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**Demystifying Rule 86A of the
CGST Rules - The Untrodden Path**

To ensure availability of funds to meet working capital crisis, especially for Micro, Small and Medium Enterprises ('MSME') Sector, the Central Government and Reserve Bank of India ('RBI') have taken certain heavy-weight monetary measures.

The above noble objective of one arm of the Government and RBI is getting frustrated in practice by the GST authorities. Even on trivial issues or minor lapses on the part of suppliers, GST Authorities block the credit utilization of bona fide recipients, thereby forcing the taxpayers to discharge their GST liabilities in cash. Rule 86A of the CGST Rules is a classic example of another arm of the Government giving such powers to the GST Authorities to curb the flow of funds to industry.

This is evident from a recent news article:

'Indirect tax department has started blocking Input tax credit ('ITC') of the whole supply chain under GST framework even if one of the vendor or supplier has missed out filing requirements. This impacted several corporates and prompted some to consider legal recourse' - Economic Times; June 4, 2021

The use of such excessive and disproportionate powers by the GST Authorities compelled us to revisit Rule 86A of the CGST Rules. Together, let us take 'the Untrodden Path'.

Rule 86A: Conditions of use of amount available in electronic credit ledger -

*"(1) The Commissioner or an officer authorized by him in this behalf, not below the rank of an 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-*

.....

*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.*

....."

The use of the term "**available**" in the above Rule, when closely looked at, gives an altogether different context and meaning to the above Rule. Such an interpretation has hitherto not been taken in any decision or judgment.

In common parlance, the term 'available' indicates "*anything which is at someone's disposal or which is at hand*". As per the Collins Dictionary, the term 'available' means "*obtainable or accessible; capable of being made use of; at hand*". Law Lexicon also defines the term in a similar manner only.

By corollary, something which is not in *presenti* i.e. non-existent / not available, cannot be said to be available. Hence, notwithstanding the satisfaction of other conditions specified under Rule 86A, the ITC fraudulently availed, must be **available** in the Electronic Credit Ledger ('ECL') for any order to be passed under Rule 86A by the GST Authorities.

It is a settled Rule of Interpretation that every word used by the Legislature must be given its due meaning. It is trite that Legislature does not waste any word and never says anything in vain. A simple exercise to test this Rule of Interpretation is to check whether by dropping the subject word, does the meaning of the provision remains intact or it undergoes change.

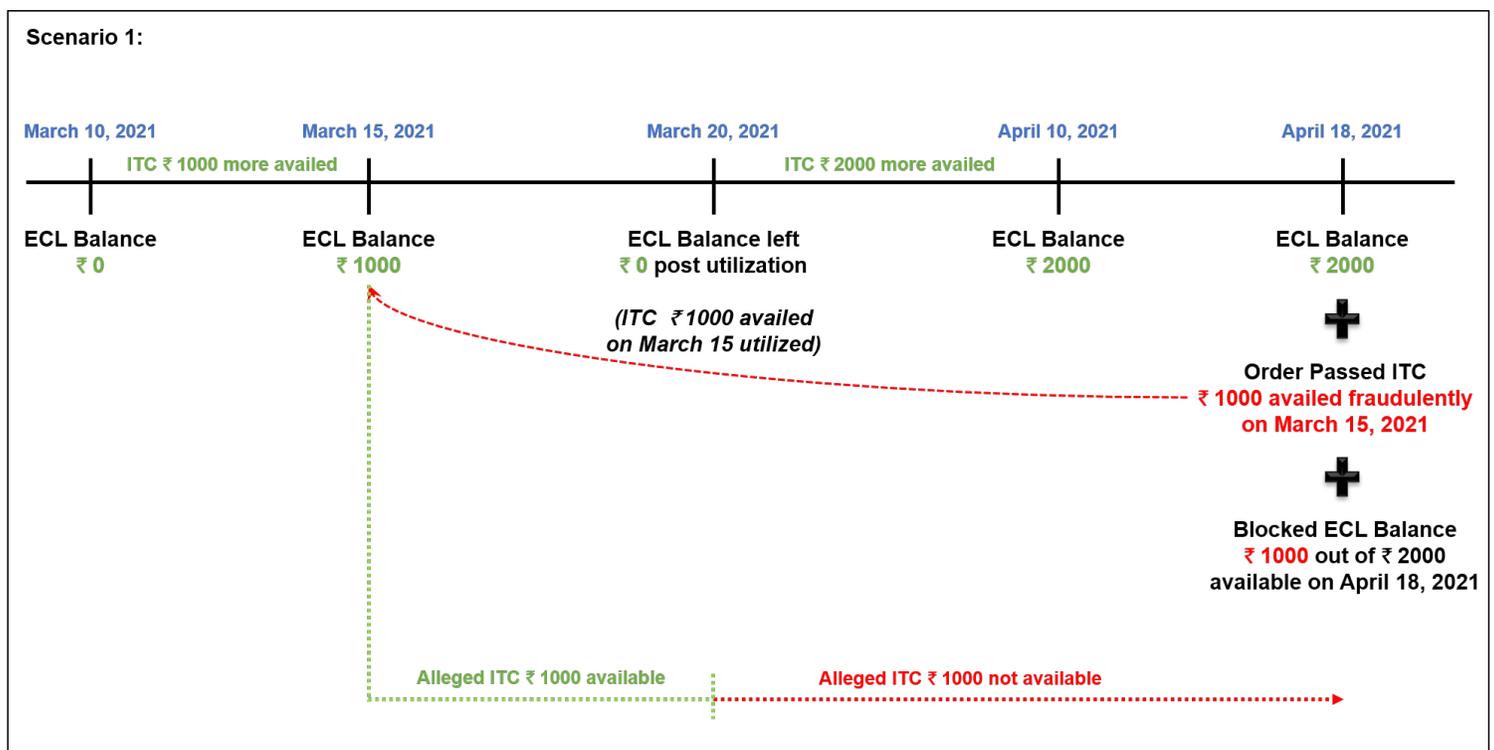
Moreover, generally, the words used by the Legislature need to be understood in their natural or ordinary sense. If the words of the statute are unambiguous, then it is inappropriate to expound a different meaning to such words beyond their natural and ordinary meaning. The words used in the provision are sufficient to say aloud the intent of the lawmakers.¹

