HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 11921/2024

Sumetco Alloys Private Limited

----Petitioner

Versus

Deputy Commissioner & Others

----Respondents

For Petitioner(s)	:	Mr. Narendra Singhvi, Adv. with Ms. Shristhi Agarwal, Adv.
For Respondent(s)	:	Mr. Sandeep Taneja, AAG Mr. Samaksh Dasot, CGPC

HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Order

19/09/2024

1. The only point arising for consideration in this case is the order of disallowing credit could be passed by the Competent Authority i.e., Deputy Commissioner, State Tax without hearing the petitioner.

2. Learned counsel for the petitioner would submit that an information regarding passing of order was uploaded on the GST portal by the Competent Authority i.e., Deputy Commissioner but he is not the person who issued notice to the petitioner or applied his mind on the reply submitted by the petitioner. According to him, notice was given to the petitioner by respondent no.2, who is neither the Commissioner, nor the authority authorised by the Commissioner, to exercise the power under Rule 86A of the Rajasthan Goods and Services Tax Rules, 2017 (for short 'the RGST Rules, 2017')/the Central Goods and Services Tax Rules, 2017 (for short 'the CGST Rules, 2017) and, therefore, it is

submitted that the order is void ab initio, in utter violation of principles of natural justice and without application of mind.

3. Learned Additional Advocate General would submit that the notice was given to the petitioner by Joint Commissioner and Joint Commissioner, after applying his mind to the material on record and also considering the reply of the petitioner was satisfied that the present is a fit case for blocking of electronic credit ledger and, therefore, he forwarded the matter to the Deputy Commissioner, who proceeded to upload an information on GST portal with reference to an order dated 29.05.2024 relating to the blocking of electronic credit ledger. Learned Additional Advocate General further submits that Rule 86A of the RGST Rules, 2017/the CGST Rules, 2017 provides that the Commissioner or the officer authorised on his behalf is only required to record reasons in writing, which has been shown in the present case and as there is no provision for affording any opportunity of hearing to the person affected, the order could not be said to be in violation of provisions of law.

4. Admittedly, under Rule 86A of the RGST Rules, 2017/the CGST Rules, 2017, the authority competent to disallow debit/block credit is the Commissioner or an officer authorised on his behalf, not below the rank of Assistant Commissioner. The law further requires that such an officer having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible as provided in clauses (a) and (b), may for the 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 credit.

5. Even though the rule in terms does not incorporate principles of natural justice, the authority, who is vested with the statutory power, is competent to take a decision whether debit should be allowed or not, is obliged to hear the affected person by giving him notice.

6. In this case, we find that the notice was given by an authority who was not competent to take decision i.e., Joint Commissioner, whereas, the impugned order has been passed by the Deputy Commissioner, who is a competent authority but who did not give notice, nor heard the petitioner. This prima facie appears to be in utter violation of principles of natural justice.

7. The submission of learned Additional Advocate General that the authority, who gave opportunity of hearing, collected material and forwarded the same to the competent authority fulfills the requirement of principles of natural justice, cannot be accepted at this stage.

8. In view of the above, the action of the respondents in blocking the electronic credit ledger of the petitioner is kept in abeyance and the respondents are restrained from giving effect to decision of blocking credit ledger of the petitioner.

9. List this case for final hearing at motion stage in the last week of November, 2024.

10. In the meantime, rejoinder, if any, be filed.

(ASHUTOSH KUMAR),J **(MANINDRA MOHAN SHRIVASTAVA),CJ**

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