***THE HON'BLE SRI JUSTICE SUJOY PAUL**
AND
***THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

+WRIT PETITION Nos.10390, 10425, 10459 and 12733 of 2024

% 26-06-2024

M/s. Bhavani Oxides and others. …Petitioners

vs.

$The State of Telangana and others. … Respondents

!Counsel for the Petitioners: Sri M. Uma Shankar.
Sri M. Naga Deepak.

^Counsel for Respondents: Sri Swaroop Oorilla, learned Special Government Pleader for State Tax.

<Gist :

>Head Note :

? Cases referred

1. 2024 (5) TMI 509
2. 2023 (11) TMI 957
3. 2022 (2) TMI 843
4. 1977 (2) SCC 777
5. 2022 SCC OnLine Cal 4544
6. (2002) 4 SCC 638
7. (2019) 5 SCC 119
8. (2009) 2 SCC 1
9. AIR 1959 SC 422
10. AIR 1955 SC 830
11. AIR 1952 SC 324
12. (1924) AC 185
13. AIR 1961 SC 1549
14. AIR 1976 SC 1697
15. AIR 1953 SC 10
16. AIR 1979 SC 193
17. (1993) 1 SCC 78
18. (1997) 3 SCC 486
19. (2008) 14 SCC 151
20. (2011) 13 SCC 733
21. AIR 1968 SC 647
22. (2003) 2 SCC 111

IN THE HIGH COURT FOR THE STATE OF TELANGANA

HYDERABAD

*** * * ***

WRIT PETITION Nos.10390, 10425, 10459 and 12733 of 2024

(Per Hon'ble Sri Justice Sujoy Paul)

Between:

M/s. Bhavani Oxides and others.

...Petitioners

vs.

The State of Telangana and others.

... Respondents

JUDGMENT PRONOUNCED ON: 26.06.2024

THE HON'BLE SRI JUSTICE SUJOY PAUL

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? :

2. Whether the copies of judgment may be Marked to Law Reporters/Journals? :

3. Whether His Lordship wishes to see the fair copy of the Judgment? :

_____

SUJOY PAUL, J

_____

NAMAVARAPU RAJESHWAR RAO, J

THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

WRIT PETITION Nos.10390, 10425, 10459 AND 12733 OF 2024

COMMON ORDER: *(Per Hon'ble Justice Sujoy Paul)*

Regard being had to the similitude of the questions involved on the joint request of the parties, the matters were analogously heard and decided by this common order.

Facts:-

2. The facts are taken from W.P.No.10390 of 2024. The petitioner is a proprietorship firm engaged in the manufacture and supply of zinc oxide and duly registered with Goods and Service Tax (GST) authorities of Telangana State. The petitioner claims itself as *bona fide* purchaser of inputs from various suppliers and has been receiving proper tax invoices, e-way bills and maintained weighment slips under the provisions of Central Goods and Service Tax (CGST) Act, 2017 (Act) and Telangana State Goods and Service Tax (SGST) Act, 2017.

3. It is submitted that on 14.03.2024, the State Tax Officer in purported exercise of power under Rule 86A i.e., *Conditions of use*

of amount available in electronic credit ledger of the CGST Rules, 2017 (Rules), blocked the credit ledger of the petitioner by mentioning 'Registration of supplier has been cancelled'. The ledger is blocked without issuing any show cause notice. No detailed reasons and necessary facts were disclosed, which became foundation for such blocking by the respondent. Because of the blocking, the electronic credit ledger reflects the closing balance as zero. This action of blocking is subject matter of challenge in these petitions filed under Article 226 of the Constitution.

