

**CWP-4938-2025****206****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CWP-4938-2025****Date of Decision: 28.11.2025****NB INTERNATIONAL**

..... Petitioner

Versus

**COMMISSIONER, CENTRAL GOODS AND SERVICES TAX AND
OTHERS**

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE PARMOD GOYAL**

Present: Mr. Aman Bansal, Advocate and
Mr. Bharat Jain, Advocate for the petitioner.

Mr. Sourabh Goel, Senior Standing Counsel
for the respondents.

LISA GILL, J. (Oral)

1. Prayer in this writ petition is for directing respondent No.2 to unblock ITC amounting to Rs.82,50,038/- lying in the Electronic Credit Ledger (ECL) of petitioner.

2. Learned counsel for petitioner submits that petitioner is a partnership firm situated in State of Haryana and is engaged in business of manufacturing brass/copper sheets and utensils. Petitioner is registered under the provisions of Central Goods and Services Tax Act, 2017/Haryana Goods and Services Tax Act, 2017 (for short – '2017 Act') with GSTIN No.06AALFN7519C1ZA. It is further submitted that petitioner availed ITC in

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accordance with provisions of Section 16 of the Act, however, without any prior investigation or communication ITC of petitioner to the tune of Rs.82,50,038/- in its ECL was blocked on 21.11.2023. Reference is made to intimation uploaded on online portal (Annexure P-3). Assistant Commissioner, CGST Division sent communication dated 17.11.2023 to Deputy Excise and Taxation Commissioner, Excise & Taxation Department, Jagadhri in respect to blocking of Input Tax Credit (ITC) of recipients of M/s M.S. Trading Company. It was informed that supplier M/s M.S. Trading Company was found non-existent at its principal place of business and it appeared from perusal of GSTR-1 return filed by supplier that it had passed on ITC to various firms. ITC in question was requested to be blocked in accordance with provisions of Rule 86A of CGST/HGST Rules, 2017 (for short – ‘2017 Rules’). It is stated that no opportunity was afforded to petitioner to prove genuineness of purchases before blocking the ITC. Petitioner, subsequent to blocking of its ITC, submitted detailed representation dated 01.01.2024 while explaining that it is a bona fide purchaser and has availed ITC on the basis of purchased documents, duly available with it. Upon considering the representation ITC to the tune of Rs.27,48,835/- was unblocked on 16.02.2024 but the remaining amount stood blocked.

3. It is further stated that on 21.11.2023, it was only Rs.55,01,203/- which was available in the credit ledger. Therefore, there was blocking in the negative. The amount of ITC to the extent of negative balance was unblocked as per intimation dated 16.02.2024.

4. Learned counsel for petitioner submits that in terms of Rule 86A(3) CGST Rules, ITC can be blocked only for a period of one year, however,

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respondent No.2 yet again on 05.12.2023 blocked the ITC to the tune of Rs.82,50,038/- in petitioner's ECL and for the same reason i.e. regarding investigation with respect to M/s M.S. Trading Co. No further proceedings have been initiated against the petitioner. Reliance is placed upon judgment of Hon'ble the Supreme Court in **Kesari Nandan Mobile versus Office of Assistant Commissioner of State Tax (2), Enforcement Division – 5 (Civil Appeal No. 9543 of 2025)** decided on 14.08.2025 to submit that action of respondents is clearly arbitrary. It is, thus, prayed that this writ petition be allowed as prayed for.

5. Learned counsel for respondents has opposed the writ petition while submitting that petitioner has availed ineligible ITC fraudulently on the basis of invoices issued by one M/s M.S. Trading Co. which was found non-operational at the registered address. It is in view thereof that ITC of petitioner was blocked in accordance with Rule 86A of 2017 Rules. Learned counsel for respondents submits that investigation in the matter was still going on, therefore, ITC was blocked again and there is no bar in re-blocking the ITC in Rule 86A of CGST Rules. It is further submitted that judgment of Hon'ble the Supreme Court in **Kesari Nandan's** case (supra) is in respect to Section 83 of 2017 Act and not Section 86 of 2017 Act and the action taken under Rule 86A CGST Rules is correct. Dismissal of the writ petition is sought.

6. We have heard learned counsel for the parties and perused the file with their assistance.

7. Blocking of ITC of petitioner as narrated in the foregoing paras is a matter of record. At the outset, it is relevant to refer to Rule 86A of 2017 Rules and Section 83 of CGST/HGST Act. Rule 86A of Rules 2017 reads as under:-



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“Rule 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."

8. Section 83 of 2017 Act reads as under:-

“83. Provisional attachment to protect revenue in certain cases

(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to



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the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under subsection (1).”

9. It is apposite to note that sub-Rule 3 of Rule 86A specifically provides that restriction shall cease to have effect after expiry of period of one year from the date of imposition of such restriction. Section 83(2) of 2017 Act similarly provides that provisional attachment which was carried out to protect revenue in certain cases shall cease to have effect after expiry of period of one year from the date of the order made under Section 83(1). Hon’ble the Supreme Court while considering the provisions of Section 83 of 2017 Act in **Kesari Nandan’s** case (supra) decided the following question:-

“Whether CGST Act or any other law in force permits issuance of second provisional attachment order under sub-section (1) of Section 83 of CGST Act after initial provisional attachment order issued thereunder ceases, by reason of efflux of a year from the date of its issuance, in terms of sub-section (2) thereof?”

