

TAX INFO

Dated 14.10.2021

Latest update on GST Law: Information regarding **Rule 86A is a temporary measure and cannot take the shape of permanent arrangement** based on the **Judgement issued by Tripura High Court.**

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Rule 86A is a temporary measure and cannot take the shape of permanent arrangement

Name of Petitioner	Sahil Enterprises
Name of Respondent	Union of India
Court	HC-Tripura
Date of Judgement	14.09.2021
Appeal No.	IA No.1/2021 with WP(C) No.531/2021

Facts of the Case:

The case of the petitioner is that having paid CGST on the purchases made from a registered dealer, the seller has not deposited tax with the Government. As a result, petitioner's input tax credit account has been put under attachment w.e.f. 21.05.2020. As per the provisions of the CGST Act such attachment cannot continue beyond a period of one year. After completion of the period, attachment should be lifted which so far has not been done. The petitioner has challenged the vires of Section 16(2)(c) of the CGST Act, 2017.

Reply of Respondent:

Respondent replied that petitioner has claimed tax credit without the tax being deposited with the Government revenue. In order to safeguard the interest of the revenue, therefore, the Commissioner had exercised powers under Rule 86A of the said rules.

Findings of the Court:

The Commissioner or an officer authorized by him in this behalf, having reason to believe that credit of input tax available in electronic credit ledger has been fraudulently availed or is ineligible he may for reasons to be recorded in writing not allow the debit of any amount equivalent to such credit in the ledger account of the person concerned for discharge of the liability or to claim any refund of unused amount. **The restrictions that can be imposed on use of amount available in electronic credit ledger of a person can be by way of a temporary measure for a period not exceeding one year. If the department wants to permanently disallow credit of accumulated amount in the ledger of a dealer, it must adjudicate the issue and pass an order after bi-parte hearing.**

Decision of the Court:

Department cannot continue to subject the petitioner's electronic credit ledger to the restrictions imposed by the Commissioner, on 21st May 2020. The same shall be released.

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