Petitioners' contention:

4. Sri M. Uma Shankar, learned counsel for the petitioners in W.P.Nos.10390, 10425 and 10459 of 2024, submits that in W.P.No.10390 of 2024, the respondents have issued notice to the petitioner therein and one of the suppliers under Sections 73/74 of the Act and the said proceeding is still pending. In all fairness, the department should have proceeded as per the said show cause notice and after following the procedure could have taken a final decision. Instead, the draconian Rule 86A is enforced, which resulted in total stoppage of business of the petitioner. The

petitioner is not able to file his monthly return. If ultimately, the aforesaid action is found to be illegal, still the petitioner may be required to pay late fee, penalty etc., for the intervening period. Both the learned counsel for the petitioners placed reliance on two judgments of Telangana High Court passed in the case of **M/s. Laxmi Fine Chem v. Assistant Commissioner**[1] and in the case of **M/s. Sri Krishna Enterprises v. The Superintendent of Central Tax**[2], to bolster the submissions: (1) the impugned drastic action of blocking the electronic credit ledger is arbitrary and runs contrary to the principles of natural justice, more so, when it is taken without issuing show cause notice. (2) As per clause 3.1.3 of Circular No. CBEC-20/16/05/2021-GST/1552 dated 02.11.2021 issued by the Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, GST Policy Wing, Government of India, it is clear that the department itself was conscious that the power under Rule 86A cannot be exercised in routine manner, instead, it must be exercised sparingly and with utmost circumspection. (3) The point involved is no more *res integra,* as the Gujarat High Court in the case of

[1] 2024 (5) TMI 509
[2] 2023 (11) TMI 957

Samay Alloys India Pvt. Ltd v. State of Gujarat[3] has already considered the above draconian provision and set aside similar action. (4) The impugned document does not contain necessary details i.e., the details of the supplier whose registration is cancelled, the date when such cancellation has taken place etc. Therefore, there is no material whatsoever on the strength of which the 'satisfaction' is arrived at or in other words "reasons to believe" was recorded.

5. Sri M. Naga Deepak, learned counsel for the petitioner in W.P.No.12733 of 2024, submitted that the language employed in Rule 86A makes it clear that even if, the Input Tax Credit available in the e-credit ledger has been fraudulently availed or one is ineligible, the debit of amount equivalent to 'such credit' can be subject matter of blocking, but the impugned action is beyond that amount which is contrary to Rule 86A. Sri M. Naga Deepak, in his case urged that blocking is not confined to the 'such' amount only. By placing reliance on the judgment in the case of **State of Kerala v. K.T. Shaduli Yusuff**[4], it is urged that the principles of natural justice are to be read into Rule 86A. During

[3] 2022 (2) TMI 843
[4] 1977 (2) SCC 777

the course of hearing, it was pointed out that in W.P.Nos.10425, 10459 and 12733 of 2024, the respondents have directly blocked the electronic credit ledger and no notice under Section 74 of the Act was given.

Stand of Revenue:-

6. *Per contra,* Sri Swaroop Oorilla, learned Special Government Pleader for State Tax for respondents, supported the impugned action and urged that constitutionality of Rule 86A is not subject matter of challenge and hence, said Rule must be read as such. The Rule is totally silent about following the principles of natural justice. Thus, the impugned action cannot be held to be illegal merely because it is taken without following the principles of natural justice. Reliance is placed on the judgment of Calcutta High Court in the case of **Basanta Kumar Shaw v. Assistant Commissioner of Revenue**[5].

7. The Government Pleader further urged that the impugned action in W.P.No.10390 of 2024 clearly shows that the blockage is made applicable to the extent Input Tax Credit was fraudulently claimed and the entire amount is not blocked. If the petitioner

[5] 2022 SCC OnLine Cal 4544

replenishes the said amount, he can file the return electronically. Furthermore, it is submitted that the petitioners are not remedy less. As per Sub-rule 2 of Rule 86A, the petitioners can prefer an application/representation before the Commissioner, who upon being satisfied that conditions for disallowing the debit of electronic credit ledger no longer exists, may allow such debit. The petitioners may avail such remedy.

8. The parties have confined their arguments to aforesaid extent and not pressed any other point.

9. We have heard the learned counsel for the parties at length and perused the record.

FINDINGS:

Statutory alternative remedy:

10. The learned Government Pleader has taken pains to contend that Rule 86A(2) of the Rules provides a statutory alternative remedy, and for this reason, the petitioners should be relegated to avail the said remedy. We do not see any merit in this contention for the simple reason that Sub-rule (2) nowhere prescribes any mode of preferring any application, appeal or representation. The

statutory remedy lies when there exists an express right of preferring an appeal, application, etc., and a corresponding duty on the competent authority to entertain and decide the same (see **Director of Settlements, A.P. v. M.R.Apparao**[6] and **Municipal Corporation of Greater Mumbai v. Rafiqunnisa M.Khalifa**[7]). In absence of any such provision of preferring such application and corresponding duty on the authority, the objection of learned Government Pleader deserves to be rejected.

