

Reasons must be recorded in writing to exercise the power to block electronic credit ledger– Bombay HC

24 February 2022



Summary

The Bombay High Court (HC) has held that while there is discretion provided to authorities for blocking electronic credit ledger (ECL), the satisfaction must be reached based on objective material available before the authority. Further, the ECL can be blocked only to the extent of the amount fraudulently/wrongly availed and the reasons to block ECL must be recorded in writing. The power to block ECL is drastic in nature and hence, the decisions cannot be made on imaginary basis.

Facts of the case

- The petitioner¹ is engaged in infrastructure development. The petitioner noticed that its Electronic Credit Ledger (ECL) was not operational and was blocked².
- The petitioner contended that blocking of the ECL of the petitioner amounts to illegal provisional attachment³. Further, the Commissioner is the only authority for making attachment which can be done only if any proceeding is pending or initiated⁴.
- The petitioner submitted that the power to attach ECL cannot be exercised without quantifying the credit amount of wrong availment. Further, blocking of ECL could not have been done without an order recording reasons in writing.
- The revenue authorities⁵ noticed that the petitioner never existed at the principal place of business. Since the petitioner has availed credit fraudulently, thus it is liable to be recovered⁶.
- Therefore, the petitioner filed present writ⁷ before the Bombay HC praying to quash the blocking of ECL and issue direction to Union of India to issue guidelines for reasonable exercise of power.

Bombay HC observations and ruling⁸:

- **Blocking of ECL is different from provisional attachment of property:** In case of attachment of property, the custody of the property is taken over by the department. However, in case of blocking of ECL, the custody remains with the taxpayer. Only a disability is created on the capacity to utilise unutilised ITC. The power under the relevant provisions pertaining to blocking of credits⁹ is quite different from the power of provisional attachment of property as these can be invoked irrespective of any proceedings initiated under the law¹⁰. Hence, any order passed under the rule cannot be treated as the order amounting to the provisional attachment of property.
- **Provisions permits blocking of the ECL:** The rule permits disallowance of debit of an amount to the ECL and blocking of ECL can be done only to the extent of amount of credit that has been fraudulently or wrongly availed.
- **Order of blocking of ECL is arbitrary and illegal:** The rule prescribes two pre-requisites to be fulfilled to exercise power of blocking of ECL. The first is satisfaction of the authority that blocking is necessary on the basis of material available and second is that recording of

¹ Dee Vee Projects Ltd.

² by the Deputy Commissioner, State Sales Tax, MIDC, Nagpur

³ under Section 83 of the CGST Act.

⁴ under any of sections such as sections 62, 63, 64, 67, 73 and 74

⁵ respondent no. 3-Additional Director, DGGI

⁶ along with interest and consequential penalties

⁷ Writ Petition No. 2693 of 2021

⁸ Order dated 11 February 2022

⁹ Rule 86A of the CGST Rules, 2017

¹⁰ Chapters XII, XIV and XV of the CGST Act, 2017

the reasons in writing. In absence of the same, the authority cannot block the ECL even to the extent of amount fraudulently or wrongly availed. The order does not give any reasons and does not specify the amount¹¹. Hence, the impugned order is arbitrary and illegal.

- **No necessity for examining justification in blocking ECL:** The impugned order itself has been found to be not worthy of upholding. Hence, there arises no necessity for examining justification for issuance of the impugned order.
- **No need to issue directions for exercising the power:** The rule has been adequately framed making authority so as to take care of any possible misuse of the power. Hence, there is no need to issue any direction to the Union of India for coming out with appropriate guidelines for exercise of the power.

Our comments

The subject matter has been a matter of extensive litigation under GST since inception.

In a similar ruling, even the Madras High Court in case of HEC India LLP¹² had pronounced that before invoking the power of blocking ECL, the authority should have reasons to believe, otherwise, the invocation of power shall be unauthorised and without jurisdiction.

Similarly, even the Allahabad High Court in case of North End Food Marketing Pvt. Ltd¹³ had held that the power to block ECL should be used sparingly and only on discretionary weighty grounds and reasons. Even the Karnataka HC¹⁴ in case of Aryan Tradelink had directed the Revenue to pass a detailed reasoned order to block ECL.

The judgment is in line with the above judicial pronouncements and shall help in curbing the litigations.

¹¹ to the extent to which the ECL has been blocked.

¹²WA No. 2341 of 2021

¹³ Writ Tax No. - 309 of 2021

¹⁴ Writ Petition No. 11581/2020 (T/RES)

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