

# **Analysis of Rule 86B of CGST Rules, 2017**

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## **REFER THE DECISION OF THE HON'BLE HIMACHAL PRADESH HIGH COURT IN THE CASE OF**

**M/s A.M. Enterprises v. State of Himachal Pradesh & Ors. (CWP No. 1517 of 2024) decided on 20-09-2024**

### **Background of Rule 86B:**

Rule 86B restricts the use of Input Tax Credit (ITC) from the Electronic Credit Ledger for discharging more than 99% of output tax liability in cases where the taxable supply exceeds ₹50 lakh in a month, mandating at least 1% payment in cash.

### **Petitioner's Contention:**

The petitioner challenged the constitutional validity of Rule 86B, arguing that:

- The rule lacks explicit statutory backing in the HPGST Act, 2017
- Sections 49(4), 49A, and 49B of the Act do not provide for such stringent restrictions on ITC usage.
- The requirement to pay a minimum of 1% in cash, despite sufficient ITC, is unreasonable and lacks clear legislative mandate

### **Court's Analysis and Observations:**

The High Court observed that:

- While Section 49(4) allows for conditions on ITC utilization, the specific restriction imposed by Rule 86B is not expressly supported by any provision of the HPGST/CGST Act.
- Section 164 empowers the government to frame rules, but this power does not extend to creating rules that impose severe restrictions on ITC usage without clear legislative authority.
- The Electronic Credit Ledger represents the taxpayer's own funds, already paid to the authorities through earlier tax payments. Imposing restrictions on its usage, when tax dues are fully paid, is unjustified

### **On Cancellation of GST Registration:**

The court addressed the issue of GST registration cancellation for violations related to Rule 86B, stating that

- Such extreme measures are disproportionate, especially when there is no actual harm to the authorities, as the tax dues have been fully paid.
- Harsh penalties based on incomplete investigations violate the principle of proportionality and are unjustifiable.

### **Conclusion:**

The Himachal Pradesh High Court's ruling casts significant doubt on the validity of Rule 86B, suggesting that it lacks statutory backing and is ultra vires the HPGST Act, 2017. The decision emphasizes the necessity for any restrictions on ITC usage to have explicit legislative support and to adhere to principles of fairness and proportionality.

### **Advice:**

**While the Himachal Pradesh High Court decision offers strong grounds to challenge adverse action under Rule 86B, a cautious and practical approach would be to comply with the 1% cash payment requirement proactively. Challenges should be considered only where notices are issued or disputes arise, to avoid unnecessary exposure to litigation and administrative hurdles.**

**Rule 86B of Central Goods and Services Tax Rules, 2017**