11. Even if for the sake of argument, it is accepted that under Sub-rule 2 of Rule 86A any application/representation is entertainable, the person intending to prefer such application/representation must be equipped with necessary details on the strength of which he can effectively challenge the action of the department. Putting it differently, the impugned action does not disclose necessary details and factual background which can be met/attacked by the petitioners by preferring an application/representation under Sub-rule 2. Thus, we find no reason to relegate the petitioners to avail so called remedy available to them under Rule 86A (2) and instead deem it proper

[6] (2002) 4 SCC 638
[7] (2019) 5 SCC 119

to decide the matter in exercise of power under Article 226 of the Constitution.

Previous Orders:

12. This Court in **M/s. Laxmi Fine Chem** and **M/s. Sri Krishna Enterprises** (both cited supra) considered the judgment of the Gujarat High Court in the case of **Samay Alloys India Pvt. Ltd** (cited supra) dealing with Rule 86A of Rules. The para No.5 of judgment in the case of **M/s. Laxmi Fine Chem** (cited supra) is worth recording and the same is reproduced as under:

> "5. Today, the learned Standing Counsel for the State submits that upon instructions he has been informed to state that the impugned action of blocking the input tax credit **was without issuance of any show cause notice. Thus the said action on the part of the respondents in passing the order of blocking the input tax credit to the tune of Rs.50,06,000/- by making a negative credit in the electronic credit ledger of the petitioner is per se bad in law and violative of principles of natural justice.** As regards the second ground, there is a recent decision of the Division Bench of the Gujarat High Court, in the case of Samay Alloys India Pvt.Ltd. vs. State of Gujarat decided on 03.02.2022, dealing with the aspect of Rule 86(A) of the CGST Rules 2017, wherein in paragraph Nos.38 to 44 and 57 has held as under…"
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> (Emphasis Supplied)

Department's Circular:

13. The relevant clauses of Circular dated 02.11.2021, on which heavy reliance is placed by Sri Uma Shankar, learned counsel for

the petitioners in W.P.No.10390 of 2024 and batch reads as under:

> "3.1.3 The Commissioner, or an officer authorised by him, not below the rank of Assistant Commissioner, must form an opinion for disallowing debit of an amount from electronic credit ledger in respect of a registered person, only after proper application of mind considering all the facts of the case, including the nature of prima facie fraudulently availed or ineligible input tax credit and whether the same is covered under the grounds mentioned in sub-rule (1) of rule 86A, as discussed in para 3.1.2 above; the amount of input tax credit involved; and whether disallowing such debit of electronic credit ledger of a person is necessary for restricting him from utilizing/ passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue.
>
> 3.1.4 It is reiterated that the power of disallowing debit of amount from electronic credit ledger must not be exercised in a mechanical manner and careful examination of all the facts of the case is important to determine case(s) tit for exercising power under rule 86A. The remedy of disallowing debit of amount from electronic credit ledger being, by its very nature, extraordinary, has to be resorted to with utmost circumspection and with maximum care and caution. It contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration of suspicion. The reasons are to be on the basis of material evidence available or gathered in relation to fraudulent availment of input tax credit or ineligible input tax credit availed as per the conditions/ grounds under sub-rule (1) of Rule 86A."
>
> (Emphasis Supplied)

14. The circular dated 02.11.2021 clearly shows that the department is conscious of the impact of invoking Rule 86A of the Rules in a mechanical manner. Therefore, a word of caution is communicated to the authorities to deal with such matters with

utmost care, caution and sensitivity. Pertinently, the emphasis is laid for existence of reasons which must be based on material evidence regarding fraudulent availment of Input Tax Credit. The 'reasons' must be discernible and whenever required must be disclosed. In the instant case, in the fitness of the case, it was expected that the name of the supplier, date of cancellation of his registration and other necessary details should have been disclosed to the petitioner to enable him to put forth his defence in an effective manner.

