partly allowed. The action of negative blocking on the ECL shall stand quashed and set aside.

6. The petitioner shall be entitled to consequential reliefs.

YASHWANT VARMA, J

DHARMESH SHARMA, J

DECEMBER 4, 2024/RW