By applying the above Rules of Interpretation to Rule 86A, it is obvious that the term 'available' used therein carries its natural and ordinary meaning. If the term 'available' is dropped from the Rule 86A, then the interpretation of Rule 86A would be different from the interpretation this Rule would have with the term 'available' remaining in it. Therefore, the term 'available' as used in Rule 86A must be given its due meaning.

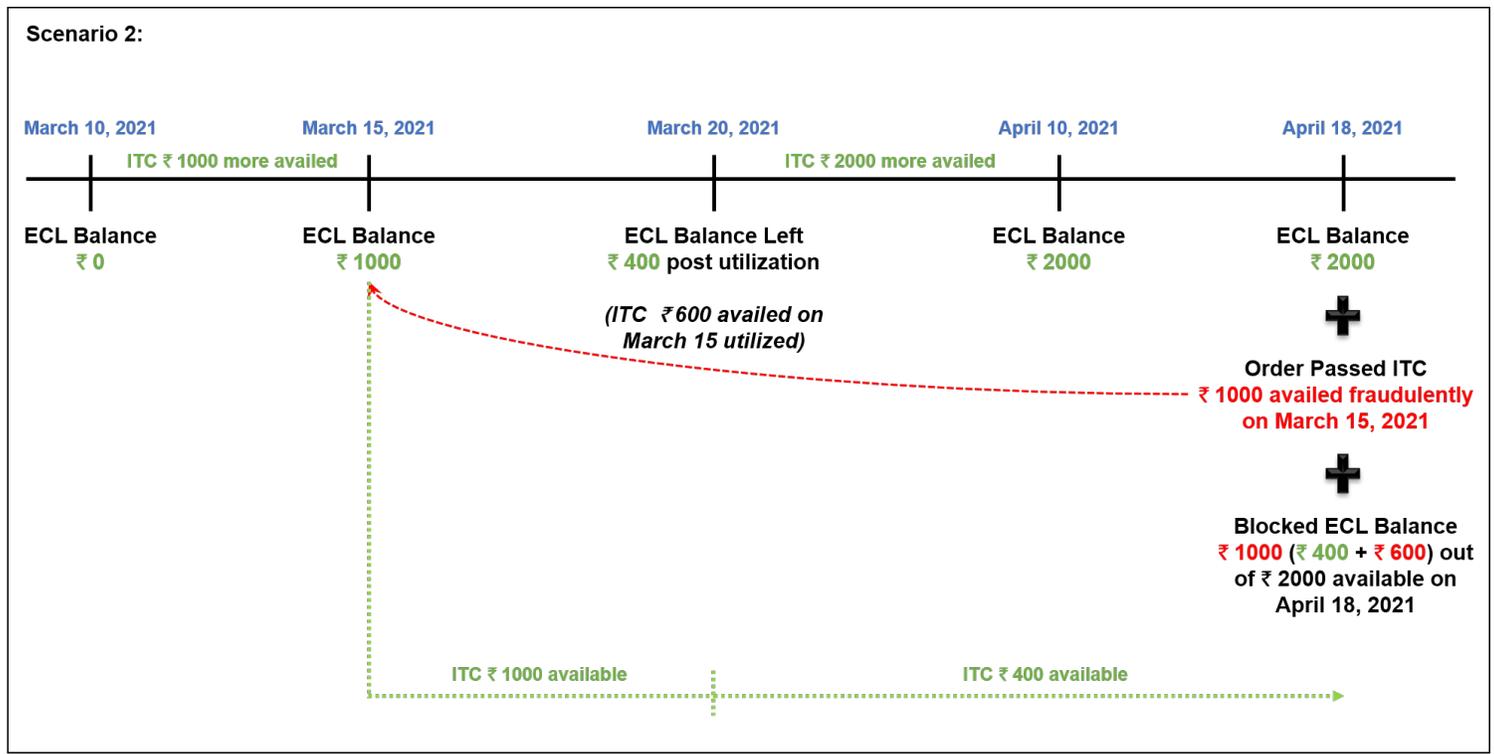
Power to block ITC under Rule 86A is akin to the power of attachment of property under Section 83 of the CGST Act. Both the provisions require the Commissioner to have reason to believe under specified circumstances to block ITC or attach property provisionally for a period of one year. Recently in the case of Radha Krishna Industries², the Supreme Court held that the power under Section 83 is draconian and needs to be interpreted restrictively. The provision must be construed on its plain terms without any intendment.