Section 74 and Rule 86 : Principles of Natural Justice.

15. The matter may be viewed from another angle. The purpose behind bringing Section 74 of the Act and Rule 86A of the Rules in the statute book is to ensure that the benefit of Input Tax Credit, etc., cannot be enjoyed fraudulently. The relevant portions of both the provisions are reproduced in a tabular form in order to examine the provisions in juxta position.

Section 74:- **Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful-misstatement or suppression of facts:**	**Rule 86A:-** **Conditions of use of amount available in electronic credit ledger.**
(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where	(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an

input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice. (2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order. (3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax. (4) to (8) xxx (9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.	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 unutilized 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.

(Emphasis Supplied)

16. A plain reading of Section 74 of the Act shows that it also talks about determination of Input Tax Credit wrongly availed or utilized by reason of fraud or any willful misstatement or by suppression of facts. In the event of any such condition being available, Sub-section (1) provides service of notice on the person chargeable with tax. Sub-section (2) prescribes the time limit for issuance of notice under Sub-section (1). Sub-section (3) makes it clear that proper officer needs to serve a statement containing necessary details relating to Input Tax Credit wrongly availed or utilized. In turn, the person chargeable may file his response in the manner provided in other sub-sections. Sub-section (9) enables the proper officer to consider the representation and determine the amount of tax, interest and penalty due from such person. Thus, principles of natural justice are statutorily codified

in Section 74. The person chargeable is not only required to be put to notice, there is a statutory mandate that necessary details in the shape of a statement containing the details of tax not paid or short paid or wrongly refunded or Input Tax Credit wrongly availed or utilized must be furnished.

17. Rule 86A of the Rules is silent about the observance of principles of natural justice. The parties were at loggerheads on the question of applicability of principles of natural justice when power is being exercised under Rule 86A. This is an interesting conundrum which deserves serious consideration.

18. A conjoint reading of Section 74 and Rule 86A leaves no room for any doubt that the intention and object behind insertion of those provisions is to deprive the person chargeable from a benefit which is wrongly or fraudulently claimed and enjoyed. A 'Section' in a statute is always on a higher footing than the 'Rule' made under the Act. As noticed, Section 74 statutorily recognizes and mandates that principles of natural justice are to be followed. Rule 86A, on the other hand, is totally silent on the aspect of applicability of principles of natural justice. Thus, if Rule 86A is implemented without following the principles of natural justice, it

may cause hardship, inconvenience and injustice. It is difficult to accept that the law makers intended not to follow principles of natural justice while inserting Rule 86A in the statute book. If we interpret Rule 86A in the manner suggested by learned Government Pleader, it will have an impact that although Section 74, a substantive provision of the Act recognizes the principles of natural justice, the Rule made under the Section says total goodbye to principles of natural justice. Hence, we are unable to persuade ourselves with this line of argument.

19. It is trite that if the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity, and inconsistency (see para 101 of **Mahmadhusen Abdulrahim Kalota Shaikh v. Union of India**[8]). Similarly, a construction giving rise to anomalies should be avoided (see **Veluswami Thevar v. G.Raja Nainar**[9]. Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or

[8] (2009) 2 SCC 1
[9] AIR 1959 SC 422

injustice, *presumably not intended*, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence (see **Tirath Singh v. Bachittar Singh**[10]).

20. In **Shamrao v. District Magistrate, Thana**[11], the Apex Court opined that the object of the construction of a statute being to ascertain the will of the Legislature, *it may be presumed that neither injustice nor absurdity was intended*. If, therefore literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.

21. In order to avoid inconsistency, injustice, anomaly and hardship and also in order to iron out the creases between Section 74 of the Act and Rule 86A of the Rules, we deem it proper to interpret it by holding that principles of natural justice must be observed while taking an action under Rule 86A of the Rules.

22. The aforesaid course must be adopted to avoid uncertainty and friction in the system which the statute purports to regulate.