10. After considering its various earlier decisions in **State of Odisha v. Satish Kumar Ishwardas Gajbhiye (2021)17 SCC 90**, **Rai Sahib Ram Jawaya Kapur v. State of Punjab AIR 1955 SC 549**, **Lohia Machines Ltd. v. Union of India (1985) 2 SCC 197**, **Pt. Banarsi Das Bhanot v. State of Madhya Pradesh AIR 1958 SC 909** and **Sant Ram Sharma v. State of Rajasthan AIR 1967 SC 1910**, Hon’ble the Supreme Court concluded that provisional attachment is a pre-emptive measure to protect interests of

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government revenue and, thus, cannot be employed as measure of recovery. Period of one year is sufficient for revenue to conclude its investigation. Under the garb of renewal, a provisional attachment order cannot continue with no change in circumstances. An act which cannot be done directly, cannot be done indirectly. Relevant portion of judgment reads as under:-

“29. Not to speak of a statutory conferment of power, there is a complete absence of any executive instruction consistent with the legislative policy and intendment of the CGST Act authorizing renewal of a lapsed provisional attachment order. Viewed from either angle, issuance of the provisional attachment orders by the respondent under challenge before the Gujarat High Court appears to be indefensible as rightly contended by Mr. Dave.

30. That apart, having regard to the draconian nature of power conferred on the revenue by sub-section (1) of Section 83 of the CGST Act to levy a provisional attachment, the terms of the entire section have to be construed in a manner so that sub-section (2) of Section 83 is not effectively reduced to a dead letter. We are reminded of the maxim *ut res magis valeat quam pereat*. It is an interpretive doctrine that a legal text, specially a statute, should be interpreted in a way that gives the document force rather than makes it fail. Conceding power to the revenue to issue a fresh provisional order of attachment after the initial 15 order has lapsed by operation of law or to renew the same would render the text of sub-section (2) of Section 83 otiose and accepting the reason assigned by the Gujarat High Court would permit the revenue to exercise a power which is not the statutory intendment. We, therefore, see no reason to read Section 83 in a manner to confer any additional power over and above the draconian power conferred by sub-section (1) and upon lapse as ordained by sub-section (2).

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31. Moving further, fresh issuance of a provisional attachment order premised on substantially the same grounds as the earlier one would be in disregard to the safeguard provided in sub-section (2). The age old principle, that an act which cannot be done directly cannot be done indirectly, would apply in its entirety. To permit any other interpretation would result in an abuse of law and due process. If we were to accept the reason assigned by the Gujarat High Court in the impugned order that the law does not place any embargo, it would stand to reason that the authority - not stopping after the 1st renewal order ceases to have effect in terms of sub-section (2) of Section 83 - might continue to issue repeated renewal orders. Repeated or continuous issuance of a provisional attachment order under the garb of 'renewal' could lead to a serious anomaly. With no change in circumstances, repeated orders in the garb of renewal would be contrary to the plain reading of subsection (2) and akin to filling old wine in a new bottle.

32. Besides, a reading of the statute in its entirety would reveal that the provisional attachment is a pre-emptive measure to protect the 16 interests of government revenue. It cannot function as a recovery measure; for that, the statute has other provisions. Certainly, a period of one year, as ordained by the legislature, is enough for the revenue authorities to conclude its investigation; if not, the legislature could have provided for a renewal or an extended period as in the Excise Act and the Customs Act. Sub-section (2) of Section 83 does not provide for any exception to the rule. Any explanation given by the respondent for issuing a renewal would be in the teeth of the established procedure. Once the inquiry culminates into a final demand, recourse must be had to the provisions under the section which provide for recovery of the assessed tax, penalty, interest, etc. This also provides opportunity to the assessee to challenge the same before the appropriate authority. Short-circuiting the procedure by pursuing a provisional attachment



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as a means to recover the tax due, as a natural consequence, would frustrate the intent and purpose of the statute.

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39. The appellant's argument that the Parliament, being cognizant of other taxing statutes, deliberately chose not to incorporate an extension provision in the section, also carries considerable merit. The procedure of provisional attachment is not alien to tax jurisprudence. Such pre-emptive measure can be found in several statutes, including the Customs Act and the Excise Act, and the Income Tax Act, 1961 as well. Ergo, when the statute does provide for an extension, the authority thereunder is free to do so, subject to such restrictions as may be imposed. Conversely, when a statute does not provide for an extension, renewal, re-issuance, revival — whatever be the nomenclature — the executive cannot overreach the statute to do so.”

11. Doubtlessly Hon’ble the Supreme Court was considering matters involving interpretation of Section 83 of 2017 Act. However, a bare perusal of Section 83 of 2017 Act and Rule 86A of 2017 Rules clearly indicate that basic principle behind both provisions is protection of revenue. Rule 83(2) and Rule 86A(3) are clearly *pari materia*. Rule 159 (5) and (6) of 2017 Rules confer powers upon the Commissioner to release the property from attachment when it is found that property attached was or is not liable to attachment as is the case under Rule 86A(2) of 2017 Rules.

12. In the given factual matrix, blocking of ITC beyond period of one year on the same very ground, is clearly unsustainable. It is to be reiterated that as informed to the Court, no further proceedings have been initiated against petitioner and there is no other fresh ground on the basis of which blocking of

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ITC has been renewed. It is, thus, held that blocking of petitioner's ITC by respondent after period of one year i.e. 21.11.2024 is unsustainable, hence, set aside.

13. No other argument has been addressed.

14. Writ petition is, accordingly, allowed in the above terms.

15. Needless to say, respondents are at liberty to take any further steps against petitioner in accordance with law and present order is not a reflection on the merits of matter.

(LISA GILL)
JUDGE

(PARMOD GOYAL)
JUDGE

28.11.2025

Chiranjeev/rts

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No