

# 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 petitioner<sup>1</sup> is engaged in infrastructure development. The petitioner noticed that its Electronic Credit Ledger (ECL) was not operational and was blocked<sup>2</sup>.
- The petitioner contended that blocking of the ECL of the petitioner amounts to illegal provisional attachment<sup>3</sup>. Further, the Commissioner is the only authority for making attachment which can be done only if any proceeding is pending or initiated<sup>4</sup>.
- 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 authorities<sup>5</sup> 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 recovered<sup>6</sup>.
- Therefore, the petitioner filed present writ<sup>7</sup> 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 ruling<sup>8</sup>:

- **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 credits<sup>9</sup> is quite different from the power of provisional attachment of property as these can be invoked irrespective of any proceedings initiated under the law<sup>10</sup>. 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

<sup>1</sup> Dee Vee Projects Ltd.

<sup>2</sup> by the Deputy Commissioner, State Sales Tax, MIDC, Nagpur

<sup>3</sup> under Section 83 of the CGST Act.

<sup>4</sup> under any of sections such as sections 62, 63, 64, 67, 73 and 74

<sup>5</sup> respondent no. 3-Additional Director, DGGI

<sup>6</sup> along with interest and consequential penalties

<sup>7</sup> Writ Petition No. 2693 of 2021

<sup>8</sup> Order dated 11 February 2022

<sup>9</sup> Rule 86A of the CGST Rules, 2017

<sup>10</sup> 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 amount<sup>11</sup>. 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 LLP<sup>12</sup> 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. Ltd<sup>13</sup> had held that the power to block ECL should be used sparingly and only on discretionary weighty grounds and reasons. Even the Karnataka HC<sup>14</sup> 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.

---

<sup>11</sup> to the extent to which the ECL has been blocked.

<sup>12</sup>WA No. 2341 of 2021

<sup>13</sup> Writ Tax No. - 309 of 2021

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

# Contact us

To know more, please visit [www.grantthornton.in](http://www.grantthornton.in) or contact any of our offices as mentioned below:

---

<b>NEW DELHI</b> National Office, Outer Circle, L 41, Connaught Circus, New Delhi - 110001 T +91 11 4278 7070	<b>NEW DELHI</b> 6th Floor, Worldmark 2, Aerocity, New Delhi - 110037 T +91 11 4952 7400	<b>BENGALURU</b> 5th Floor, 65/2, Block A, Bagmane Tridib, Bagmane Tech Park, CV Raman Nagar, Bengaluru - 560093 T+91 80 4243 0700	<b>CHANDIGARH</b> B-406A, 4th Floor, L&T Elante Office Building, Industrial Area Phase I, Chandigarh - 160002 T +91 172 4338 000	<b>CHENNAI</b> 9th Floor, A Wing, Prestige Polygon, 471 Anna Salai, Mylapore Division, Teynampet, Chennai – 600035 T +91 44 4294 0000
<b>DEHRADUN</b> Suite No 2211, 2nd Floor, Building 2000, Michigan Avenue, Doon Express Business Park, Subhash Nagar, Dehradun - 248002 T +91 135 2646 500	<b>GURGAON</b> 21st Floor, DLF Square, Jacaranda Marg, DLF Phase II, Gurgaon - 122002 T +91 124 462 8000	<b>HYDERABAD</b> 7th Floor, Block III, White House, Kundan Bagh, Begumpet, Hyderabad - 500016 T +91 40 6630 8200	<b>KOCHI</b> 6th Floor, Modayil Centre Point, Warriam Road Junction, MG Road Kochi - 682016 T +91 484 406 4541	<b>KOLKATA</b> 10C Hungerford Street, 5th Floor, Kolkata - 700017 T +91 33 4050 8000
<b>MUMBAI</b> 11th Floor, Tower II, One International Center, SB Marg Prabhadevi (W), Mumbai - 400013 T +91 22 6626 2600	<b>MUMBAI</b> Kaledonia, 1st Floor, C Wing, (Opposite J&J Office), Sahar Road, Andheri East, Mumbai - 400069 T +91 22 6176 7800	<b>NOIDA</b> Plot No 19A, 2nd Floor, Sector - 16A, Noida - 201301 T +91 120 485 5900	<b>PUNE</b> 3rd Floor, Unit No 309-312, West Wing, Nyati Unitree, Nagar Road, Yerwada Pune - 411006 T +91 20 6744 8800	

---

For more information or for any queries, write to us at [GTBharat@in.gt.com](mailto:GTBharat@in.gt.com)



Follow us @GrantThorntonIN

© 2022 Grant Thornton Bharat LLP. All rights reserved.

“Grant Thornton Bharat” means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly Grant Thornton India LLP, is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001. References to Grant Thornton are to Grant Thornton International Ltd. (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.