[10] AIR 1955 SC 830
[11] AIR 1952 SC 324

This principle has been stated by LORD SHAW in the following words in **Shannon Realities Ltd. v. St. Michel (Ville De)**[12]:

> "Where words of a statute are clear, they must, of course, be followed but where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system".
>
> (Emphasis Supplied)

23. The said principle enunciated by LORD SHAW was accepted with profit while construing Section 193 of the Sea Customs Act, 1878 by SUBBARAO, J., in **Collector of Customs v. Digvijaya Singhji Spinning & Weaving Mills Ltd.**[13]. In **State of Gujarat v. Chaturbhuj Maganlal**[14], the Apex Court opined that a contrary conclusion from a provision can be avoided so that it would not impede the efficacy of the provision and introduce inconvenience, friction, confusion and artificiality in the working of the provision.

24. S.R.DAS, J., in **State of Punjab v. Ajaib Singh**[15] observed that if two constructions are possible then the court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or

[12] (1924) AC 185
[13] AIR 1961 SC 1549
[14] AIR 1976 SC 1697
[15] AIR 1953 SC 10

give rise to practical inconvenience or make well-established provision of existing law nugatory.

25. In **Chief Justice of Andhra Pradesh v. L.V.A. Dikshitulu**[16], it was prominently held as under:

> "where two alternative constructions are possible, the court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working and eschew the other which leads to absurdity, confusion or fiction, contradiction and conflict between its various provisions, or undermines or tends to defeat or destroy the basic scheme and purpose of the enactment."
>
> (Emphasis Supplied)

26. Considering the common string available in the above judgments of the Apex Court, we have no hesitation to hold that principles of natural justice are to be read into Rule 86A of the Rules.

27. The principles of natural justice are not expressly required to be followed in certain taxing statutes, yet in certain judgments, the Apex Court opined that the said principles must be read into the relevant provision. It is apposite to consider following judgments in this regard.

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[16] AIR 1979 SC 193

28. In the case **C.B. Gautam v. Union of India and Others**[17], the Apex Court held as under:

> "**26.** The next question to which we propose to address ourselves is whether the provisions of Chapter XX-C are bad in law as there is no 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 said Chapter for the purchase by the Central Government of an immovable property agreed to be sold in an agreement of sale. In this regard a plain reading of the provisions of the said Chapter clearly shows that they do not contain any provision for giving the concerned parties an opportunity to be heard before an order for compulsory purchase of the property by the Central Government is made. In connection with the requirement of opportunity of being heard before an order for compulsory purchase is made we find that somewhat similar questions have been considered by this Court on a number of occasions. In the case of *Union of India* v. *Col. J.N. Sinha* [(1970) 2 SCC 458 : (1971) 1 SCR 791, 794-795] the facts were that the first respondent who was in the class I service of the Survey of India and rose to the position of Deputy Director, was compulsorily retired by an order under Rule 56(*j*) of the Fundamental Rules, no reasons were given in the order. Respondent 1 challenged the order on the ground that it violated principles of natural justice and no opportunity had been given to the first respondent to show cause against his compulsory retirement. A Division Bench of this Court in its judgment in that case observed as follows: (SCC pp. 460-61, para 8)
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> > 'Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in *Kraipak, A.K.* v. *Union of India* [(1969) 2 SCC 262 : AIR 1970 SC 150] '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. In other words they do not supplant the law but supplement it'. **It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the**

[17] (1993) 1 SCC 78

> **Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice.** But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.'

28. It must, however, be borne in mind that courts have generally read into the provisions of the relevant sections a requirement of giving a reasonable opportunity of being heard before an order is made which would have adverse civil consequences for the parties affected…

30. In the light of what we have observed above, we are clearly of the view that the requirement of a reasonable opportunity being given to the concerned parties, particularly, the intending purchaser and the intending seller must be read into the provisions of Chapter XX-C. In our opinion, before an order for compulsory purchase is made under Section 269-UD, the intending purchaser and the intending seller must be given a reasonable opportunity of showing cause against an order for compulsory purchase being made by the appropriate authority concerned… 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."