From the above ruling, we can draw an analogy to interpret Rule 86A. Resultantly, words used in Rule 86A must be interpreted restrictively only. Accordingly, the term 'ITC available' as used in Rule 86A must necessarily refer to availability of that ITC which is sought to be blocked in terms of Rule 86A. If any part of the ITC which is sought to be blocked in terms of Rule 86A has already been utilized and is therefore not available on the date of passing Order under Rule 86A, then no Order under Rule 86A can be passed. Moreover, an Order under Rule 86A cannot block any other ITC which is availed by the taxpayer after the subject ITC for which Order under Rule 86A pertains to. This is explained by plotting different scenarios as under:

Examining Rule 86A from the optics of the term 'Available'
(presuming all other conditions are satisfied)



Remarks - Order passed blocking ITC of Rs.1000 is inappropriate as the alleged fraudulently availed ITC was not available in ECL as on April 18, 2021 inasmuch as ITC of Rs.1000 was utilized for discharging output tax liability on March 20, 2021. Therefore, on April 18, 2021, no fraudulently availed ITC of Rs.1000 was available for blocking. Order dated April 18, 2021 blocking ITC of Rs.1000 out of ITC of Rs.2000 availed during March 20, 2021 to April 10, 2021 is not tenable as ITC of Rs.2000 has not been held to have been availed fraudulently.



Remarks - The Order issued blocking ITC of Rs.1000 is inappropriate to the extent of Rs.600 as the alleged fraudulently availed ITC was not available in ECL as on April 18, 2021. The alleged ITC to the extent of Rs.600 was utilized for discharging output tax liability on March 20, 2021. However, the Order is appropriate to the extent of Rs.400 as ITC of Rs.400 is out of the fraudulently availed ITC of Rs.1000 on March 15, 2021 and the same was available in ECL on the date of passing Order i.e. April 18, 2021.

Concluding Remarks:

Apropos Rule 86A, GST Authorities can block the use of ITC by taxpayer by alleging it to be fraudulently availed. But they can restrict utilization of only that portion of ITC which is available in ECL on the date of passing Order out of the ITC which is availed in contravention of Rule 86A. Utilization of no other ITC can be restricted as Rule 86A needs to be interpreted strictly. Interestingly, Section 83, albeit declared a draconian provision, still provides for post facto opportunity of being heard to the taxpayer. Whereas Rule 86A, though a reflection of Section 83, does not provide for any opportunity of being heard to the taxpayer. Our interpretation of Rule 86A herein is like sailing through uncharted waters and walking an untrodden path. It would be interesting to see how the term 'available' in Rule 86A is interpreted by the Courts.

1. G.P. Singh: Principles of Statutory Interpretation
2. Radha Krishan Industries v. State of Himachal Pradesh [2021-VIL-50-SC]



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