(Emphasis Supplied)

29. In the case of **FAG Precision Bearings v. Sales Tax Officer (I) and Another**[18], the Apex Court opined as under:

> "**10.** ... We take the view that, in the circumstances, the power under Rule 37-A may not be exercised by the Commissioner without first giving to the assessee notice to show cause why his assessment proceedings should not be stayed for a stated period. The notice should set out what the reasons and circumstances are which, according to the Commissioner, necessitate such stay so that the assessee has the opportunity of meeting the same. This is a requirement of natural justice that, having regard to the scope of Rule 37-A, requires to be read into it."
>
> (Emphasis Supplied)

30. In the case of **Sahara India (Firm), Lucknow v. Commissioner of Income Tax, Central-I and Another**[19], the Apex Court, while referring the decision in **C.B. Gautam** (supra), ruled as under:

> "**32.** The upshot of the entire discussion is that the exercise of power under Section 142(2-A) of the Act leads to serious civil consequences and, therefore, even in the absence of express provision for affording an opportunity of pre-decisional hearing to an assessee and in the absence of any express provision in Section 142(2-A) barring the giving of reasonable opportunity to an assessee, the requirement of observance of **principles of natural justice is to be read into the said provision.** Accordingly, we reiterate the view expressed in *Rajesh Kumar case* [(2007) 2 SCC 181 : (2006) 287 ITR 91]."
>
> (Emphasis Supplied)

[18] (1997) 3 SCC 486
[19] (2008) 14 SCC 151

31. In the case of **Kesar Enterprises Limited v. State of Uttar Pradesh and Others**[20], the Apex Court held as under:

> "**30.** Having considered the issue, framed in para 16, on the touchstone of the aforenoted legal principles in regard to the applicability of the principles of natural justice, we are of the opinion that keeping in view the nature, scope and consequences of direction under sub-rule (7) of Rule 633 of the Excise Manual, the principles of natural justice demand that a show-cause notice should be issued and an opportunity of hearing should be afforded to the person concerned before an order under the said Rule is made, notwithstanding the fact that the said Rule does not contain any express provision for the affected party being given an opportunity of being heard."
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> (Emphasis Supplied)

32. The learned counsel for the respondents placed reliance on the Division Bench judgment of Calcutta High Court in the case of **Basanta Kumar Shaw** (cited supra). It is submitted that Rule 86A has been interpreted by the Calcutta High Court and the Court has taken a different view than the view taken by the Gujarat High Court in **Samay Alloys** (cited supra) case.

33. We have gone through the judgment in the case of **Basanta Kumar Shaw** (cited supra). A plain reading of the judgment shows that the question whether the principles of natural justice are to be read into Rule 86A was not subject matter of discussion.

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[20] (2011) 13 SCC 733

The Calcutta High Court opined that Input Tax Credit is a concession and not a vested right. In our view, Rule 86A neither expressly nor by necessary implication excludes the principles of natural justice, the principles of natural justice for the detailed reasons given hereinabove must be read into the provision. The judgment of the Calcutta High Court in the case of **Basanta Kumar Shaw** (cited supra) is not an authority on the aforesaid aspect. It is trite that precedent is what is actually decided by the Court and not what is logically following from it (see **State of Orissa v. Sudhansu Sekhar Misra**[21]). It is equally settled that a singular different fact may change the precedential value of the judgment (see **Bhavnagar University v. Palitana Sugar Mill (P) Ltd**[22]).

34. In view of foregoing analysis, the impugned action cannot be countenanced. The action of blocking the electronic credit ledger of the petitioners without following the principles of natural justice and without assigning adequate reasons cannot sustain judicial scrutiny. Thus, the impugned action in all the Writ Petitions is set

[21] AIR 1968 SC 647
[22] (2003) 2 SCC 111

aside. The liberty is reserved to the Department to proceed against the petitioners in accordance with law.

35. The Writ Petitions are allowed to the extent indicated above. There shall be no order as to costs. Miscellaneous applications, if any pending in all the Writ Petitions, shall stand closed.

JUSTICE SUJOY PAUL

JUSTICE NAMAVARAPU RAJESHWAR RAO

Date: 26.06.2024
Note: L.R is marked.
B/o. GVR/TJMR